



General Assembly

Distr.: General
15 January 2020

Original: English

Human Rights Council

Forty-third session

24 February–20 March 2020

Agenda item 2

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report is submitted pursuant to Human Rights Council resolution 40/13 and provides an overview of the implementation of the resolution between 1 November 2018 and 30 October 2019 and of developments that are of relevance to ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem.

* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 40/13 and follows the oral update provided by the United Nations High Commissioner for Human Rights during the forty-second session of the Council on the progress made in the implementation of the resolution.¹ It should be read in conjunction with recent relevant reports of the Secretary-General and the High Commissioner.²

2. The report covers the period between 1 November 2018 and 30 October 2019 and addresses issues related to accountability for alleged violations of international human rights law and international humanitarian law, including in connection with incidents of alleged excessive use of force in the context of the large-scale protests related to the Great March of Return along the Gaza-Israel fence and of law enforcement operations in the West Bank and Gaza by all relevant duty bearers. It takes into account the report and recommendations of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory established by the Human Rights Council in its resolution S-28/1. It provides an update on accountability measures taken in relation to the three escalations of hostilities in Gaza since 2008. Lastly, it addresses measures linked to the responsibility of third States to ensure respect for international law.

3. The information contained in the present report draws mainly upon human rights monitoring activities conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Occupied Palestinian Territory. It also draws upon information from governmental sources, other United Nations entities and non-governmental organizations. OHCHR requested the Government of Israel and the Palestinian National Authority to provide information, by 15 November 2019, on any accountability measures adopted during the reporting period in relation to alleged violations of international human rights and humanitarian law committed in the Occupied Palestinian Territory, in particular with regard to use of force by their respective security forces that may have led to killings or injuries. The Palestinian National Authority responded with three submissions dated 14 November 2019. The Government of Israel did not respond. OHCHR also requested the States Members of the United Nations for information on the steps taken by them as third States to promote compliance with international law and implement the recommendations addressed to them. As of 15 November 2019, Cuba and the Syrian Arab Republic had responded.

II. Violations of international human rights and humanitarian law in the Occupied Palestinian Territory

4. Serious violations of international human rights law and international humanitarian law continued in the Occupied Palestinian Territory, including in the context of large-scale civilian protests in Gaza. The present section focuses on developments related to possible excessive use of force in the context of law enforcement operations. The report of the High Commissioner on the implementation of Human Rights Council resolutions S-9/1 and S-12/1³ provides an overview of violations of international human rights and humanitarian law by all duty bearers in the Occupied Palestinian Territory, and the report of the High Commissioner on the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan⁴ focuses on the violations of international humanitarian law governing occupation, in particular in respect of settlement expansion and its negative impact on the human rights of Palestinians during the same period (1 November 2018–30 October 2019).

¹ www.un.org/unispal/document/human-rights-commissioners-update-on-the-implementation-of-recommendations-of-commission-of-inquiry-on-gaza-protests/.

² A/HRC/35/19 and Add.1, A/HRC/37/41, A/HRC/40/43 and A/74/468.

³ A/HRC/43/70.

⁴ A/HRC/43/67.

5. A total of 131 Palestinians were killed (103 men, 5 women and 23 children) by Israeli security forces during the reporting period throughout the Occupied Palestinian Territory. The vast majority of the killings and injuries happened outside the context of hostilities, in which circumstances the use of force is governed by international human rights law and standards regulating the conduct of law enforcement officials.⁵ During the reporting period, 11 Israelis were killed by Palestinians, including 1 girl.

6. Demonstrations known as the Great March of Return at the Israel-Gaza fence, which commenced in March 2018, continued to take place almost every Friday throughout the reporting period. Protests remained largely peaceful, although on many Fridays demonstrators damaged and breached the fence, threw Molotov cocktails, homemade sound grenades and explosive devices towards the Israeli security forces and launched incendiary objects. In particular, 508 burning kites and incendiary balloons were launched by demonstrators towards Israel, causing significant damage to agricultural land and forests.⁶ The Israeli security forces responded with tear gas, rubber-coated bullets, water cannons, skunk water and sound devices, as well as live ammunition. Thirty-nine Palestinians, including 12 children and 1 woman, were killed by the Israeli security forces in that context, while some 2,078 Palestinians were injured with live ammunition, including 577 children.⁷ Many of those injured sustained permanent disabilities: 55 people, including 4 children and 1 woman, had limbs and/or fingers amputated, 6 were paralyzed and 10 partially lost their vision.⁸ Two Israeli soldiers were injured after an armed individual opened fire at them towards the end of the demonstration on 3 May 2019, east of Al-Boureij.

7. OHCHR monitored several cases related to the killing and injury of demonstrators at the fence. In the large majority of cases, it found no indication that the demonstrators in question would have presented an imminent threat to life or of serious injury. Under international human rights law, the use of potentially lethal force, such as firearms, for law enforcement purposes is an extreme measure that should be resorted to only when strictly necessary in order to protect life or prevent a serious injury from an imminent threat.⁹ Two incidents are particularly illustrative. On 21 December 2018, a 40-year-old man suffering from a physical disability resulting from poliomyelitis was shot dead with live ammunition to his head while approximately 400–600m from the fence, east of Al-Boureij. Witnesses reported that he was shot while walking around the bus parking area. On 8 February 2019, a 13-year-old boy was shot dead with live ammunition to his chest while standing and holding hands with three of his friends approximately 300m from the fence, east of Khan Younis, southern Gaza Strip.

8. Paramedics assisting injured demonstrators and journalists covering the protests were also subjected to live fire from the Israeli security forces. Thus, 110 paramedics and 62 journalists were injured by the security forces, tens of them with live ammunition and shrapnel.¹⁰ On 2 August 2019, a journalist was injured with live ammunition to his left leg as he was covering the demonstrations east of Al-Boureij. Witnesses reported that he was wearing a vest visibly marked “press” and taking photographs 200–300m from the fence when he was shot. On 27 September 2019, a 28-year-old female volunteer first responder, visibly identifiable through a white coat, was shot and injured by the Israeli security forces with live ammunition to her right hand and abdomen as she tried to assist injured demonstrators approximately 100m from the fence, east of Rafah.

9. Of particular concern is the number of children who continued to be exposed to unacceptable levels of violence at the fence. Children accounted for around 31 per cent of the fatalities and 28 per cent of those injured by live ammunition during the reporting period.¹¹ Little effort appears to have been made by the organizers of the demonstrations and

⁵ A/HRC/40/43, para. 14.

⁶ Figures provided by the Department of Safety and Security of the Secretariat.

⁷ Figures provided by the Office for the Coordination of Humanitarian Affairs of the Secretariat.

⁸ Figures provided by the World Health Organization.

⁹ Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 12.

¹⁰ Figures provided by Al Mezan Center for Human Rights.

¹¹ Figures provided by OHCHR and the Office for the Coordination of Humanitarian Affairs of the Secretariat.

the authorities in Gaza to prevent children from being exposed to violence at the fence. While the Israeli security forces bear the primary responsibility for the killing and injury of demonstrators, including children, a considerable number of demonstrators and witnesses contacted by OHCHR during the reporting period noted that the Higher National Commission for the Great March of Return continued to provide buses to shuttle demonstrators, including children, from different places in the Gaza Strip to the five demarcated demonstration sites along the eastern border. Witnesses reported that only on very rare occasions were children prevented from boarding the buses, and then only when the children under the age of 9.

10. On 18 March 2019, the independent international commission of inquiry on the protests in the Occupied Palestinian Territory presented its report to the Human Rights Council.¹² It found that, in the vast majority of the cases it had assessed, the use of live ammunition by the Israeli security forces against demonstrators was unlawful and that demonstrators had been shot in violation of their right to life.¹³ The commission of inquiry further determined that certain incidents could potentially amount to war crimes and crimes against humanity.¹⁴ In its recommendations, it urged the Israeli authorities to refrain from using lethal force against civilians posing no imminent threat to life, to ensure that the rules of engagement did not authorize lethal force against “main inciters”¹⁵ and to prohibit targeting persons based solely on their actual or alleged affiliation to any group, rather than their conduct.¹⁶ The commission of inquiry also recommended that the Government of Israel conduct prompt, impartial and independent investigations into every protest-related killing and injury, in accordance with international standards, while ensuring prompt, adequate and effective remedies for those killed or injured unlawfully.¹⁷

11. In the West Bank, including East Jerusalem, possible excessive use of force by the Israeli security forces – in some cases possibly amounting to arbitrary deprivation of life – continued in the context of law enforcement operations. During the reporting period, 35 Palestinians were thus killed, including 6 children and 1 woman.

12. OHCHR monitored several cases where the Israeli security forces used lethal force, killing or injuring a Palestinian, in circumstances in which lethal force did not appear to be strictly necessary in order to protect life or prevent a serious injury from an imminent threat.¹⁸ For example, on 14 December 2018, an 18-year-old man was shot with live ammunition to his lower back from a distance of 50m while he was running away from Israeli soldiers who were firing tear gas to disperse a group of youth outside Al-Jalazun refugee camp, north of Ramallah. The Israeli security forces did not provide medical assistance to that person and prevented a Palestinian ambulance from approaching by firing sound grenades. After 30 minutes, Palestinian paramedics were allowed to transport the man to Ramallah hospital, where he was pronounced dead. An investigation was opened by the Israel Defense Forces into the incident.¹⁹ On 4 March 2019, in the vicinity of Kafr Nimeh village, west of Ramallah, the Israeli security forces shot and killed two Palestinians and injured a third during an apparent car ramming attack in which two Israeli soldiers were injured. From video footage of the incident, it is possible to hear the sound of ramming followed by a single shot and, after a four-minute interval, three consecutive bursts of fire. Witness testimonies were consistent with the video footage. The Israel Defense Forces spokesperson refused to

¹² A/HRC/40/74.

¹³ *Ibid.*, paras. 94 and 97.

¹⁴ *Ibid.*, paras. 114–115.

¹⁵ The term refers to the category of “key instigators” used by the Israel Defense Forces in a number of submissions and mentioned below in paragraph 34.

¹⁶ A/HRC/40/74, para. 119.

¹⁷ *Ibid.*, para. 125 (a)–(b).

¹⁸ For further illustrative cases, including of possible excessive use of force against children, paramedics and people with disabilities, see A/HRC/43/70.

¹⁹ www.haaretz.co.il/news/politics/1.6766320 (in Hebrew only).

comment on enquiries by Israeli media regarding the delay between the ramming and the shooting.²⁰ The Forces opened an operational inquiry into the incident.²¹

13. In other cases, the use of lethal force led to severe and permanent injuries. On 12 July 2019, the Israeli security forces shot and critically injured a nine-year-old Palestinian boy in the head during the weekly demonstrations in Kafr Qaddum, near Qalqiliya. According to eyewitnesses, protesters were throwing stones at the Israeli security forces about 150 metres away from where the boy was standing at the entrance of a friend's house when he was hit. At the time of reporting, the boy remained hospitalized with around 100 fragments lodged in the brain, unable to speak and with very limited ability to move. Media reported that Israel Defense Forces was investigating the incident, however this has not been officially confirmed.²²

III. Update on accountability

A. Accountability for the 2014 escalation of hostilities in Gaza and other rounds of hostilities

14. Over five years after the 2014 escalation of hostilities in Gaza, lack of accountability remains pervasive for suspected violations of international humanitarian law, including allegations of war crimes perpetrated by all parties to the conflict. Since the publication of the report of the commission of inquiry on the 2014 Gaza conflict,²³ the Secretary-General and the High Commissioner have provided regular updates on the lack of progress regarding the implementation of the recommendations contained in that report, and highlighted concerns about the lack of accountability by both Israeli and Palestinian authorities.²⁴

15. With respect to Israel, the most recent update by the Israeli Military Advocate General was provided on 15 August 2018 and referred to in the previous report of the High Commissioner.²⁵ No notable progress in the investigation and prosecution of alleged violations in the context of the 2014 round of hostilities was registered during the reporting period.²⁶

16. Lack of progress and transparency persists also in relation to accountability efforts linked to previous rounds of hostilities. In particular, since July 2010, no information has been made available by the Government of Israel in relation to progress in the investigation and prosecution of alleged wrongdoing committed by the Israeli security forces in the context of Operation Cast Lead.²⁷

²⁰ www.timesofisrael.com/9-days-after-alleged-car-ramming-eyewitnesses-say-israel-hasnt-contacted-them/.

²¹ www.haaretz.com/israel-news/.premium-palestinian-car-hit-soldiers-they-shot-back-once-four-minutes-later-nine-bullets-followed-1.7045801.

²² www.timesofisrael.com/family-of-palestinian-boy-shot-in-the-head-wants-answers-from-israel/.

²³ A/HRC/29/52.

²⁴ See, in particular, A/HRC/34/38, para. 42, A/HRC/37/41, paras. 9–17, A/HRC/40/43, paras. 4–13, and A/71/364 paras. 40 and 51–55.

²⁵ A/HRC/40/43, para. 5.

²⁶ In particular, of the 500 complaints (relating to 360 incidents) referred to the Military Advocate General, 31 were referred for criminal investigation and most were closed on the ground that the conduct of the Israeli security forces complied with domestic and international law. While one investigation led to the conviction of three soldiers for looting, investigations in 28 cases did not result in criminal charges; two cases remain pending. Cases relating to 189 incidents have so far been closed. See <https://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Documents/Operation-Protective-Edge-MAG-Corps-Press-Release-Update-6-15-August-2018.pdf> and A/HRC/40/43 paras. 5 and 9.

²⁷ According to the latest available update, 47 military police investigations have been opened and led to the indictment of three Israeli soldiers (two of whom for forcing a Palestinian minor to assist them in a manner that put him at risk and another for killing a Palestinian civilian) and to the conviction of one soldier for the theft of a credit card. See https://mfa.gov.il/MFA_Graphics/MFA%20Gallery/Documents/GazaUpdateJuly2010.pdf.

17. The absence of any significant progress in the investigation of and prosecution for alleged violations confirms the serious concerns previously expressed by the High Commissioner and the Secretary-General regarding the consistent failure of the Israeli Military Advocate General to open criminal investigations in cases of alleged violations of international humanitarian law, including possible war crimes, committed by Israeli security forces in the context of hostilities.²⁸

18. In relation to more recent escalations, on 19 December 2018 the Israel Defense Forces publicly reported that the Military Advocate General had opened an investigation into the killing of two Palestinian children by an Israeli airstrike on 14 July 2018.²⁹ On that day, the Israeli Air Force conducted airstrikes targeting a vacant building belonging to the Palestinian Ministry of Culture, located in Al Katiba yard, in Gaza City, killing two 14-year-old boys and injuring 23 others.³⁰ Israel alleged that the building was being used for militant activity. According to the Israel Defense Forces spokesperson, an internal military investigation had showed that “at the time of the [missile] fire, no people were spotted on the roof of the building”.³¹ This announcement followed the publication of an independent investigation into the case by the Israeli human rights organization B’Tselem and the international non-governmental organization Forensic Architecture, which found that the sequence of video footage of the attacks initially published through the Twitter account of the Israel Defense Forces spokesperson had been edited in relation to the first fatal strike, in an alleged attempt to obscure the unlawful nature of the strike.³²

19. As also underlined by the High Commissioner in previous reports,³³ no information was made available on steps taken to ensure accountability for possible international humanitarian law violations, including possible war crimes, committed by the Palestinian authorities and armed groups in the context of the different rounds of hostilities, as identified by the commission of inquiry on the 2014 Gaza conflict and, before that, by the United Nations Fact-Finding Mission on the Gaza Conflict.³⁴ Such lack of accountability remains of the gravest concern.

B. Accountability for unlawful use of force

20. Impunity continues to prevail also in relation to incidents of possible excessive use of force by Israeli security forces outside the context of hostilities, confirming a worrying trend that has been repeatedly highlighted by the Secretary-General and the High Commissioner.³⁵ The lack of progress in the investigations related to the widespread use of lethal force by the Israeli security forces in the context of the Great March of Return extends this unacceptable trend.

21. In February 2019, prior to the release of the report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory, the Israel Defense Forces published a document intended to provide information on the nature of the events related to the Great March of Return protests and on the response by the Forces. In large part, the document echoes the position of the Government of Israel expressed in its response to the 2018 Supreme Court petition on the open-fire policy.³⁶

²⁸ A/HRC/35/19, para. 18, A/HRC/37/41, para. 14, A/HRC/40/43, para. 8, and A/71/364, para. 40.

²⁹ www.haaretz.com/israel-news/israel-probing-death-of-two-palestinian-teens-in-gaza-warning-missile-strike-1.6762293.

³⁰ See also A/HRC/40/39, para. 15.

³¹ www.haaretz.com/israel-news/israel-probing-death-of-two-palestinian-teens-in-gaza-warning-missile-strike-1.6762293.

³² www.btselem.org/video/201812_lethal_warning#full.

³³ See, in particular, A/HRC/37/41, para. 17, and A/HRC/40/43, para. 13.

³⁴ A/HRC/29/52 and A/HRC/12/48 and Corr.1.

³⁵ See, for instance, A/HRC/34/38, paras. 43–44, A/HRC/35/19, paras. 17–18, and A/71/364, para. 66.

³⁶ www.idf.il/media/48315/petition-gaza-border-events-summary-of-state-position.pdf and <https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/Gaza+Fire+Regulations+Petition/State+response+Gaza+petition.pdf> (in Hebrew only).

22. In particular, the Israel Defense Forces continue to view the protests as events that cannot be considered detached from the ongoing armed conflict with armed groups in Gaza. Such a view translates into an operational approach that questions the applicability of the law enforcement framework based on international human rights law, as reflected in the claim that “most of the means and methods employed by law enforcement agencies in situations of riots or border incidents are simply ineffective or irrelevant to this scenario”.³⁷ That assessment is inconsistent with the findings of the commission of inquiry and with the information gathered by OHCHR through its continuous monitoring activities on the ground. Both the commission of inquiry and OHCHR have observed that the Great March of Return demonstrations along the Israel-Gaza fence are civilian in nature and, despite some acts of significant violence, do not constitute combat or a military campaign.³⁸ With regard to the use of lethal force, the Israel Defense Forces stress that, according to their standard operating procedures, “in contexts such as the Gaza border events, potentially lethal force may only be used in circumstances in which there is a real and imminent danger to human life or bodily integrity. Dangers that are not as serious cannot be dealt with by the use of such force,” adding that the Forces use “various measures to ensure the use of potentially lethal force is accurate and restrained”.³⁹ OHCHR monitoring activities on the ground, however, continue to indicate a persistent pattern of Palestinians getting killed or severely injured at the fence in circumstances where they do not seem to pose an imminent threat to life or serious injury.⁴⁰

23. According to the Israel Defense Forces, allegations of misconduct by members of the Forces are investigated in an effective and thorough manner.⁴¹ However, 19 months after the start of the Great March of Return, the Israeli military system had delivered only one sentence in relation to possible unlawful acts committed by the Israeli security forces at the fence (see para. 25 below).

24. According to information provided by the Israeli Ministry of Justice, as of 30 July 2019, 226 incidents resulting in the killing of Palestinian demonstrators during the Great March of Return had been referred to the General Staff Mechanism for Fact-Finding Assessments. The Mechanism has completed the investigation of 55 cases. In 10 cases, the Military Advocate General announced the opening of a military police investigation; in 20 other cases, the determination was to conclude the investigation without proceeding any further. The other cases referred to the Military Advocate General by the Mechanism were still pending. In three additional cases, a police investigation was initiated without the involvement of the Mechanism. The High Commissioner has highlighted the shortcomings of the Mechanism in previous reports, raising concerns as to whether such an internal mechanism meets accountability requirements under international law.⁴² The organizations Al Mezan Center for Human Rights and Palestinian Centre for Human Rights have submitted to the Israeli authorities 74 and 177 cases respectively related to individuals killed or injured at the Gaza fence since 30 March 2018.

25. On 29 October 2019, an Israeli military court sentenced an Israeli soldier to one month in prison, to be served by carrying out military-related labour, and to a two-month suspended sentence and demotion for shooting and killing without authorization Othman Hilles, a 14-year-old Palestinian. The killing occurred on 13 July 2018, close to the Israel-Gaza fence, east of Gaza City, and was captured on video. The independent international commission of inquiry on the protests in the Occupied Palestinian Territory reviewed the incident and found that the victim had not posed an imminent threat of death or serious injury to Israeli security forces soldiers when he was shot.⁴³ According to the Israel Defense Forces, the conviction

³⁷ Israel Defense Forces, “Gaza border events: questions and answers”, p. 70. Available from www.idf.il/media/48555/gaza-border-events-questions-and-answers.pdf.

³⁸ A/HRC/40/74, para. 32.

³⁹ www.idf.il/en/minisites/questions-and-answers-concerning-the-violent-riots-and-attacks-occurring-on-the-border-between-gaza-and-israel-during-2018-9.

⁴⁰ www.un.org/unispal/document/human-rights-commissioners-update-on-the-implementation-of-recommendations-of-commission-of-inquiry-on-gaza-protests/.

⁴¹ Israel Defense Forces, “Gaza border events”, p. 92.

⁴² A/HRC/40/43, paras. 11 and 15.

⁴³ A/HRC/40/CRP.2, para. 517.

was part of a deal in which the soldier had pleaded guilty to “disobeying an order leading to a threat of life or health”.⁴⁴ Also according to the Forces, the defendant shot the Palestinian boy “without receiving the required permission from his commanders, not in accordance with the rules of engagement and not in accordance with the instructions he had received prior”.⁴⁵ Moreover, the soldier was not convicted of a more serious offence because military prosecutors were unable to collect sufficient evidence connecting his gunshot to the victim’s death.⁴⁶ The offence that forms the basis for the conviction and the leniency of the sentence appear starkly inconsistent with the gravity of the conduct, casting serious doubts on the effectiveness of the Israeli internal investigation and prosecution system to ensure accountability for human rights and international humanitarian law violations in line with international standards. The case appears also to highlight structural limitations inherent to the Israeli military justice system in focusing on the responsibility of soldiers in complying with orders and standard operating procedures, without addressing the legality of those same rules of engagement and the connected responsibility of military commanders.

26. Although not linked to the Great March of Return, on 15 May 2019 the Israeli Military Police Criminal Investigation Division closed the probe opened on 4 January 2018 into the killing of Ibrahim Abu Thoryah during demonstrations at the Gaza fence on 15 December 2017.⁴⁷ A double amputee in a wheelchair, Mr. Abu Thoryah was shot dead with live ammunition to the head. His killing sparked widespread international condemnation, including a statement by the High Commissioner.⁴⁸ According to media reports, the military investigation concluded that there was no evidence that the man had been killed by direct Israeli fire.⁴⁹ The Israel Defense Forces added that they had contacted Palestinian officials to obtain the bullet that had hit Mr. Abu Thoryah to examine it, but that the request had been denied. According to information collected by OHCHR at the time of the incident, there was no indication that Mr. Abu Thoryah had posed an imminent threat of death or serious injury at the moment he was killed. His physical disability must have been clearly visible to the person who shot him, in the front of the head, some 15–20m from the fence.

27. The lack of accountability for the killing and injury of Palestinians is evident in the context of the Great March of Return protests in Gaza as well as in the West Bank. On 17 December 2018, the Israeli Attorney General rejected an appeal submitted by the Association for Civil Rights in Israel (ACRI) contesting the Military Advocate General’s decision of April 2016 to close the investigation into the killing of 17-year-old Mohammad al-Qusbah by an Israel Defense Forces officer with three bullets to his upper limbs. The boy was running away from Israel Defense Forces personnel after throwing a stone towards Israeli installations near the village of Ar-Ram, on 3 July 2015.⁵⁰ In justifying the closing of the investigation, the Military Advocate General noted that security personnel had made “a professional error” by firing while the boy was running, adding that the incident occurred in “operational circumstances”.⁵¹ The Attorney General regarded the delay in the promotion of the officer as an “appropriate and proportionate response”.⁵² The failure to prosecute a soldier who had opened fire against an individual (in this case a minor) who, according to information resulting from OHCHR monitoring activities, did not seem to pose a threat to life or serious

⁴⁴ www.timesofisrael.com/in-first-soldier-convicted-over-killing-of-gaza-rioter-gets-1-month-sentence.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ www.haaretz.com/israel-news/.premium-israel-army-closes-case-disabled-gazan-s-death-citing-no-evidence-soldiers-shot-him-1.7246465 and www.ynetnews.com/articles/0,7340,L-5066263,00.html.

⁴⁸ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22550&LangID=E%2027%20 and www.timesofisrael.com/idf-soldiers-didnt-intentionally-kill-double-amputee-in-gaza-riot/.

⁴⁹ This reflects what was already announced in the Israel Defense Forces initial probe, which indicated that there were “no moral or professional failures” on the part of the Israel Defense Forces in the incident. See www.timesofisrael.com/idf-soldiers-didnt-intentionally-kill-double-amputee-in-gaza-riot/.

⁵⁰ www.btselem.org/press_releases/20160410_muhammad_ali_qusbah_case_closed.

⁵¹ Letter dated 13 December 2018 from the Israeli Attorney General addressed to ACRI. See also www.timesofisrael.com/idf-colonel-cleared-in-shooting-death-of-rock-thrower/ and www.haaretz.com/israel-news/.premium-idf-officer-who-killed-stone-throwing-palestinian-tapped-for-top-post-1.6358286.

⁵² Letter dated 13 December from the Israeli Attorney General addressed to ACRI.

injury, again casts doubt on the effectiveness of the accountability system in place. Concerns also persist in relation to the Attorney General's position that the delay in the officer's promotion represents an appropriate and proportionate punishment for the conduct in question. In March 2019, ACRI and the family of the victim filed a petition with the Israeli High Court of Justice against the decision of the Attorney General.

28. On 27 March 2019, the Public Committee against Torture in Israel (PCATI) appealed to the Israeli Attorney General against the decision of the Military Advocate General to close the investigation into the killing of Aref Jaradat, a 22-year-old Palestinian with Down syndrome who was shot on 4 May 2016 in the abdomen in the context of an operation of the Israeli security forces in Sa'ir, near Hebron. Mr. Jaradat died of his wounds on 19 June 2016. According to the information collected by OHCHR at the time, the man, who was seemingly disoriented by the ongoing operation, was shot while standing with his hands visible some 20m from the Israeli security forces, in an open location, in circumstances where he did not seem to pose any threat. PCATI reported that the Military Advocate General ordered an investigation several months after the complaint had been submitted and the involved soldiers were only interviewed nine months after the incident. The investigation was closed on 25 July 2017 for lack of evidence, with various contradictions and discrepancies between the testimonies of soldiers. The Military Advocate General rejected, on 22 January 2019, a motion by PCATI to reconsider its decision.

29. During the reporting period, the spokesperson for the Military Advocate General announced the closure of the investigations into the killing by the Israeli security forces, in three separate incidents, of Ali Omar Nimer Qinu (aged 17), Layth Haitham Fathi Abu Na'im (aged 16) and Yassin Omar Sliman a-Saeadih (aged 35) during law enforcement operations conducted in the West Bank in the context of clashes in January and February 2018.⁵³

30. The persisting lack of accountability for possible unlawful acts committed against Palestinians perpetuates a cycle of impunity that facilitates the occurrence of further violations. Moreover, by leaving unanswered the quest for redress, justice and truth, the suffering of the affected families is exacerbated. The two cases below are illustrative in that regard.

31. On 20 April 2018, 14-year-old Mohammad Ibrahim Ayoubi was killed by the Israeli security forces with a single shot of live ammunition to his head while running away from the Gaza-Israel fence, some 250–300m from it, at Abu Safia demonstration site, in northern Gaza Strip. An initial Israeli military investigation determined that the boy was attempting to damage the fence.⁵⁴ Video footage, however, showed the boy being shot as he was running away. Eyewitnesses confirmed the circumstances of his killing to OHCHR. In July 2018, the family filed a complaint to the Military Advocate General, with the support of the Palestinian Centre for Human Rights, which told OHCHR that the Centre had been informed on 14 March 2019 that an investigation had been opened by the military police and that, on 13 May 2019, the military police had arranged for two witnesses to provide testimony by videoconference. No further update has been received since then. Both of Mohammad's parents have described suffering from continuous psychological distress and his 16-year-old brother, who was present at the demonstration site the day his brother was killed, has suffered from recurring nightmares and episodes of increased aggressiveness. The family has denounced the lack of psychosocial, medical and financial support.

32. On 21 June 2016, 15-year-old Mahmoud Badran was shot and killed by an Israel Defense Forces officer. In the same incident, four other Palestinians, including three children, were injured when the security forces opened fire on the roof of their car as they were driving on an underpass connecting two Palestinian villages along route 443. One of the injured boys told OHCHR that they had been shot without warning by two individuals standing next to a parked car.⁵⁵ Mahmoud's father reported that the family had retained a lawyer to support them in following up on the investigation carried out by the Israeli authorities. Each time the lawyer

⁵³ www.btselem.org/press_releases/20191028_mag_corps_closes_3_more_cases_of_palestinian_fatalities.

⁵⁴ www.timesofisrael.com/army-said-to-find-teen-was-trying-to-damage-gaza-fence-when-shot/.

⁵⁵ A/HRC/34/36, para. 9.

approached the Military Advocate General, he was told that the investigation was almost completed and that a charge list would be issued soon. On 12 January 2018, Israeli media reported that the Military Advocate General had decided to close the case against the Israel Defense Forces officer.⁵⁶ With the defendant having supposedly acted based on the assumption that the persons in the car were involved in an earlier incident of stone throwing, the military investigators found that the erroneous identification of the car was “sincere and reasonable” and that the forces had “operated appropriately”.⁵⁷ After the investigation was closed, the family proceeded with a civil lawsuit, which was pending as at December 2019. The father has explained that the loss of Mahmoud has had a devastating impact on his family. His younger son avoids leaving the house while his wife suffers from episodes during which she abruptly breaks down in tears or stares in front of her without saying a word.

Rules of engagement

33. The independent international commission of inquiry on the protests in the Occupied Palestinian Territory has stressed that scarce accountability measures arising out of Operations Cast Lead and Protective Edge and public comments by high-ranking public officials cast doubt over the State’s willingness to scrutinize the actions of military and civilian leadership who drafted, approved and supervised the implementation of the rules of engagement governing the actions of Israeli forces at the demonstrations.⁵⁸ The rules of engagement of the Israeli security forces remain largely confidential. The Government of Israel, however, has outlined some of their operational implications in its response to two petitions submitted by six Israeli and Palestinian human rights organizations to the High Court of Justice on 15 and 23 April 2018.⁵⁹

34. The Israel Defense Forces have provided further information on its rules of engagement (referred to as “standard operating procedures”). In particular, they have clarified the notion of “key instigators” or “key rioters”, which had been treated with caution by the High Court of Justice in its judgment on the legality of the open-fire regulation policy in May 2018.⁶⁰ International law does not recognize as such these two categories of individuals in the context of demonstrations. According to Israel Defense Forces instructions, “where the commander assesses that the use of potentially lethal force is required to repel the real and imminent danger posed by a crowd, the commander will order such force only against ‘key instigators’ or ‘key rioters’”.⁶¹ The Forces also note that individuals falling into those two categories “are often conducting activities within the violent riots for a lengthy period of time, and snipers face a challenge in identifying a time which provides the necessary circumstances for carrying out their fire while reducing the risk of hitting above the knee or hitting someone else. For example, snipers may act as a person temporarily moves away from the crowd or rests before continuing his activity”.⁶² Such a conclusion is highly problematic because it excessively broadens the notion of “imminent threat”, particularly in relation to its temporal proximity, an interpretation that does not find support in international human rights law standards or jurisprudence.⁶³ The Israel Defense Forces have provided a list of examples of behaviour that could trigger the use of lethal force against the two categories of

⁵⁶ A/HRC/37/41, para. 21. See also www.haaretz.com/israel-news/.premium-idf-officer-won-t-be-indicted-for-opening-fire-againstrules-killing-palestinian-boy-1.5730351.

⁵⁷ See A/HRC/40/43, para. 23.

⁵⁸ A/HRC/40/74, para. 111.

⁵⁹ www.idf.il/media/48315/petition-gaza-border-events-summary-of-state-position.pdf and <https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/Gaza+Fire+Regulations+Petition/State+response+Gaza+petition.pdf> (in Hebrew only). See also A/HRC/40/43 para. 16.

⁶⁰ High Court of Justice of Israel, *Yesh Din v. Chief of General Staff, IDF* (case No. 3003/18), judgment of 24 May 2018.

⁶¹ Israel Defense Forces, “Gaza border events”, p. 83.

⁶² *Ibid.*, pp. 87–88.

⁶³ In that regard, the commission of inquiry has stressed that it is clear that the “imminent threat to life” standard – as applied in the rules of engagement – was too far removed from the criteria as understood in international law (A/HRC/40/CRP.2, para. 324).

individuals.⁶⁴ As emphasized by the commission of inquiry, such examples of behaviour cannot in themselves lawfully trigger the use of lethal force under the law enforcement paradigm as framed under international law, unless the victim is simultaneously posing an imminent threat to life or serious injury.⁶⁵

35. Conflicting media reports emerged in July and August 2019 on whether the open-fire regulations employed by the Israel Defense Forces along the Israel-Gaza fence were amended during the reporting period to ensure that soldiers would primarily shoot below the knee and fine-tune the regulations to shooting at the ankle after it emerged in many cases that firing at the lower limbs above the knee led to death.⁶⁶ In a letter addressed to ACRI in August 2019, the Military Advocate General denied that any change or revision of the instructions provided to soldiers at the fence had occurred since the beginning of the large-scale demonstrations in March 2018.⁶⁷ While the Israel Defense Forces have not expressed any official position on the matter, OHCHR findings continue to suggest the persistence of live ammunition injuries to the upper limbs, including the torso and the head, among casualties at the fence, in certain cases leading to fatalities.⁶⁸ Such persistence does not appear to support the notion that any change has been made to the regulations of the Israeli security forces or to manner of their implementation. In addition, no change in the rules of engagement has been reported to prohibit the authorization of lethal force against “key instigators” or “key rioters” as a status.

Civil remedies

36. As highlighted in previous reports of the High Commissioner, Palestinians residing in Gaza face significant barriers that impede or prevent them from seeking civil remedies to pursue accountability for alleged violations.⁶⁹ The reporting period did not witness any amendment to the 2014 clause excluding the Gaza population (as residents of an “enemy territory”) from the scope of Israeli civil liability legislation. The applicability of such a clause has exempted the State from liability for wrongful acts committed by the Israel Defense Forces since the 2014 escalation.⁷⁰

⁶⁴ In particular, reference is made to the following actions: coordinating the tactical placement and setting on fire of tyres; coordinating people to contribute towards pulling back parts of the security infrastructure; moving through the crowd while talking into a radio; pulling wires attached to part of the security infrastructure (barbed wire coils), together with a group of people; inciting a mob, influencing the behaviour of those in the mob or providing the conditions for mass breaches or infiltrations to occur; and connecting wires to the security infrastructure (i.e., barbed wire coils placed by the Israel Defense Forces inside Gaza) so that it may be pulled backwards. See Israel Defense Forces, “Gaza border events”, pp. 84–85. See also A/HRC/40/CRP.2, para. 315.

⁶⁵ A/HRC/40/CRP.2, para. 316.

⁶⁶ www.btselem.org/press_releases/20190724_military_admits_to_killing_protestors_for_no_reason, www.ynet.co.il/articles/0,7340,L-5569938,00.html and www.haaretz.com/israel-news/premium-israel-takes-tactical-risk-in-gaza-to-serve-a-strategic-goal-1.7866444.

⁶⁷ Letter dated 15 August 2019 from the Military Advocate General to ACRI. The Israel Defense Forces stressed that there had been additional restrictions imposed on the use of force over and above what was authorized by the standard operating procedures, but that this had not required any changes to the standard operating procedures (Israel Defense Forces, “Gaza border events”, p. 66). See also www.idf.il/en/minisites/questions-and-answers-concerning-the-violent-riots-and-attacks-occurring-on-the-border-between-gaza-and-israel-during-2018-9/.

⁶⁸ On 26 July 2019, a 22-year-old demonstrator was shot dead with live ammunition to his abdomen, east of Khuza’a; on 31 August 2019, a 22-year-old demonstrator was pronounced dead after being shot in the head with live ammunition the day before, also east of Khuza’a; on 6 September 2019, a 14-year-old boy and a 17-year-old boy died after being shot by live ammunition to their waist and neck at Malaka and Abu Safia demonstration sites; and, on 4 October 2019, a 28-year-old demonstrator was hit by live ammunition to his chest at Abu Safia demonstration site and was pronounced dead later on the same day, upon arrival at the hospital.

⁶⁹ See, in particular, A/HRC/37/41, para. 15, and A/HRC/40/43, paras. 25–26. See also A/71/364, paras. 40 and 56–57.

⁷⁰ A/71/364, paras. 56–57. See Government of Israel decree of 26 October 2014 declaring the Gaza strip “enemy territory”, valid retroactively from 7 July 2014, thereby activating the exemption from damages to “persons who are not citizens or residents of Israel, and are residents of a territory outside Israel that has been declared an ‘enemy territory’ in a governmental decree”. On 3 February 2019, an

C. Accountability for violations by the Palestinian authorities

37. During the reporting period, few developments have been reported in relation to actions undertaken by the Palestinian authorities in the West Bank and the Gaza Strip to investigate and prosecute the authors of alleged violations linked to incidents of excessive use of force by the Palestinian security forces.

38. OHCHR sought information, in particular, on the steps taken by the Palestinian Authority to investigate allegations of excessive use of force by Palestinian security forces in the context of the civilian demonstrations held in Ramallah and Nablus on 13 June 2018 to protest against the imposition by the Palestinian Authority of restrictive measures on the Gaza Strip. According to information provided by the Ministry of the Interior, an internal investigation found that the Palestinian security forces had acted according to the law, except for some minor violations, for which disciplinary measures had reportedly been taken. However, as previously reported by the High Commissioner and several independent human rights organizations,⁷¹ first-hand monitoring and verification activities suggest that demonstrators were physically assaulted, that at least 56 people were violently and arbitrarily arrested and that some were subjected to ill-treatment in detention. The Palestinian Authority also informed OHCHR that, during the reporting period, three incidents involving possible excessive use of force by police personnel were referred to the military courts. The status of those proceedings remains unknown. The High Commissioner urges the State of Palestine to ensure that incidents involving possible excessive use of force are promptly, impartially and independently investigated in line with international standards, and that those responsible are held accountable.

39. In the context of Gaza, OHCHR did not receive information indicating any measures taken by the de facto authorities to investigate and prosecute those allegedly involved in incidents of possible excessive use of force by the Gaza security forces during the civilian demonstrations that took place between 14 and 16 March 2019. A considerable number of participants, including women and children, were beaten by Gaza security forces in uniform and by others in plainclothes, and consequently hospitalized. Up to 1,000 demonstrators were arrested and detained, and some of them were subjected to ill-treatment while in detention.⁷² Staff members of the Palestinian Independent Commission for Human Rights who were physically assaulted by Gaza security forces during the March 2019 protests reported having been informally approached by representatives of the comptroller mechanism of the Ministry of the Interior in Gaza, which offered them apologies and a verbal commitment to opening a probe into the incidents. However, as at the end of the reporting period, no information has been published about any concrete steps taken to that effect.

IV. Third-State responsibility

40. In its resolution 40/13, the Human Rights Council called upon all States to ensure respect for international humanitarian law in the Occupied Palestinian Territory, in accordance with article 1 common to the Geneva Conventions. It also called upon all States to fulfil their obligations with regard to penal sanctions, grave breaches and the

appeal was filed by Al Mezan Center for Human Rights and Adalah to the Supreme Court of Israel against the decision of the District Court of Beersheva of 4 November 2018 upholding the constitutionality of the law prohibiting Palestinians living in Gaza from seeking compensation from Israel. The constitutionality of the exclusionary clause was challenged in a tort lawsuit brought by two human rights organizations on behalf of Ateyeh Nabaheen, who was shot and seriously wounded on 11 November 2014 in Gaza, while on his family's property, outside any area of military activity, and who was left quadriplegic and confined to a wheelchair as a result of his wounds. See www.nevo.co.il/psika_html/mechozi/ME-10-12-40777-390.htm (in Hebrew only); A/HRC/37/41, para. 16, and A/HRC/37/41, para. 26.

⁷¹ A/HRC/40/39, para. 61. See also www.alhaq.org/advocacy/6185.html and <https://www.amnesty.org/en/latest/news/2018/06/state-of-palestine-amnesty-staff-member-arbitrarily-detained-and-tortured-by-palestinian-security-officers/>.

⁷² A/HRC/43/70, paras. 44–45.

responsibilities of the High Contracting Parties to the Fourth Geneva Convention, in accordance with articles 146, 147 and 148 of the Fourth Geneva Convention. Moreover, it called upon all the parties concerned to cooperate fully with the preliminary examination of the International Criminal Court and with any subsequent investigation that may be opened.

41. Third States may take various measures to comply with their obligations under relevant international law, in particular to ensure respect for international humanitarian law.⁷³ Such measures may range from diplomatic interventions and démarches to more significant steps, including supporting domestic and international efforts to bring suspected perpetrators of serious violations of international human rights and humanitarian law to justice, applying measures of retortion or adopting lawful countermeasures.⁷⁴

42. In October 2019, with a view to contributing to the present report, OHCHR sent a note verbale to Member States requesting them to provide information on any steps they may have taken as third States to promote compliance with international law and implement the recommendations addressed to them in the report of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory. Two responses were received, from Cuba and the Syrian Arab Republic. In their responses, both States reiterated their support for Human Rights Council resolution 40/13 and reaffirmed the need for the international community to take decisive steps to end violations of international law in the Occupied Palestinian Territory, while emphasizing the importance of continuing to document the violations and crimes committed.

43. On 17 September 2019, the District Court of The Hague held an admissibility hearing on a case brought by a dual national of the State of Palestine and the Netherlands, Ismail Ziada, against a former Chief of General Staff of the Israel Defense Forces and a former Commander of the Israeli Air Force, alleging their responsibility as commanders in an airstrike that hit the plaintiff's family house in Bureij refugee camp in Gaza, on 20 July 2014, during Operation Protective Edge⁷⁵ and that resulted in the death of six members of the plaintiff's family. The case has been submitted in accordance with the law of the Netherlands extending civil jurisdiction for citizens unable to initiate legal proceedings elsewhere.

44. While States Members of the United Nations have often supported the adoption of resolutions and declarations by different United Nations bodies enshrining respect for international law principles in relation to the situation in the Occupied Palestinian Territory, the degree of compliance with the decisions and recommendations of these bodies remains uneven, as underlined in previous reports of the High Commissioner.⁷⁶

V. Conclusion and recommendations

45. The period under review was characterized by a persistent failure to ensure accountability for allegations of excessive use of force by the Israeli security forces in the context of the large-scale protests in Gaza and law enforcement operations in the West Bank, including East Jerusalem. Impunity also remained pervasive in relation to allegations against all parties to the 2014 escalation and to previous rounds of hostilities in Gaza. Furthermore, there were concerns about the insufficiency of steps taken to investigate and prosecute the members of Palestinian security forces or of the security forces in Gaza responsible for alleged excessive use of force and other human rights abuses committed against Palestinians.

⁷³ International Committee of the Red Cross (ICRC), commentary of 2016 on article 1 common to the Geneva Conventions, para. 165. See also A/HRC/40/43, para. 49.

⁷⁴ ICRC, commentary of 2016 on article 1, para. 181.

⁷⁵ www.reuters.com/article/us-netherlands-israel-gantz/dutch-court-to-hear-case-against-israels-gantz-idUSKBN1W12JZ.

⁷⁶ A/HRC/31/40/Add.1 and A/HRC/35/19, para. 62. Also, as emphasized by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, the international community possesses a great deal of power to ensure a positive, durable and just solution to the occupation. Indeed, it will not end without the international community acting decisively in support of international law and its common values to compel Israel to fulfil its obligations (A/74/507, para. 76).

46. With regard to the responsibility of third States, and as already emphasized by the High Commissioner, despite the incessant calls made by the international community and the support provided to Palestinian and Israeli authorities in their peace efforts, not enough has been done by the international community to that effect.⁷⁷ In its resolution 2334 (2016), the Security Council stressed that the status quo was not sustainable and that significant steps were urgently needed to stabilize the situation and to reverse negative trends on the ground. In that regard, the Secretary-General has emphasized that a lack of accountability compromised chances for sustainable peace and security, adding that tackling impunity must be the highest priority.⁷⁸ The High Commissioner again echoes those calls.

47. Recalling the follow-up measures described in previous comprehensive reviews of recommendations,⁷⁹ the High Commissioner:

(a) Calls upon Israel to fully comply with its obligations under international human rights law and international humanitarian law in the Occupied Palestinian Territory; urges it to conduct prompt, independent, impartial, thorough, effective and transparent investigations into all alleged violations and abuses of international human rights law and international humanitarian law, in particular into allegations of international crimes; and also calls upon Israel to ensure that all victims and their families have access to effective remedies, reparation and truth;

(b) Urges the State of Palestine to conduct prompt, independent, impartial, thorough, effective and transparent investigations into all alleged violations and abuses of international human rights law and international humanitarian law, in particular into allegations of international crimes; and calls upon the State of Palestine to ensure that all victims and their families have access to effective remedies, reparation and truth;

(c) Recommends that all parties ensure full respect for international law, including international humanitarian law, in particular the principles of distinction, proportionality and precaution, and that they ensure accountability for grave violations;

(d) Calls upon all States to take measures to ensure respect for the Geneva Conventions by all parties;

(e) Reiterates the calls upon all States and relevant United Nations bodies to take all necessary measures to ensure full respect and compliance with the relevant resolutions of the Security Council, the General Assembly and the Human Rights Council.

⁷⁷ A/HRC/35/19, para. 62.

⁷⁸ A/71/364, para. 6.

⁷⁹ A/HRC/35/19, para. 62.