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Human rights situation in Palestine and other occupied Arab territories

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 43/3 and provides an overview of the implementation of the resolution, and developments that are of relevance to ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem. The reporting period is from 1 November 2019 to 31 October 2020.

* The present report was submitted after the deadline so as to include the most recent information.



I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 43/3 and should be read in conjunction with recent relevant reports of the Secretary-General and the United Nations High Commissioner for Human Rights.¹

2. In the report, which covers the period between 1 November 2019 and 31 October 2020, the High Commissioner addresses issues related to accountability for alleged violations of international human rights law and international humanitarian law committed by all relevant duty bearers in the West Bank, including East Jerusalem, and Gaza. The High Commissioner also provides an update on measures of accountability taken by all relevant duty bearers in relation to possible violations of international humanitarian law and international human rights law during escalations of hostilities in Gaza since 2008. As requested by the Council in resolution 43/3, in the present report the High Commissioner addresses how parties can fulfil their obligations in implementing the relevant recommendations previously addressed to them, which were reviewed by the High Commissioner in 2017.² The High Commissioner also outlines measures to be taken by third States to ensure respect by all parties to the conflict for their obligations under international law in the Occupied Palestinian Territory.

3. The report draws on information arising from human rights monitoring conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Occupied Palestinian Territory, and information from governmental sources, other United Nations entities and non-governmental organizations. OHCHR requested Israel and the State of Palestine to provide information, by 15 November 2020, on any accountability measures adopted during the reporting period in relation to alleged violations of international human rights law and international humanitarian law committed in the Occupied Palestinian Territory, in particular with regard to the use of force by their respective security forces that may have led to death or injury, and on allegations of torture or any other ill-treatment in their detention facilities. The State of Palestine responded on 9 November 2020. Israel did not respond. OHCHR also requested other States Members of the United Nations to provide information on the steps taken by them as third States to promote compliance with international law and implement the recommendations addressed to them. No responses have been provided as at the time of writing the present report.

4. The human rights situation in the Occupied Palestinian Territory remained dire during the reporting period. Israeli security forces killed 67 Palestinians (64 males and 3 females), including at least 47 civilians of whom 16 were children. In addition, 3,678 Palestinians were injured by Israeli security forces. One Israeli soldier was killed and 90 other Israelis were injured by Palestinians. Many incidents monitored by OHCHR outside the context of hostilities raised serious concerns of excessive use of force by Israeli security forces,³ in some cases such use may amount to arbitrary deprivation of life, including extrajudicial execution. Continuing lack of respect for international humanitarian law by all parties to the conflict, including in the context of hostilities, remained of concern. The prevailing climate of impunity described in previous reports of the Secretary-General and the High Commissioner persisted.⁴

¹ See A/75/336, A/75/376, A/HRC/46/63 and A/HRC/46/65.

² See A/HRC/35/19.

³ The term “excessive use of force” is used in the present report to refer to incidents in the context of law enforcement operations in which force was not used in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990). Such incidents may entail situations in which force was used unnecessarily and/or disproportionately; and/or in pursuit of an illegal law enforcement objective; and/or in a discriminatory manner.

⁴ A/75/376, para. 26; A/HRC/34/38, para. 48; and A/HRC/40/43, para. 14.

II. Update on accountability

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

5. More than six years after the 2014 escalation of hostilities in Gaza, serious concerns persist over the lack of accountability 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 independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1,⁵ the Secretary-General and the High Commissioner have provided regular updates on the lack of progress regarding the implementation of the recommendations contained in the commission's report and highlighted concerns about the lack of accountability by both Israeli and Palestinian authorities.⁶

Israel

6. With respect to Israel, the most recent update by the Military Advocate General of Israel was provided on 15 August 2018.⁷ No further updates have been published since and no notable progress in the investigation and prosecution of alleged violations in the context of the 2014 round of hostilities was made public during the reporting period. During the reporting period, Al Mezan Center for Human Rights, which represented some of the victims, was informed by Israeli authorities that 13 cases related to the killing of Palestinian civilians during the 2014 hostilities had been closed. On 6 April 2020, the Attorney General of Israel rejected an appeal submitted by Adalah: Legal Center for Arab Minority Rights in Israel and Al Mezan Center for Human Rights against the decision taken in January 2017 by the Military Advocate General to close the investigation into the killing of five members of the Abu Dahrouj family during an Israeli air strike on 22 August 2014.⁸ Adalah also reported that, on 19 July 2020, the Military Advocate General had notified it that the case related to the killing of three children in the Israeli air strike on the Shuheibar family home, on 17 July 2014, had been closed without further investigation.⁹

7. Similarly, lack of progress and transparency persists in relation to accountability efforts linked to previous major rounds of hostilities in 2008 and 2009 (with no public information made available since July 2010) and in 2012 (with no public updates provided since April 2013).

8. The absence of any significant progress in the investigation of and prosecution for alleged violations confirms the serious concerns repeatedly expressed by the Secretary-General and the High Commissioner regarding the consistent failure of the Military Advocate General to open criminal investigations into cases of alleged violations of international humanitarian law, including possible war crimes, committed by Israeli security forces in the context of hostilities.¹⁰

9. On 14 November 2019, Israeli security forces struck, with at least four missiles, two houses belonging to an extended family in Deir El-Balah, killing 9 individuals, including 5 children, and 2 women, and injuring 12 others, including 11 children. Media sources, citing Israeli defence officials, reported that the houses had been hit based on an outdated target

⁵ A/HRC/29/52.

⁶ In particular, A/71/364, paras. 39 and 51–55; A/HRC/37/41, paras. 9–17; A/HRC/40/43, paras. 4–13; and A/HRC/43/21, paras. 14–15 and 19.

⁷ A/HRC/40/43, paras. 5 and 9; and <https://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Documents/Operation-Protective-Edge-MAG-Corps-Press-Release-Update-6-15-August-2018.pdf>.

⁸ For an assessment of the incident, see www.adalah.org/en/content/view/8990.

⁹ For an assessment of the incident, see the conference room paper containing the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 (A/HRC/29/CRP.4), paras. 194–200. Available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx.

¹⁰ A/71/364, para. 40; A/HRC/34/38, para. 42; A/HRC/37/41, para. 14; A/HRC/40/43, para. 8; and A/HRC/43/21, para. 17.

database and without prior verification of civilian presence at the site.¹¹ However, an internal review of the incident by the Israel Defense Forces determined that the target had been designated as a Palestinian Islamic Jihad military compound in June 2019 and vetted several times, including a few days prior to the attack.¹² It also acknowledged that, while militant activity had taken place at the targeted site in the past, including during the November 2019 escalation, it was not an area from which civilians were excluded and that they had, in fact, been present at the time of the strike.¹³ The incident raises serious concern about the failure by Israel to take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury of civilians and damage to civilian objects, in accordance with international humanitarian law.¹⁴

Palestinian authorities

10. As previously and repeatedly underlined by the Secretary-General and the High Commissioner,¹⁵ no information was made available on steps taken to ensure accountability for possible violations of international humanitarian law, including possible war crimes, committed by the Palestinian authorities and armed groups in the context of the different rounds of hostilities.¹⁶ Such lack of accountability remains of grave concern. During the reporting period, concerns persisted regarding the continuous indiscriminate launching of rockets and mortar shells towards Israel by Palestinian armed groups in Gaza, some of which resulted in the injury of Israeli civilians and damage to civilian buildings. Incendiary balloons were also launched towards Israel from Gaza, with some reportedly damaging lands and crops in Israel.¹⁷

B. Accountability for unlawful use of force and other violations of international human rights law

Israel

11. Impunity remained pervasive for incidents of possible excessive use of force by Israeli security forces outside the context of hostilities, confirming the alarming trend repeatedly highlighted by the Secretary-General and the High Commissioner in the past.¹⁸ Between 1 January 2017¹⁹ and 31 October 2020, 354 Palestinians²⁰ (including 74 children) were killed by Israeli security forces in the Occupied Palestinian Territory in law enforcement operations. OHCHR is aware of 46 investigations opened in relation to incidents that occurred in this context, of which at least 10 were closed without further action being taken and 4 resulted in indictments, 3 of which led to convictions.²¹

12. In Gaza, the number of Palestinian fatalities and injuries in the context of the Great March of Return sharply decreased compared with the previous reporting period, due to the

¹¹ See www.haaretz.com/israel-news/.premium-outdated-intelligence-social-media-rumors%20behind-israel-s-killing-of-gaza-family-1.8131101.

¹² See <https://app.activetrail.com/S/eiwixjxejf.htm>.

¹³ Ibid.

¹⁴ International Committee of the Red Cross (ICRC), Customary International Humanitarian Law database, rule 15 (see https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule15); and A/75/336, para. 5.

¹⁵ A/70/421, para. 61; A/HRC/40/43, para. 13; and A/HRC/43/21, para. 19.

¹⁶ See, in particular, A/HRC/29/52 and A/HRC/12/48 and Corr.1.

¹⁷ A/75/336, para. 5.

¹⁸ A/71/364, para. 66; A/75/336, paras. 4 and 9; A/HRC/34/38, para. 48; and A/HRC/43/21, para. 20.

¹⁹ 1 January 2017 represents the beginning of the first reporting period during which the High Commissioner was requested by the Human Rights Council to report on accountability and justice for violations of international law in the Occupied Palestinian Territory.

²⁰ This number does not include those killed in the context of hostilities and those killed in situations in which it was not possible to determine the circumstances. The total number of Palestinians killed by Israeli security forces during the same period amounts to 531.

²¹ One of the convictions refers to the killing of a 14-year-old Palestinian in the context of the Great March of Return demonstrations (A/HRC/43/21, para. 25). For information on the other two convictions, see paras. 15–16 below.

suspension of the weekly demonstrations in December 2019.²² However, the continuing lack of notable progress in the investigations related to the widespread use of lethal force by Israeli security forces against Palestinian demonstrators between 30 March 2018 and December 2019 remained striking.²³ The last update provided by the Ministry of Justice of Israel in relation to progress in the investigations and prosecutions referred to July 2019.²⁴ In September 2020, the human rights organization Yesh Din published a report highlighting that, since the beginning of the Great March of Return, of the 231 incidents that had resulted in the killing of Palestinian demonstrators referred to the General Staff Mechanism for Fact-Finding Assessments of the Israel Defense Forces, only 17 investigations had been opened by Israeli military authorities, resulting in 1 conviction.²⁵ Al Mezan Center for Human Rights and the Palestinian Centre for Human Rights have submitted to Israeli authorities 81 and 186 cases, respectively, related to individuals killed or injured at the Gaza fence since 30 March 2018.

13. Along the Gaza coast, the Israeli Navy continued to enforce unilaterally imposed access restrictions, using live ammunition, rubber-coated bullets and water cannons on Gaza fishers while conducting arrest and seizure operations, often reportedly within the authorized fishing zones.²⁶ In its response to a freedom of information request submitted by the organization Gisha regarding its operations along the Gaza coast, Israel Defense Forces pointed out that “as part of [its] regulations and directives, it has been established that the use of force for the purpose of enforcing the security restrictions will be only as a last resort, carried out gradually and only to the smallest extent required to stop the breach of restrictions or to seize the vessel”.²⁷

14. During the reporting period, Al Mezan Center for Human Rights recorded a total of 294 shooting incidents at sea, resulting in the injury of 11 fishers. In many of the cases monitored by OHCHR, fishers appear to have been subjected to force that may have been unnecessary or excessive, and many of them alleged degrading treatment during seizure and arrest operations. For example, on 14 August 2020, Israeli security forces shot and injured a 22-year-old fisher in his right leg within the Israeli-authorized fishing zone at around 3 nautical miles from the northern Gaza coast. According to information collected by OHCHR, the victim, who sustained heavy bleeding requiring hospitalization, was attempting to communicate to Israeli security forces his right to fish within the authorized fishing zone and did not appear to pose an imminent threat to Israeli security forces at the moment that he was shot. OHCHR is not aware of any investigations being opened by Israeli authorities in relation to any of these incidents.

15. On 15 June 2020, an Israeli military court sentenced an Israeli officer to 45 days in prison, to be served by carrying out military-related labour, for the killing of a 23-year-old Palestinian fisher, Nawaf al-Attar, off the Sudaniyah coast, north of Bayt Lahya, on 14 November 2018.²⁸ According to OHCHR monitoring, after a first warning shot was fired while he was fishing on the Gaza beach, the fisher was shot in the pelvis while he was running away from Israeli security forces, which were located at the Gaza northern maritime border at a distance of 250 metres. The shooting took place in circumstances in which the victim’s behaviour did not appear to present an imminent threat of death or serious injury to anyone. The conviction was based on the charges of “exceeding authority causing a risk to life or health” and “injury through negligence”. Such charges, along with the leniency of the

²² During the reporting period, 3 Palestinians, including 2 children, were killed and 126 Palestinians, including 50 children, were injured with live ammunition in the context of the Great March of Return demonstrations.

²³ Conference room paper containing the detailed findings of the independent international commission of inquiry on the protests in the Occupied Palestinian Territory (A/HRC/40/CRP.2), paras. 737–758. Available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session40/Pages/ListReports.aspx.

²⁴ A/HRC/43/21, para. 24.

²⁵ Yesh Din, “Killing time: the slow processing of complaints regarding Gaza Great March of Return casualties and the use of the fact-finding assessment mechanism to thwart prosecution of soldiers” (September 2020). See also A/HRC/43/21, para. 25.

²⁶ A/75/336, para. 38.

²⁷ Israeli army response to the Gisha freedom of information request (15 December 2019).

²⁸ See www.mezan.org/en/post/23760.

sentence, appear starkly inconsistent with the gravity of the conduct, reinforcing the serious concerns previously expressed by the High Commissioner regarding the effectiveness of the Israeli internal investigation and prosecution system to ensure accountability for violations of international law in line with international standards.²⁹

16. The ongoing lack of accountability for the killing and injury of Palestinians is also evident in relation to Israeli law enforcement operations in the West Bank, including East Jerusalem. On 16 August 2020, the Military Advocate General requested a sentence of three months' military service and three months' suspended sentence for an Israeli soldier who had shot and killed a 23-year-old Palestinian, Ahmad Manasra, as part of a plea bargain agreed to by the soldier, pending ratification by a military court.³⁰ On 20 March 2019, Mr. Manasra had been shot multiple times with live ammunition in the chest and shoulders while helping the family of a Palestinian man, Ala Ghayadeh, who had himself been shot and seriously wounded by Israeli security forces in the immediate aftermath of his car breaking down at a junction near the village of El-Hadar, close to Bethlehem. Monitoring of the case by OHCHR pointed to serious concerns of unnecessary or excessive use of force by Israeli security forces. According to the plea bargain, which refers to the charge of "causing death by negligence", the soldier mistakenly thought that the two men were throwing stones at an Israeli security forces installation located nearby. The soldier was not charged with wounding Mr. Ghayadeh, although the first shooting was included in the initial indictment. On 23 August 2020, the victims' families filed a petition with the High Court of Justice of Israel against the plea bargain and obtained an interim injunction to prevent the military court's issuing a sentence until the petition was discussed.³¹ The charges and leniency of the sentence proposed as part of the plea bargain appear starkly incommensurate with the gravity of the conduct, raising serious concerns that justice and redress for Palestinian victims of alleged violations of international human rights law and international humanitarian law have not been delivered in accordance with international norms and standards.

17. On 3 September 2020, the High Court of Justice unanimously rejected a petition submitted in March 2019 by the Association for Civil Rights in Israel regarding the closing of the investigation into the killing of Mohammad al-Qusbah.³² Mr. Al-Qusbah, aged 17, was killed by an Israel Defense Forces officer with three bullets to his upper body, while running away from Israel Defense Forces personnel after throwing a stone near the village of Ar-Ram, on 3 July 2015. The High Court of Justice found no reason to consider that the disciplinary action (delay in promotion) taken against the Israel Defense Forces officer represented an excessively lenient sentence.³³ The High Court of Justice reviewed the rules of engagement and concurred with the position of the Military Advocate General and the Attorney General that the killing had resulted from the officer not acting in accordance with the rules. In a previous report, the High Commissioner noted how the failure to prosecute a soldier who had opened fire against an individual (in this case a child) who was running away from Israeli security forces cast doubt on the effectiveness of the accountability measures put in place.³⁴ These concerns persist in relation to the High Court of Justice upholding the Attorney General's position that a delay in the officer's promotion represented an appropriate and proportionate punishment.³⁵

²⁹ A/HRC/43/21, para. 25.

³⁰ See www.haaretz.com/israel-news/premium-israeli-army-seeks-community-service-for-soldier-who-killed-innocent-palestinian-1.9076450.

³¹ See www.haaretz.com/israel-news/premium-top-court-to-hear-appeal-against-light-sentence-of-soldier-who-killed-palestinian-1.9124853; and <https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts\20\040\059\o08&fileName=20059040.O08&type=4> (in Hebrew only).

³² The Association for Civil Rights in Israel had contested the decision taken by the Attorney General of Israel in December 2018 to uphold the closing of the investigation by the Military Advocate General in April 2016; and A/HRC/43/21, para. 27.

³³ See <https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts\19\820\017\k09&fileName=19017820.K09&type=4> (in Hebrew only).

³⁴ A/HRC/43/21, para. 27.

³⁵ The officer was chosen to represent the Israel Defense Forces at the Memorial Day ceremony at the Western Wall in Jerusalem, on 27 April 2020.

18. In its decision, the High Court of Justice did not depart from the position of the Military Advocate General and the Attorney General, who stated that the “unique intensity” characterizing “combat” or “operational activity” should be taken into account. In particular, the High Court of Justice noted that the officer performed in a “war-like situation”, which was characterized by a real danger to his life. Such an approach is in clear contradiction of international law, which distinguishes between rules regulating law enforcement operations, governed by international human rights instruments, and those regulating the conduct of hostilities between warring parties in situations of armed conflict, mainly governed by international humanitarian law. Under the law enforcement framework, the use of lethal force by security forces is authorized only as a measure of last resort, when strictly necessary in order to protect life or prevent serious injury from an imminent threat.³⁶ Even in situations of armed conflicts and military occupation, the law enforcement framework applies when security forces, including the military, are interacting with the civilian population.³⁷ On the other hand, the conduct of hostilities refers to the means and methods of warfare that one party to the conflict employs to undermine the military capabilities of the other, including “active combat” or launching attacks, as regulated by the rules of international humanitarian law on the conduct of hostilities.³⁸ In qualifying a context in which Israeli security forces were engaged in a law enforcement operation as “combat activity”, the High Court of Justice seemed to uphold its previous practice of conflating two sets of rules that have been maintained as clearly distinct under international law,³⁹ thereby creating a dangerous situation in which the protection afforded to civilians by their right to life under international law is diminished.

19. On 21 October 2020, the Department of Internal Police Investigations at the Ministry of Justice announced its intention to bring to trial an Israeli border police officer involved in the killing of Iyad Hallaq on a charge of reckless homicide, while the case against his commanding officer would be closed.⁴⁰ According to its statement, “the deceased posed no danger to police and civilians in the area” and the officer who shot him did so against orders and after speaking with the victim. On 30 May 2020, Mr. Hallaq, a 31-year-old Palestinian with autism, was shot and killed by Israeli security forces while walking from his home in the Wadi al-Jawz neighbourhood to a vocational training centre for persons with disabilities in Jerusalem’s Old City.⁴¹ Monitoring conducted by OHCHR raised serious concerns of unnecessary or excessive use of force by Israeli security forces. On 21 September 2020, Mr. Hallaq’s parents had petitioned the High Court of Justice urging the Department of Internal Police Investigations to conclude the investigation of the case and put the two police officers involved in the incident on trial.⁴²

20. No notable progress has been reported in relation to investigations into allegations of ill-treatment, possibly amounting to torture, in Israeli detention facilities, including serious public allegations following the widespread arrests after the Ein Bubin attack of 23 August

³⁶ Human Rights Committee, general comment No. 36 (2018), para. 12. See also the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

³⁷ Regulations respecting the Laws and Customs of War on Land, art. 43; A/HRC/40/CRP.2, paras. 85–86. See also ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts* (Geneva, 2015), p. 36. This entails that, even in armed conflicts, the use of force directed against civilians not directly participating in hostilities is subject to human rights-based law enforcement rules. See the report of the Public Commission to Examine the Maritime Incident of 31 May 2010 (Turkel Commission) (Part One – January 2011), paras. 189 and 234.

³⁸ A/HRC/40/CRP.2, para. 94.

³⁹ In particular, the High Court of Justice upheld the stance already confirmed in its decision of May 2019 on the rules of engagement in the context of the Gaza protests (see www.lawfareblog.com/supreme-court-israel-dismisses-petition-against-gaza-rules-engagement).

⁴⁰ See www.haaretz.com/israel-news/israeli-cop-who-shot-dead-autistic-palestinian-faces-trial-1.9251419; and www.gov.il/he/departments/news/21-10-2020-01 (in Hebrew only).

⁴¹ A detailed assessment of the incident is provided in A/75/336, para. 8.

⁴² See www.haaretz.com/israel-news/.premium-parents-of-autistic-palestinian-shot-by-cops-petition-high-court-to-charge-officers-1.9177147. See also OHCHR in the Occupied Palestinian Territory, “Israeli security forces yet again use lethal force against a Palestinian not presenting an imminent threat of death or serious injury, killing him”, press statement, 2 June 2020.

2019.⁴³ In its response to a freedom of information request submitted by the Public Committee against Torture in Israel, dated 5 July 2020, the Ministry of Justice reported that, in 2019, 36 cases related to complaints of alleged ill-treatment and torture had been opened by the Inspector for Complaints against the Israel Security Agency, and 71 other cases had been transferred to the State Prosecutor's Office. OHCHR is not aware of any further steps having been taken as a result of these proceedings.

Palestinian authorities

21. During the reporting period, there was little progress in relation to actions carried out by the Palestinian authorities in the West Bank and Gaza to investigate and prosecute the perpetrators of violations linked to incidents of possible excessive use of force or allegations of torture and ill-treatment by Palestinian security forces.

22. In its submission of 9 November 2020, the State of Palestine reported that it had intensified efforts to adopt legislation on the mandate and working methods of the national preventive mechanism to independently investigate allegations of torture and ill-treatment, as required by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, OHCHR notes with concern that, despite the obligation contained in the Optional Protocol, to which the State of Palestine acceded in 2017, the establishment and operationalization of the national preventive mechanism remained pending at the end of the reporting period.⁴⁴

23. With regard to allegations of excessive use of force by Palestinian security forces in the West Bank, OHCHR monitoring of incidents resulting in the killing and injury of Palestinians during the reporting period⁴⁵ confirmed that certain steps had been taken by Palestinian authorities, including the creation of ad hoc inquiries, pledges to compensate the victims' families, and announcements regarding the opening of criminal investigations and the adoption of disciplinary measures against the officers involved. However, no information has been made publicly available regarding the criminal charges filed against those allegedly responsible. OHCHR monitoring also points to the use of informal reconciliation mechanisms to address cases of killing or serious injury resulting from possibly excessive use of force by Palestinian security forces. This raises concerns that such mechanisms may be used instead of judicial proceedings and other disciplinary measures to ascertain the truth and ensure accountability.

24. With regard to allegations of ill-treatment, in some cases possibly amounting to torture, OHCHR monitoring points to very serious concerns with regard to the lack of steps taken to investigate and prosecute individuals possibly responsible for these crimes, as well as the inadequacy of internal disciplinary mechanisms. Of particular concern are a number of credible allegations that detainees had been subjected to intimidation by Palestinian security forces and pressured into not filing complaints against Palestinian law enforcement officers or withdrawing those that had been made, as a condition for release from detention.

25. The High Commissioner reiterates the call upon the State of Palestine to ensure that incidents involving human rights violations are promptly, impartially, independently and thoroughly investigated in line with international standards, and that those responsible are held accountable.⁴⁶ Within this framework, OHCHR intensified its efforts, during the reporting period, to provide technical assistance to the State of Palestine, including on strengthening accountability. This included targeted training for Palestinian security forces aimed at combating arbitrary arrest and detention, and torture and ill-treatment, to accelerate criminal accountability.

26. The Office of the Attorney General of the de facto authorities in Gaza reported having received and investigated complaints related to incidents of possible excessive use of force by the authorities' security forces during the civilian demonstrations held between 14 and 16

⁴³ A/75/336, paras. 14–18.

⁴⁴ OHCHR notes that the international treaties to which the State of Palestine has acceded had not been published in the *Official Gazette* at the time of writing.

⁴⁵ A/HRC/46/63, para. 22.

⁴⁶ A/HRC/43/21, para. 38.

March 2019.⁴⁷ However, the outcomes of such investigations have not been made public and OHCHR is not aware of any other measure having been taken by the de facto authorities in Gaza to investigate and prosecute those allegedly involved in violations, including possible excessive use of force against demonstrators, arbitrary arrests and ill-treatment and torture in detention.

27. OHCHR monitoring continues to point to widespread allegations of ill-treatment, possibly amounting to torture, in Gaza detention facilities.⁴⁸ Little information has been made public in relation to any steps taken by the authorities in Gaza to investigate these allegations, notwithstanding the Independent Commission for Human Rights having reported that it had received 85 complaints of ill-treatment or torture during the reporting period.

28. The lack of transparency in relation to any steps taken to ensure accountability for serious human rights violations is a matter of utmost concern. In the rare cases in which the authorities in Gaza have formed ad hoc committees or commissions of inquiry to investigate such allegations through a decision by the de facto Ministry of the Interior, their findings have not led to criminal charges or to the adoption of other concrete accountability steps. For example, on 23 February 2020, a 39-year-old man from the Bureij camp, central Gaza, died while in the custody of the de facto Internal Security Agency after being arrested on the charge of “undermining public security” for collaborating with the Palestinian Authority. The de facto Minister of the Interior announced the creation of an ad hoc committee to investigate the incident. On 29 February 2020, the committee released the results of its investigation, pointing out that, while the man did not receive proper medical care in detention, his death had resulted from natural causes. The family of the victim rejected the probe, highlighting that signs of torture had been found on his body.⁴⁹

C. International mechanisms

29. On 20 December 2019, the Prosecutor of the International Criminal Court released a statement in which she stated that she had determined that there was a reasonable basis to initiate an investigation into the situation in Palestine, pursuant to article 53 (1) of the statute of the Court, concerning alleged war crimes committed by multiple parties since 13 June 2014 in the West Bank, including East Jerusalem, and Gaza.⁵⁰ However, before opening an investigation, the Prosecutor considered it appropriate to make a request to the Court’s Pre-Trial Chamber for a jurisdictional ruling on the scope of the Court’s territorial jurisdiction in relation to the situation.⁵¹ The matter remains pending.

III. Implementing the recommendations reviewed by the High Commissioner in A/HRC/35/19

30. In its resolution 43/3, the Human Rights Council requested the High Commissioner to report on how all parties could fulfil their obligations in implementing the recommendations reviewed by the High Commissioner in 2017 (A/HRC/35/19), pertaining to accountability in the Occupied Palestinian Territory. In that report, the High Commissioner reviewed more than 900 recommendations addressed to all parties since 2009, which had been formulated to improve the human rights situation in the Occupied Palestinian Territory. They essentially pertain to violations of international humanitarian law and international human rights law, mainly by Israel but also by Palestinian duty bearers and parties. The recommendations were subdivided into seven areas: accountability and access to justice; international engagement; arrest and detention; settlements; freedom of movement; other civil and political rights; and economic, social and cultural rights. In the 2017 report, the High Commissioner showed that the vast majority of the recommendations had not been

⁴⁷ A/HRC/43/70, paras. 47–48; and A/HRC/43/21, para. 39.

⁴⁸ A/HRC/46/63, paras. 62–63.

⁴⁹ See www.alwatanvoice.com/arabic/news/2020/03/01/1318541.html (in Arabic only).

⁵⁰ See www.icc-cpi.int/Pages/item.aspx?name=20191220-otp-statement-palestine.

⁵¹ Prosecution request pursuant to article 19 (3) for a ruling on the Court’s territorial jurisdiction in Palestine, ICC-01/18, 22 January 2020.

implemented, and concluded with follow-up measures addressed to Israel, the State of Palestine and the international community.

31. Given that the human rights situation in the Occupied Palestinian Territory has not improved materially since the publication of the 2017 report, these recommendations remain valid.⁵² Hence, the High Commissioner reiterates the proposal to both Israel and the State of Palestine to make full use of OHCHR technical assistance, including for the development of national mechanisms to monitor recommendations.⁵³ This suggestion is particularly relevant for Israel, given its publicly stated freeze in relations with OHCHR, in particular in the Occupied Palestinian Territory since February 2020, including in relation to the issuance of visas for international staff.⁵⁴

32. As noted, the vast majority of recommendations reviewed in the 2017 report relate to unlawful conduct by the parties. Continued OHCHR monitoring shows that the concerns expressed in prior reports remain.⁵⁵ In particular, numerous alleged violations of international humanitarian law are attributable to Israel in relation to its conduct during the escalations of hostilities in Gaza. Further violations pertain to the rules on law enforcement operations and those related to belligerent occupation both in the West Bank, including East Jerusalem, and Gaza.⁵⁶ Accordingly, the High Commissioner reminds Israel of its obligations under the international human rights instruments to which it is party, under the Geneva Conventions of 12 August 1949 and other norms of international humanitarian law, and under customary international law, and reiterates the call upon Israel to fully comply with them in the Occupied Palestinian Territory.⁵⁷

33. In 2017, the High Commissioner noted the repeated failure of Israel to comply with the calls for accountability made by the entire human rights system.⁵⁸ In view of the continuous lack of steps taken to ensure accountability according to international standards (see sect. II), the High Commissioner reiterates the calls upon Israel and the State of Palestine to conduct prompt, impartial, independent and thorough investigations into all alleged violations of international human rights law and international humanitarian law, including all allegations of international crimes. The High Commissioner also reiterates the call upon all duty bearers to ensure that all victims have access to remedies and reparation.⁵⁹

34. As regards follow-up measures addressed to the international community in the 2017 report, the High Commissioner notably suggested that the Human Rights Council consider recommending to the General Assembly that it make use of its powers under Article 96 (a) of the Charter of the United Nations in order to specify how all parties could fulfil their obligations in implementing the recommendations reviewed in the report.⁶⁰ The High Commissioner reiterates the call upon all States and relevant United Nations bodies to take all measures necessary to ensure full respect for and compliance with the relevant resolutions of the Human Rights Council, the General Assembly and the Security Council, including Security Council resolution 2334 (2016), in which the Security Council reaffirmed that the establishment by Israel of settlements in the West Bank, including East Jerusalem, had no legal validity and constituted a flagrant violation under international law.⁶¹ In signing the Charter of the United Nations, States have bound themselves to comply with the decisions of

⁵² See, e.g., A/HRC/37/38, A/HRC/40/39 and A/HRC/43/70.

⁵³ A/HRC/35/19, paras. 67 and 73.

⁵⁴ See www.timesofisrael.com/israel-freezes-ties-with-un-rights-chief-after-release-of-settlement-blacklist.

⁵⁵ See A/HRC/46/63 and A/HRC/46/65.

⁵⁶ In A/HRC/34/38, the Secretary-General summarized the applicable legal framework and referred to the main recurrent violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory.

⁵⁷ A/HRC/35/19, para. 67.

⁵⁸ *Ibid.*, para. 69.

⁵⁹ *Ibid.*, paras. 69 and 71.

⁶⁰ *Ibid.*, para. 75.

⁶¹ *Ibid.*, para. 80.

the Security Council and are also under an obligation to bring to an end a situation deemed illegal by the Security Council.⁶²

35. Under the principles of State responsibility, the State responsible for an internationally wrongful act must cease that act if it is continuing, in addition to making full reparation for any injury that such act has caused.⁶³ Despite continuous calls over decades for the occupying power to fully respect international law and to comply with its obligations under the law of occupation, violations continue to occur at an alarming pace. The international community could therefore consider further efforts towards bringing the occupation to an end, thereby also putting an end to these associated violations.⁶⁴ The articles on the responsibility of States for internationally wrongful acts also oblige States to cooperate to bring to an end any serious breach of an obligation arising under a peremptory norm of general international law.⁶⁵ Accordingly, the High Commissioner calls upon all States to act collectively to stop the serious violations of international humanitarian law and international human rights law that are being perpetrated in the Occupied Palestinian Territory on an ongoing basis and to enable the Palestinian people to exercise their right of self-determination.

IV. Responsibility of third States

36. In its resolution 43/3, the Human Rights Council reiterated its call upon all States to promote compliance with international law and all contracting parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) to respect, and to ensure respect for, international humanitarian law in the Occupied Palestinian Territory, in accordance with article 1 common to the Geneva Conventions. It further requested the High Commissioner to report on legal measures to be taken by States to ensure that Israel, and all relevant parties, respect their obligations under international law in the Occupied Palestinian Territory.

37. The obligation to respect and ensure respect for the Geneva Conventions, as enshrined in common article 1, is valid in all circumstances.⁶⁶ This duty extends to the entire body of international humanitarian law.⁶⁷ It encompasses both negative and positive obligations: while States are expected to abstain from certain conduct (i.e. they must not encourage, aid or assist in violations of the Geneva Conventions), they must also take proactive steps to bring to end violations by parties to the conflict.⁶⁸ This obligation further imposes a positive

⁶² Charter of the United Nations, Article 25; and *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, *I.C.J. Reports 1971*, p. 16, at pp. 53–54, para. 117.

⁶³ Articles 30–31 of the articles on the responsibility of States for internationally wrongful acts (General Assembly resolution 56/83, annex).

⁶⁴ International Covenant on Civil and Political Rights, art. 1; and International Covenant on Economic, Social and Cultural Rights, art. 1. The International Court of Justice confirmed the *erga omnes* nature of the right to self-determination in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, *I.C.J. Reports 2004*, p. 136, at pp. 171–172, para. 88. See also paragraph (5) of the commentary to article 26 of the draft articles on the responsibility of States for internationally wrongful acts about the right to self-determination being a peremptory norm (Report of the International Law Commission on its fifty-third session, A/56/10 and Corr.1, p. 208).

⁶⁵ Article 41 (1).

⁶⁶ See, e.g., *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, *I.C.J. Reports 1986*, p. 14, at p. 114, para. 220.

⁶⁷ ICRC, Customary International Humanitarian Law database, rule 144 (https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule144); and ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: 28th International Conference of the Red Cross and Red Crescent, 2–6 December 2003* (Geneva, 2003) (www.icrc.org/en/doc/assets/files/other/ihlcontemp_armedconflicts_final_ang.pdf).

⁶⁸ A/HRC/43/35, para. 34. See also, e.g., ICRC, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts: 28th International Conference*; Knut Dörmann and Jose Serralvo, “Common article 1 to the Geneva Conventions and the obligation to prevent international humanitarian law violations”, *International Review of the Red Cross*, vol. 96, No. 895/896, p. 719 (<https://international-review.icrc.org/articles/common-article-1-geneva-conventions-and-obligation->

duty on States to do everything reasonably in their power to stop ongoing violations of international humanitarian law and to prevent those that are foreseeable.⁶⁹

38. It follows that third States must, to the degree possible, exert the influence they possess over the parties to the conflict to ensure respect for international humanitarian law.⁷⁰

39. As discussed in previous reports of the High Commissioner, in complying with their obligation to ensure respect for international humanitarian law, States can choose among different measures considered as adequate. Such measures may range from diplomatic steps to more significant ones, including measures of retortion and the adoption of countermeasures⁷¹ that are appropriate and proportional to the circumstances.⁷² The International Committee of the Red Cross, in its 2016 updated commentary to common article 1, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 and various authors have outlined possible measures that States can take to comply with their obligation to ensure respect for the law.⁷³ The European Union Guidelines on promoting compliance with international humanitarian law present another useful indicative list of measures in this regard.⁷⁴

40. In a note verbal dated 15 October 2020, OHCHR reiterated its request to States Members of the United Nations for information on the steps taken to promote compliance with international law in the Occupied Palestinian Territory and to implement the recommendations contained in the reports of the relevant independent international commissions of inquiry and fact-finding missions.

41. Some public measures were taken by third States during the reporting period, mainly in relation to the publicly announced plans of Israel to annex the Occupied Palestinian Territory. Several Governments denounced these plans. On 7 July 2020, the Ministers of Foreign Affairs of Egypt, France, Germany and Jordan issued a joint statement calling on Israel not to proceed with its plan to annex parts of the Occupied Palestinian Territory, asserting that it “would be a violation of international law and imperil the foundations of the peace process”.⁷⁵ On 23 June 2020, 1,080 parliamentarians from 25 European States published a joint letter to European Governments and leaders against the Israeli annexation of the West Bank, asking European leaders to act decisively in response to this challenge.⁷⁶

42. Supporting international efforts to bring to justice suspected perpetrators of violations of international humanitarian law and international human rights law is another measure available to third States to comply with their obligations under common article 1. It may include support for ongoing international legal proceedings or the creation of commissions

[prevent-international-humanitarian-law](#)); ICRC, *Commentary on the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 2nd ed., 2016, paras. 164–173 (on common article 1); and Théo Boutruche and Marco Sassòli, “Expert opinion on third States’ obligations vis-à-vis IHL violations under international law, with a special focus on common article 1 to the 1949 Geneva Conventions”, 8 November 2016 (www.nrc.no/globalassets/pdf/legal-opinions/eo-common-article-1-ihl---boutruche---sassoli---8-nov-2016.pdf), pp. 13–14.

⁶⁹ A/HRC/43/35, para. 34.

⁷⁰ ICRC, Customary International Humanitarian Law database, rule 144 (https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule144); and ICRC, *Commentary*, para. 165.

⁷¹ A/HRC/40/43, para. 49; and A/HRC/43/21, para. 41.

⁷² A/74/507, para. 78. In the same report, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 suggested that States should escalate the range of their targeted countermeasures until compliance had been achieved.

⁷³ A/74/507, paras. 72–76; ICRC, *Commentary*, para. 181; and Dörmann and Serralvo, “Common article 1”, pp. 725–726.

⁷⁴ See [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009XG1215(01)&from=EN).

⁷⁵ See www.diplomatie.gouv.fr/en/country-files/israel-palestinian-territories/peace-process/events/article/joint-statement-of-the-foreign-ministers-of-france-germany-egypt-and-jordan-07.

⁷⁶ See www.scribd.com/document/466688615/Letter-by-European-Parliamentarians-Against-Israeli-Annexation.

of inquiry, fact-finding missions and other international investigative mechanisms. Support may also pertain to proceedings under national justice.⁷⁷

43. States parties to the Geneva Conventions and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), must provide for universal jurisdiction in their national legislation for the war crimes defined as grave breaches by these instruments.⁷⁸ Accordingly, such third States must investigate and prosecute or extradite alleged perpetrators of grave breaches of the Geneva Conventions committed in the Occupied Palestinian Territory. They must also investigate other relevant war crimes over which they have jurisdiction and prosecute the suspects, if appropriate.⁷⁹ Given that resorting to penal measures to repress violations of international humanitarian law may also be considered as a means of ensuring respect for the law,⁸⁰ States should consider vesting their national courts with competence – including on principles of universal or extraterritorial jurisdiction, in accordance with international law – to inquire into allegations of breaches of international humanitarian law, wherever they are committed.

44. For instance, in Germany, a preliminary investigation is ongoing for war crimes allegedly committed by members of the Israel Defense Forces within the scope of a strike in Gaza, on 24 July 2014, which killed several members of the same family (*Kilani* case).⁸¹ In Belgium, Switzerland and the United Kingdom of Great Britain and Northern Ireland, criminal complaints were filed between 2009 and 2017 against senior Israeli officials for alleged war crimes committed during the escalation of hostilities in Gaza in 2008 and 2009.

45. In addition to the responsibility of third States under common article 1 to take reasonable measures to ensure respect for the law, States have an obligation, according to the articles on the responsibility of States for internationally wrongful acts, not to recognize as lawful a situation created by a serious breach of international law, nor render aid or assistance in maintaining that situation.⁸² As highlighted above, States have an obligation to cooperate to bring to an end, through lawful means, any serious breach of international law.⁸³ The duty of cooperation is also implied in the obligation of States, under the Charter of the United

⁷⁷ ICRC, *Commentary*, para. 181.

⁷⁸ Fourth Geneva Convention, art. 146; and Protocol I Additional to the Geneva Conventions, art. 85 (1). A number of international human rights treaties, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, also provide for mandatory universal jurisdiction over certain crimes. See also ICRC, Customary International Humanitarian Law database, rule 157 (https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule157), and the commentary thereto.

⁷⁹ ICRC, Customary International Humanitarian Law database, rule 158 (https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule158). Numerous States require the presence of the accused on their territory to establish jurisdiction.

⁸⁰ *Ibid.*, with reference to the International Tribunal for the Former Yugoslavia, *Prosecutor v. Tadić*, case No. IT-94-1, Decision on the Defence Motion on Jurisdiction, 10 August 1995, para. 71.

⁸¹ See www.ecchr.eu/en/case/israeli-airstrikes-in-gaza-justice-in-the-kilani-case.

⁸² Article 41 (2). For instance, States should not recognize the unlawful situation resulting from Israeli settlements or aid or assist in maintaining it (A/HRC/40/43, para. 51).

⁸³ Article 41 (1) of the articles on the responsibility of States for internationally wrongful acts. Considered as serious are breaches by a State of an obligation arising under a peremptory norm of general international law (article 40 of the articles on the responsibility of States for internationally wrongful acts). The prohibition of aggression, genocide, slavery, racial discrimination, crimes against humanity and torture, and the right to self-determination, as well as fundamental rules of international humanitarian law, are generally considered peremptory norms under international law (see paragraph (5) of the commentary to article 26 and paragraph (4) of the commentary to article 40 of the draft articles on the responsibility of States for internationally wrongful acts (Report of the International Law Commission on its fifty-third session, A/56/10 and Corr.1, pp. 208 and 283, respectively)). See paragraph (3) of the commentary to article 50 of the draft articles on the law of treaties (Reports of the International Law Commission on the second part of its seventeenth session and on its eighteenth session, A/6309/Rev.1, pp. 76–77).

Nations, to promote universal respect for, and observance of, human rights and freedoms, as also recalled by almost all core international human rights treaties.⁸⁴

V. Conclusion and recommendations

46. The period under review was characterized by a persistent pervasive failure to ensure accountability for allegations of excessive use of force by the Israeli security forces in the context of law enforcement operations in the Occupied Palestinian Territory. Impunity also persisted in relation to allegations against all parties to the 2014 escalation and to previous and more recent rounds of hostilities in Gaza. Furthermore, there were concerns that few steps had been 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 violations committed against Palestinians.

47. With regard to the responsibility of third States, the High Commissioner underlines the obligation of all States to ensure respect for international humanitarian law by taking all necessary measures to that effect.

48. As already emphasized by the High Commissioner, despite the insistent calls made by the international community for compliance with applicable obligations under international law, and the support provided to Palestinian and Israeli authorities in their peace efforts, the steps taken by the international community have continued to remain insufficient to ensure that end.⁸⁵ 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. In that regard, the Secretary-General has emphasized that a lack of accountability has compromised chances for sustainable peace and security, adding that tackling impunity must be the highest priority.⁸⁶ The High Commissioner again echoes those calls.

49. Recalling the follow-up measures described in previous comprehensive reviews of recommendations,⁸⁷ as well as all the recommendations reviewed, 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) Calls upon Israel to resume its cooperation with OHCHR and make full use of OHCHR technical assistance;

(c) 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;

⁸⁴ Charter of the United Nations, Article 1 (3). See the preambles of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities.

⁸⁵ A/HRC/35/19, para. 62.

⁸⁶ A/71/364, para. 6.

⁸⁷ A/HRC/35/19, paras. 63–81.

(d) **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;**

(e) **Calls upon all States to take all necessary measures to effectively ensure respect for the Geneva Conventions by all parties to the conflict, taking into account the means reasonably available to them and their level of influence on the parties; and, in particular, reminds States with close ties to the parties that they must exert their influence to ensure respect for the law;**

(f) **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.**
