

Israel's Consistent Violation of the Right to Life of Palestinians, the Lack of Accountability for Unlawful Killings, and the Continued Ignominy of Occupation

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Dear Editor,

In 2018, Israeli security forces killed 290 Palestinians, 55 of whom were under the age of 18.¹ The majority of these individuals were killed as a result of Israel's longstanding 'open-fire policy'.² According to the Israeli NGO B'Tselem, Israel's open-fire policy specifies that:

live ammunition may be fired in two situations only. First, shooting to kill is permitted when members of the security forces or other individuals are in life-threatening danger. Even then, the use of firearms is permitted only if there is no other way to avert the danger and only against the assailants themselves. Second, members of the security forces may only shoot at a person's legs, as the last phase in an attempt to arrest the person in question, only after they have given warning and fired in the air, and only when no one else is in danger of getting hurt.³

Having been a witness to the shooting of a Palestinian teenager in August 2017,⁴ I can confirm the veracity of reports which state that the above stipulations are routinely and recklessly ignored by Israeli security forces.⁵ Furthermore, the Israeli security forces' official open-fire policy has a clear relationship with Israel's unofficial 'shoot-to-kill' policy. This 'shoot-to-kill' policy is supported and encouraged by many leading political figures in Israel, despite its

¹ 'Israeli Security Forces Killed 290 Palestinians in 2018; Most Were Victims of a Reckless Open-Fire Policy' (*B'Tselem*, 17 January 2019) <https://www.btselem.org/press_releases/20190117_2018_fatalities> accessed 6 February 2019.

² 'Open-Fire Policy' (*B'Tselem*, 11 November 2017) <<https://www.btselem.org/firearms>> accessed 6 February 2019.

³ *ibid.*

⁴ 'The Aftermath of an Attack: Israel's Arbitrary and Collective Punishment Measures' (*Al-Haq*, 7 September 2017) <<http://www.alhaq.org/advocacy/topics/right-to-life-and-body-integrity/1137-the-aftermath-of-an-attack-israels-arbitrary-and-collective-punishment-measures>> accessed 6 February 2019.

⁵ See for example B'Tselem (n 2); 'This is How We Fought in Gaza: Soldiers' Testimonies and Photographs from Operation "Protective Edge"' (*Breaking the Silence*, 2014) <<https://www.breakingthesilence.org.il/pdf/ProtectiveEdge.pdf>> accessed 6 February 2019; 'European Officials Accuse Israel of "Systematic Unlawful Killings" in Gaza' *The Times of Israel* (Israel, 25 January 2017) <<https://www.timesofisrael.com/european-group-accuses-israel-of-systematic-unlawful-killings-in-gaza/>> accessed 6 February 2019; 'Gaza Protest Death Toll Rises to 18 as Israel Rejects Allegations of Excessive Force' (*Thejournal.ie*, 2 April 2018) <<https://www.thejournal.ie/palestine-gaza-17-dead-3935981-Apr2018>> accessed 6 February 2019.

blatant illegality under international human rights law.⁶ Equally concerning is the almost complete lack of accountability for Palestinians killed by Israeli security forces, whether as a result of the open-fire policy or otherwise.

The Right to Life under International Law

Israel's unofficial 'shoot-to-kill' allows security forces to use lethal force against any individual considered a 'danger to police and civilians', rather than requiring that security forces use nonlethal force against such individuals.⁷ Such policy is in direct contravention of Article 6 of the International Convention on Civil and Political Rights (ICCPR). Article 6 of the ICCPR recognises and protects the right to life of all human beings: '[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'⁸

It is also noted in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials that non-violent means should be used, as far as possible, before force or firearms are used in a law-enforcement operation.⁹ This is the well-established international human rights law principle of use of force *as a last resort*. When attempting, for example, to prevent an individual from committing a crime, non-violent means must be the first option employed; force should always be at the minimum level possible if force is used, and lethal force should only be used when strictly unavoidable.¹⁰ This is further underscored by General comment Number 36 on ICCPR Article 6, which states the following:

The use of potentially lethal force for law-enforcement purposes is an extreme measure, which should be resorted to only when strictly necessary in order to protect life or prevent serious injury from an imminent threat... The intentional taking of life by any

⁶ Harriet Agerholm, 'Israeli Officials Back Shoot-To-Kill Policy of Palestinian Suspects, Says Human Rights Watch' *The Independent* (London 2 January 2017) <<https://www.independent.co.uk/news/world/middle-east/israel-shoot-to-kill-policy-palestinian-suspects-human-rights-watch-idf-soldiers-west-bank-gaza-a7505486.html>> accessed 6 February 2019.

⁷ United Nations General 'Assembly Written Statement Submitted by Al-Haq, Law in the Service of Man, Non-Governmental Organization in Special Consultative Status' (15 February 2016) A/HRC/31/NGO/X; See also: Steven Klein, 'Why Israel's Unwritten 'Shoot to Kill' Policy Is So Dangerous' (*Haaretz*, 20 October 2015) <https://www.haaretz.com/opinion/.premium-why-unwritten-shoot-to-kill-policy-is-so-dangerous-1.5410892> accessed 25 February 2019.

⁸ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 6.

⁹ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (7 September 1990) <<https://www.ohchr.org/Documents/ProfessionalInterest/firearms.pdf>> accessed 2 March 2019 art 4.

¹⁰ Noam Lubell, *Extraterritorial Use of Force Against Non-State Actors* (Oxford University Press, 2010) 202.

means is permissible only if it is *strictly necessary* in order to protect life from an imminent threat.¹¹

General comment Number 36 further notes that ‘all operations of law enforcement officials should comply with relevant international standards, including the Code of Conduct for Law Enforcement and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.’¹²

As discussed in the 2018 report of the Office of the UN High Commissioner for Human Rights (OHCHR) on the situation in Palestine, in many of the instances monitored by that office, ‘it appeared that the use of firearms was not limited to a measure of last resort in situations posing imminent threat to life or serious injury, as required by international law.’ While Israel continues to deny its human rights responsibilities in the Occupied Palestinian Territories (OPT), its human rights obligations to the OPT under the ICCPR have been strenuously affirmed by numerous bodies, including by the UN General Assembly itself.¹³

Unlawful killings and the Accountability Vacuum

Accountability concerns are another major issue with regard to such incidents. For example, 169 Palestinians were killed between September 2015 and October 2016 by Israeli security forces following an attack or alleged attack. According to the 2016 ‘Report of the Secretary General on the Human rights situation in the Occupied Palestinian Territory, including East Jerusalem’, as of the 31st October of that year, only two of those 169 cases had led to an indictment and subsequent conviction.¹⁴ One such conviction was that of Elor Azaria, an Israeli soldier who shot Palestinian Abdel Fatah-al-Sharif in the head while he lay wounded on the street in Hebron in March 2016.¹⁵ Azaria was convicted of manslaughter in February 2017 and

¹¹ UN Human Rights Committee ‘General Comment No 36, Article 6 (Right to Life)’ (30 October 2018) CCPR/C/GC/36. Italic emphasis added.

¹² *ibid.*

¹³ UN Human Rights Council ‘Human Rights Situation in the Occupied Palestinian Territory, Including East Jerusalem’ (16 March 2017) A/HRC/34/38; See also UNGA ‘Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, Including East Jerusalem : Resolution / Adopted by the General Assembly’ (23 December 2016) A/RES/71/98.

¹⁴ UN Human Rights Council ‘Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General Human Rights Situation in Palestine and Other Occupied Arab Territories’ A/HRC/34/38.

¹⁵ Yaniv Kubovich, “‘Hebron Shooter’ Elor Azaria’s Prison Sentence Cut by a Third’ (*Haaretz*, 19 March 2018), <<https://www.haaretz.com/israel-news/hebron-shooter-elor-azaria-s-prison-sentence-cut-by-a-third-1.5914309>> accessed 25 February 2019.

sentenced to 14 months in prison, amidst protests from Israeli politicians and civilians that he was convicted at all. Azaria was released after serving only 9 months of his 14-month sentence.¹⁶ This lack of accountability for the unlawful killing of Palestinian civilians is made all the more concerning by recent reports indicating that many such incidents are not investigated at all.¹⁷ In its 2018 report, the OHCHR notes Israel's 'consistent failure to investigate and prosecute' those responsible for unlawful killings and excessive uses of force – a failure which is indicative of 'a permissive policy towards such practices.'¹⁸

Speaking on General comment Number 36 in February 2019, Christof Heyns and Yuval Shany note that a failure to investigate a potentially arbitrary deprivation of life, even in an armed conflict situation, could render that deprivation of life unlawful.¹⁹ Furthermore, General comment Number 36 states that 'investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards...'²⁰ It further specifies that violations of article 6 should not be addressed 'merely through administrative or disciplinary measures', but through a criminal investigation.²¹ That Israel is failing its international obligations under Article 6, both in respect to the right to life in the first instance, and in respect to its duty to investigate unlawful or arbitrary deprivations of life in the second instance, cannot be doubted.

Conclusion

However, Israel's occupation of Palestine would not be rendered any more just even if all uses of force by Israeli security forces were found to be lawful, and if every killing of a Palestinian was found not to amount to an arbitrary deprivation of life. While respect for and compliance with the relevant rules of international human rights law must not only be encouraged but demanded, such compliance still fails to address the ignominy of the occupation's very

¹⁶ Kubovich (n15).

¹⁷ Hagai El-Ad, 'The IDF Doesn't Investigate Palestinian Deaths — it Whitewashes Them' (*+972 Magazine*, 1 January 2019) <<https://972mag.com/idf-doesnt-investigate-palestinian-deaths-whitewashes/139521/>> accessed 6 February 2019.

¹⁸ UN Human Rights Council 'Implementation of Human Rights Council Resolutions S-9/1 and S-12/1' (5 March 2018) A/HRC/37/38.

¹⁹ Ryan Goodman, Christof Heyns and Yuval Shany, 'Human Rights, Deprivation of Life and National Security: Q&A with Christof Heyns and Yuval Shany on General Comment 36' (*Just Security*, 4 February 2019) <<https://www.justsecurity.org/62467/human-life-national-security-qa-christof-heyns-yuval-shany-general-comment-36/>> accessed 6 February 2019.

²⁰ UN Human Rights Committee (n 11).

²¹ *ibid.*

existence. Even if Israel's conduct was to comply with every relevant rule of international human rights law, this would not address Israel's continued, unabated and illegal expansion into Palestinian territory.²² Nor would it address the original fact of indefinite occupation which, in and of itself, 'necessarily constitutes an assault on both sovereign integrity and fundamental human rights.'²³

In 1991, the American poet and essayist Adrienne Rich wrote that war is the 'absolute failure of imagination.'²⁴ So too is Israel's occupation of Palestine. With the occupation now in its 52nd year, it is well past time for Israel to imagine a new way of being.

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²² United Nations Security Council 'Resolution 2334' (23 December 2016) S/RES/2334. See also 'Statistics on Settlements and Settler Population' (*B'Tselem* 16 January 2019) <<https://www.btselem.org/settlements/statistics>> accessed 25 February 2019.

²³ Orna Ben-Naftali, Aeyal M. Gross and Keren Michaeli, 'Illegal Occupation: Framing the Occupied Palestinian Territory' [2005] 23(3) *Berkeley Journal of International Law* 613.

²⁴ Adrienne Rich, *What Is Found There: Notebooks on Poetry and Politics* (WW Norton & Company 1991) 16.