

Hebron killing: an extrajudicial execution?

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N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. Israeli soldier is filmed shooting dead wounded Palestinian attacker

[Source: The Guardian, 24 March 2016, available at: <https://www.theguardian.com/world/2016/mar/24/israeli-soldier-filmed-shoot-dead-wounded-palestinian-attacker-hebron>]

[1] An Israeli rights group has released a video showing the moment an Israeli soldier appears to shoot dead a wounded Palestinian in Hebron minutes after he had stabbed another soldier.

[2] The footage, released by B'Tselem, was recorded on Thursday morning during an incident in the Tel Rumeida district of the southern West Bank city. It shows the immediate aftermath of an attack in which an Israeli soldier was wounded by two Palestinian men.

[3] The stabbing of the soldier happened just before a parade by Israeli settlers in the city celebrating the festival of Purim. The video was filmed by Emad abu-Shamsiyah, a B'Tselem volunteer, and shows one of the Palestinians accused of the attack, Abdel-Fattah al-Sharif, 21, lying injured on the ground.

[4] A second Palestinian, Ramzi al-Qasrawi, 20, was also shot dead by soldiers during the attack.

[5] Israeli military sources said the soldier responsible for the shooting had been detained before the emergence of the video on the orders of his unit commander, who reported the shooting. In the graphic footage, the wounded soldier can be seen being lifted into an ambulance while soldiers and armed Israeli civilians mill around.

[6] Clearly visible in the video is the injured Sharif, who has already been shot once, his head still moving. After almost two minutes, a soldier approaches Sharif, aims his weapon at his head and shoots him, apparently killing him. Later footage shows him lying motionless with blood coming from his head.

[7] The video appears to confirm in this instance repeated claims by Palestinians and human rights groups in recent months that Israeli security forces have shot and killed suspected attackers who pose no threat.

[8] A witness told the Palestinian Ma'an news agency: "I heard gunshots, went outside my house to check what it was, and saw several Israeli soldiers yelling and two youths on the ground. A soldier approached one of the youths that was moving while yelling and opened fire at him from zero range."

[9] The initial Israeli military investigation established that the shooting occurred about three minutes after soldiers shot the two Palestinians knife-wielding during the reported attack.

[10] Sarit Michaeli, a spokeswoman for B'Tselem, said: "In this case it seems crystal clear a soldier executed a wounded Palestinian assailant while he was on the ground. You can see he is alive but injured.

[11] "It is also clear from the video that an Israeli soldier has been injured. But this kind of conduct is shocking, especially considering the blasé response of the other soldiers and security forces who are also seen. It raises quite serious questions about why these appear so unsurprising to these other soldiers and that needs to be seriously investigated."

[12] Despite the evidence that the soldier shot a wounded man who had already been incapacitated, Michaeli added that she had little optimism that the shooting would be properly investigated.

[13] "Since the beginning of this wave of escalation [from last October] there have been many reports of disproportionate use of force vis-a-vis suspected assailants, none seriously investigated and of those none has seen charges opened."

[14] Commenting on the incident, an Israeli army spokesman, Peter Lerner, said: "The Israel Defence Forces views this incident as a grave breach of IDF values, conduct and standards of military operations. A military police investigation has commenced and the soldier involved has been detained."

[15] Israel's defence minister Moshe Ya'alon later described the soldier's actions as being "in utter breach of IDF values and of our code of ethics in combat." He added: "Even when the blood boils, we must not allow such loss of reason and such loss of control."

[16] Ayman Odeh, leader of a bloc of Arab parties in the Israeli parliament, also issued a harsh condemnation of the videotaped killing. "Israel has turned in recent months into a place in which executions are carried out

in public with the encouragement of cheering mobs.”

[17] In January, concern about possible extrajudicial killings by Israeli forces during the current wave of violence was raised by the Swedish foreign minister, Margot Wallström. The diplomatic row that ensued led to her being called “irresponsible and delusional” by Israel’s foreign ministry, and told she was not welcome in the country. The new footage is bound, however, to raise renewed concern.

[18] Commenting on the footage Amnesty International’s Middle East and North Africa Director Philip Luther said: “The shooting of a wounded and incapacitated person, even if they have been involved in an attack, has absolutely no justification and must be prosecuted as a potential war crime.

[19] Israeli forces have a long history of carrying out unlawful killings - including extrajudicial executions - in the Occupied Palestinian Territories with impunity. Amnesty has documented a number of similar cases during the upsurge in violence that began in October.”

[20] The incident comes amid a six-month wave of Palestinian stabbings, shootings and car-ramming attacks that has killed 28 Israelis and two Americans. Over the same time, at least 188 Palestinians have died by Israeli fire. Israel says most of them were attackers, and the rest died in clashes with Israeli security forces.

[21] Israel blames the attacks on incitement by Palestinian leaders and social media. Palestinians say the violence stems from frustration at nearly five decades of Israeli military occupation. The Palestinians have also accused Israel of using excessive force and killing assailants who have already been stopped or wounded.

B. UN Special Rapporteur on extrajudicial, summary or arbitrary executions express outrage on Hebron killing

[Source: Office of the United Nations High Commissioner for Human Rights, News, 30 March 2016, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18544&LangID=E>]

[1] GENEVA (30 March 2016) – The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns today expressed his outrage at the killing of a Palestinian man by an Israeli soldier on 24 March in Hebron, West Bank, as he laid incapacitated on the ground following his alleged role in a knife attack.

[2] Footage of the shooting of Abed al-Fatah al-Sharif was released by the Israeli human rights organization B’Tselem, and others have subsequently also posted similar videos on the Internet.

[3] “The images shown carry all the signs of a clear case of an extrajudicial execution,” the human rights expert stressed. “There does not appear to be any provocation on the side of the gravely wounded man.

[4] Whatever legal regime one applies to the case, shooting someone who is no longer a threat is murder. It is furthermore troublesome that this was done to no apparent alarm to the other soldiers who were nearby," Mr. Heyns said.

[5] The Special Rapporteur expressed further concern at the decision of the medical personnel on the scene to ignore Mr. Abed al-Fatah al-Sharif and attend only to the injured Israeli soldier, who had sustained light injuries.

[6] "Part of protecting the right to life is accountability where it has been violated," Mr. Heyns said welcoming the news that the soldier has been arrested by the Israeli authorities and is facing trial. "Ensuring a proper trial and if appropriate, punishment, will be of great importance, to stop what appears to be a pattern of unpunished cases where excessive force is used," he underscored.

[7] A total of 133 Palestinians and 30 Israelis (including 2 Arab Israelis) have been killed since the recent outbreak of hostilities in October last year.

[8] "The current cycle of provocation and retaliation has to stop. Political leaders on both sides have an obligation to condemn the killings and to ensure accountability," the human rights expert stated.

Discussion

I. Wounded, sick and shipwrecked

1. Does IHL provide protection only to wounded, sick and shipwrecked combatants? Equally to wounded, sick and shipwrecked civilians? (GC I-II, Art. 12; GC IV, Art. 16; P I, Art. 8(a) and (b); CIHL, Rule 110)

2. Under IHL, which condition must be fulfilled by a wounded, sick or shipwrecked person in order to qualify for protection? Mr. Sharif carried out an attack against an Israeli soldier few minutes before being shot: may this circumstance influence the evaluation? (*Doc. A, paras. 6; 12*) In the opinion of The Guardian and of B'Tselem, does Mr. Sharif appear to fulfil the prescribed condition? (*Doc. B para. 3*) In the opinion of the UN Special Rapporteur? In your opinion?

II. Medical care / medical duties

3. (*Doc. B, para. 5*) The UN Special Rapporteur expresses concern because the medical personnel ignored Mr. Sharif and attended only the Israeli soldier. Does IHL require medical personnel to give care without any discrimination? Or may medical personnel prioritize among their patients? On medical grounds? On other grounds? Could we claim that the decision of the medical personnel in this case to prioritize the care of the wounded Israeli soldier was made in accordance with medical grounds? (GC I, Art. 12; P I, Art. 10; CIHL, Rule 110)

III. Direct participation in hostilities

4. Which are the criteria required to classify an act as direct participation in hostilities? Are these criteria cumulative or not? In what legal instrument do we find these criteria? Shall civilians directly participating in hostilities be cared for if wounded, sick or shipwrecked? (ICRC, Interpretative Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law)

5. (*Doc. A, Paras. 2, 3; Doc. B, Para. 4*) Could the conduct of Mr. Sharif amount to direct participation in hostilities? If not, why not? If so, could the Israeli soldier invoke the direct participation in hostilities by Mr. Sharif to justify his killing? Does a knife attack against a soldier in an occupied territory constitute direct participation in hostilities, a crime or both? May the threatened soldier react according to IHL rules on the conduct of hostilities, or only according to International Human Rights Law (IHRL) rules on law enforcement? What is the main difference between the two paradigms? If both apply, which prevails here? Does the difference between IHL rules and IHRL rules matter in our case?

IV. War crimes

6. Under IHL, must Israel ensure the accountability of the Israeli soldier? Under IHL, must the Palestinian authority ensure accountability of Palestinians attacking Israeli soldiers with knives? Under what circumstances do the latter violate IHL? (GC IV, Art. 147; P I, Art. 37; CIHL, Rule 65)

7. (*Doc. A, para. 18*) Under IHL, which categories of persons or objects must be affected in order to invoke war crimes? May the killing of Mr. Sharif be considered a war crime, as claimed by Amnesty International? May Mr. Sharif be considered a person protected under GC IV? If not, why not? (GC IV, Art. 147; GC IV, Art. 4)

8. If the killing of Mr. Sharif constitutes a war crime, has Israel complied with its obligations under IHL? Are these obligations of result or only of means? (GC IV, Art. 146)