



Urgent Appeal to the United Nations Special Procedures on the Extrajudicial Execution and Wilful Killing of Palestinians Mr. Ashraf Mubaslat, Mr. Mohammad Dakhil, and Mr. Adham Mabrukah, by the Israeli Occupying Forces on 8 February 2022 in Nablus, West Bank.

Date: 3 March 2022

For the attention of:

- The United Nations Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, Mr S. Michael Lynk;
- The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr Morris Tidball-Binz;
- The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr Nils Melzer;
- The United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Ms. Tlaleng Mofokeng;
- The United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Ms E Tendayi Achiume; and
- The United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ms Fionnuala Ní Aoláin.

1. Introduction

On Tuesday, 8 February 2022, the Israeli Occupying Forces (IOF) shot and killed three Palestinian men; Mr. Ashraf Mohammad Abdel Fatah Mubaslat, 21, Mr. Mohammad Raed Hussein Dakhil, 22, and Mr. Adham Jamal Abdel Rahim Mabrukah, 27, in Nablus, inside the West Bank in the Occupied Palestinian Territory (OPT).¹ The three men were traveling by car towards Al-Makhfyeh neighbourhood in the western part of Nablus city. While en route, the

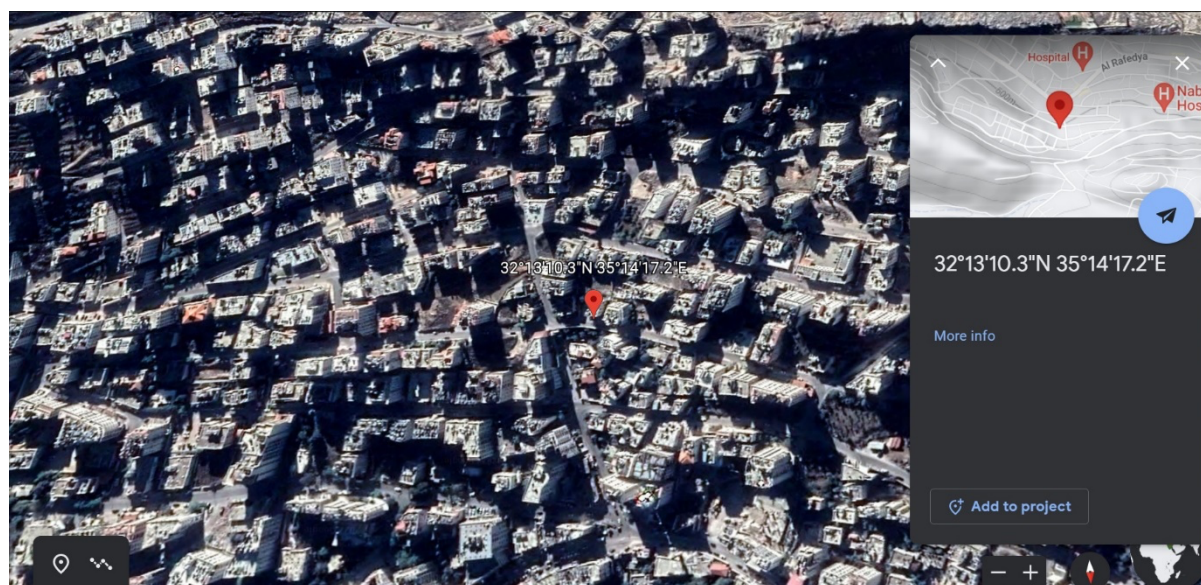
¹ Al Jazeera, 'Israeli soldiers open fire at car in Nablus killing Palestinians', (8 February 2022) available at: <https://www.aljazeera.com/news/2022/2/8/israel-troops-kill-three-palestinians-in-occupied-west-bank>; Reuters, 'Israeli forces kill three Palestinian Militants in the West Bank (8 February 2022) available at: <https://www.reuters.com/world/middle-east/israeli-forces-kill-three-palestinian-gunmen-israeli-security-service-says-2022-02-08/>

IOF blocked their car using two unmarked vehicles with Palestinian number plates and then opened fire. These soldiers then exited the unmarked vehicles and continued to fire live ammunition at the car. Once the IOF had left the area, residents investigated the car and found the disfigured bodies of the three men, presenting no signs of life. The men were then taken by ambulance to the hospital but pronounced dead prior to their arrival.²

Under international law, these killings by the IOF amount to an extrajudicial targeted killing, in violation of International Humanitarian Law (IHL), International Human Rights Law (IHRL) and International Criminal Law, giving rise to individual criminal responsibility.³ Consequently, Al-Haq addresses this urgent appeal to the relevant United Nations (UN) Special Procedures mandates urging investigation and remedy of the extrajudicial executions of Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah by the IOF. Al-Haq requests full reparations for the families of the three Palestinian men and international justice and accountability into widespread and systematic human rights violations committed against the Palestinian people by the IOF.

2. Facts of the Case

In the afternoon of 8 February 2022, at around 1:20 pm, Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah were travelling in a silver Seat Ibiza car (the car) in the Al-Makhfyeih neighbourhood. This area is in the western part of Nablus city, a populated residential area close to a local Samaru supermarket.⁴



Map of Al-Makhfyeih neighbourhood, densely populated, in the western part of Nablus city.

Israeli special forces from the IOF used two vehicles; the first was an orange public Volkswagen taxi car (the taxi), and the second a grey Volkswagen Caddy minivan (the minivan). Both vehicles were unmarked, appearing civilian in character with Palestinian

² Summary based on Al-Haq Field Report on the killing of Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah prepared on 10/2/2022, on file with Al-Haq.

³ See below, section 3. *Legal Analysis*.

⁴ Al-Haq Field Report on the killing of Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah prepared on 10/2/2022, on file with Al-Haq.

number plates.⁵ There were approximately ten Israeli soldiers in both of the unmarked vehicles wearing formal army uniforms, face masks, helmets, and armed with automatic rifles. These soldiers were accompanied by a soldier concealed in civilian clothes.⁶ He had a hat over his head, a pistol on his waist and was carrying an automatic rifle.⁷ According to eyewitness testimony, the taxi intercepted the car and blocked its path.⁸ The actions taken by the IOF can be then divided into two distinct stages.⁹



A photo highlighting the positions of the vehicles during the incident.

First, live ammunition was fired by the IOF towards the windscreen of the car. The IOF opened fire without warning, and the shooting was intensive and continuous.¹⁰

Second, a group of approximately five soldiers surrounded the car from each side. Three soldiers were seen pointing their weapons at the silver car and firing live ammunition from three to five meters continuously towards the car.¹¹ Other Israeli soldiers not shooting at the car were shouting and blocking any vehicles approaching in either direction on the street.¹² After two rounds of intensive live ammunition being fired at the car, the front and back windscreens were shattered, as well as the glass in the left and right side of the silver car.

⁵ Al-Haq Field Report on the killing of Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah prepared on 10/2/2022, on file with Al-Haq.

⁶ Information obtained by Al-Haq field researcher on 8/2/2022, on file with Al-Haq.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Al-Haq Field Report on the killing of Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah prepared on 10/2/2022 on file with Al-Haq.

¹² Al-Haq Affidavit 26/2022, given by Jane Bishara, 38, a resident of Nablus, on 8 February 2022. (hereinafter Al-Haq Affidavit 26/2022).

Following the attack on the car, Israeli soldiers were seen inspecting and confiscating two automatic rifles from the car and putting them in a blue plastic bag.¹³ The operation lasted approximately fifteen minutes before the soldiers returned to their vehicles and the taxi and the minivan left the scene.¹⁴



A photo taken of the back windscreen after the incident.

No gunshots were seen or heard coming from the car in any direction at any time during the operation. Despite this, eyewitness testimony confirms that the Israeli soldiers did not give any warning before they started firing at the car; for example, no gunshots were fired into the air and no verbal warnings were heard by witnesses.¹⁵

After the IOF left the area, local residents called the emergency services. Witnesses found the windscreen of the car riddled with bullet holes. There were no signs of life in any of the three Palestinians in the car, whose bodies were disfigured due to the heavy shooting directed at their upper bodies.¹⁶ Four ambulances arrived at the scene, and with the help of residents, the paramedics carried the three men into the ambulance. The bodies were transported to Rafidyah Hospital in Nablus to the emergency department. An autopsy team confirmed that the three Palestinian men were dead prior to arrival at the hospital.¹⁷

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Information obtained by Al-Haq field researcher on 8/2/2022, on file with Al-Haq

¹⁷ Al-Haq Field Report on the killing of Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah prepared on 10/2/2022, on file with Al-Haq

Israel and the IOF, through its description of Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah as “terrorists”, argues that they were not civilians, but instead constituted legitimate military targets.¹⁸



A photo taken of the bullet holes in the car windscreen after the incident.

3. Legal Analysis

International jurisprudence provides two distinct legal frameworks which govern the use of force by armed forces and security personnel, namely the conduct of hostilities paradigm found in International Humanitarian Law (IHL), applicable only in armed conflicts, and the law enforcement paradigm rooted in International Human Rights Law (IHRL). Given Israel’s internationally recognised position as Occupying Power in the West Bank there is a clear application of IHL during the attack, however, as confirmed by the *Wall* Advisory Opinion of the International Court of Justice (ICJ), both IHL and IHRL constitute jointly applicable frameworks in situations of armed conflict, such as the ongoing military occupation of the OPT.¹⁹ IHL and IHRL must be viewed as ‘complementary, not mutually exclusive,’ when it comes to the protection of the right to life, as recognised by the UN Human Rights Committee.²⁰

¹⁸ Al Jazeera, ‘Israeli soldiers open fire at car in Nablus killing Palestinians’, (8 February 2022) available at: <https://www.aljazeera.com/news/2022/2/8/israel-troops-kill-three-palestinians-in-occupied-west-bank>; Reuters, ‘Israeli forces kill three Palestinian Militants in the West Bank (8 February 2022) available at: <https://www.reuters.com/world/middle-east/israeli-forces-kill-three-palestinian-gunmen-israeli-security-service-says-2022-02-08/>

¹⁹ Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, International Court of Justice (9 July 2004) (Hereinafter ‘*Wall Advisory opinion*’), paragraph 106, available at: <https://www.icj-cij.org/public/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>

²⁰ Human Rights Committee, General Comment No. 36 (2018) on Article 6 of the ICCPR on the right to life, UN Doc. CCPR/C/GC/36, 30 October 2018 (hereinafter ‘CCPR General Comment No. 36’), para. 64, available at: <https://undocs.org/CCPR/C/GC/36>

Israel, the Occupying Power, is bound by IHL, including its obligations under the Fourth Geneva Convention (GCIV) as well as customary IHL.²¹ Additionally, Israel is bound to respect, protect, and fulfil IHRL in the OPT as a state party to the International Covenant on Civil and Political Rights (ICCPR),²² the International Covenant on Economic, Social and Cultural Rights (ICESCR),²³ the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),²⁴ and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),²⁵ amongst other international human rights treaties it has ratified.

3.1. International humanitarian law

GCIV defines protected persons in Article 4 as “those who at a given moment and, in any manner, whatsoever find themselves, in the case of a conflict or occupation in the hands, of persons a party to the conflict or Occupying Power of which they are not nationals”.²⁶ It has been recognised by international jurisprudence that under the Fourth Geneva Convention, as protected persons, Palestinians are entitled to be humanely treated and be protected against all acts of violence and threats under Article 27 of the Fourth Geneva Convention.²⁷ In its simplest form, GCIV guarantees the rights of civilians during situations of occupation and protects them from abuse of the Occupying Power.

Israel and the IOF, through its description of the Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah as “terrorists”, argues that they were not civilians, instead constituting legitimate military targets.²⁸ This is not the case. The principle of distinction differentiates between combatants and civilians; where civilians are afforded protection against military operations, combatants are considered legitimate military targets.²⁹ The prohibition of the deliberate use of force against civilians is absolute, however, civilians and other protected persons can lose their protection when and “for such time” that they “directly participate in hostilities”.³⁰ The notion of direct participation in hostilities and subsequent loss of civilian protection in such circumstances is codified under IHL in Article 51(3) of Additional Protocol

²¹ *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (adopted 12 August 1949, entry into force 21 October 1950) 75 UNTS 287 (hereinafter ‘Fourth Geneva Convention’).

²² *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entry into force 23 March 1976) 16 December 1966, 999 UNTS 171 (ICCPR).

²³ *International Covenant on Economic, Social and Cultural Rights* (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3 (ICESCR).

²⁴ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entry into force 26 June 1987) 1465 UNTS 85 (CAT).

²⁵ *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted 7 March 1966, entry into force 4 January 1969) 660 UNTS 195 (ICERD).

²⁶ Article 4, Fourth Geneva Convention,

²⁷ *Wall Advisory opinion*, Paragraph 101; Article 27, Fourth Geneva Convention

²⁸ Al Jazeera, ‘Israeli soldiers open fire at car in Nablus killing Palestinians’, (8 February 2022) available at: <https://www.aljazeera.com/news/2022/2/8/israel-troops-kill-three-palestinians-in-occupied-west-bank>; Reuters, ‘Israeli forces kill three Palestinian Militants in the West Bank (8 February 2022) available at: <https://www.reuters.com/world/middle-east/israeli-forces-kill-three-palestinian-gunmen-israeli-security-service-says-2022-02-08/>

²⁹ Al-Haq, ‘A Demonstration of Power. Israel’s Excessive Use of Force resulting in the Killing of Non-Violent Palestinian Protestors and Demonstrators during 2014 and 2015.’ (May 2016), p.31, available at: https://www.alhaq.org/cached_uploads/download/alhaq_files/publications/papers/Excessive.Use.of.Force.pdf

³⁰ ICRC, ‘Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law’ (May 2009), 41, (Hereinafter ‘ICRC interpretive guidance’) available at: <https://www.icrc.org/en/doc/assets/files/other/icrc-002-0990.pdf>

I of the Geneva Conventions (API). While Israel has not ratified API, article 51(3) is well established in customary international law, with many countries recognising its application.³¹

In the present case, Israel claims that Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah were only known to Israeli intelligence on the basis of alleged acts of violence, such as shooting at military sites.³² Notably, the West Bank is currently policed under a law enforcement paradigm and there are currently no active hostilities. That being said, such actions, even if true, would fall within the definition of “direct participation in hostilities”, but only “for such time” as the men participated in them.³³ The temporal element of the direct participation in hostilities (“for such time”) requires the men to be engaged in violence at the time, as recognised by the ICRC.³⁴ At the time of the operation by the IOF, the men were not attacking a military base or patrol but travelling by car in an urban neighbourhood. While there were weapons in the car, as can be seen from the evidence compiled by Al-Haq staff, there was no shooting from the vehicle nor any warnings given by the IOF. It can be concluded from the evidence gathered that at the time, Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah, were not participating in hostilities, and there were also no hostilities taking place. Therefore, the men should have been afforded civilian protection guaranteed under IHL during the operation committed by the IOF on the 8 February 2022. As seen from the facts, this did not occur. Instead, the IOF killed three men, regardless of their rights under GCIV.

GCIV does permit the Occupying Power some discretion in measures of ‘control and security’ against protected persons, for example, imposing restrictions on movement or depriving individuals of their liberty on security grounds.³⁵ However, such measures must be carried out in a non-discriminatory manner and “should not affect the fundamental rights of the persons concerned”.³⁶ It is clear from the wording of Article 27 of GCIV that if Israel had any evidence of criminal activity Israel has the right to arrest and prosecute in a fair trial.³⁷ These types of measures are highlighted as appropriate for persons suspected of participating in hostilities by the ICRC in their guidance on direct participation. Within GCIV there is an express provision prohibiting murder, “whether applied by civilians or military agents”.³⁸ However, despite their obligations, rather than attempt to arrest the men, the evidence shows the IOF set out to commit a clear extrajudicial killing.

³¹ ICRC Customary law Database, Rule 6. Civilians loss of protection from attack, available at: [https://www.loc.gov/rr/frd/Military_Law/pdf/law-war-handbook-2005.pdf](https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1_rule6#:~:text=Civilians%20are%20protected%20against%20attack,a%20direct%20part%20in%20hostilities.&text=Volume%20II%2C%20Chapter%201%2C%20Section%20F.&text=State%20practice%20establishes%20this%20rule,and%20non%2Dinternational%20armed%20conflicts; For example, the USA, which also has not ratified API, has a similar provision to article 51(3) in their military manual, see International and operational law department (USA), ‘Law of war Handbook’ (2005), page 142, available at: <a href=)

³² Al-Haq Field Report on the killing of Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah prepared on 10/2/2022, on file with Al-Haq.

³³ Article 51(3), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3, available at: <https://www.refworld.org/docid/3ae6b36b4.html>

³⁴ ICRC interpretative guidance

³⁵ Article 27, Fourth Geneva Convention

³⁶ JS Pictet, ‘Commentary on the Fourth Geneva Convention.’ (ICRC, Geneva, 1958) 207.

³⁷ Article 27, Fourth Geneva Convention.

³⁸ Article 32, Fourth Geneva Convention.

This type of targeted killings reflects wider Israeli policy within the OPT.³⁹ It has been well-documented by Al-Haq that Israeli soldiers have consistently failed to issue warning signs before resorting to live fire and using lethal force, failing to use either method as a last resort.⁴⁰ These policies do not comply with any security measures envisioned in both Article 27 GCIV and ignore obligations enshrined in Article 32 GCIV. Further, the use of unmarked civilian cars by the IOF may amount to acts of perfidy, in breach of customary international law and Article 23(b) of the Hague Regulations.⁴¹ The actions of the IOF show a complete disregard for their obligations under GCIV, both in this situation and throughout their conduct during the occupation of the OPT.⁴² GCIV recognises under Article 147 a grave breach when the Occupying Power wilfully kills a protected person, as well as denies any rights guaranteed within GCIV.⁴³ The actions taken by the IOF clearly show an operation which had the singular purpose of killing Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah, regardless of their rights under IHL. It can be concluded that the killing of the three men by the IOF shows not only a failure to comply with their obligations under IHL, but also a grave breach of GCIV under Article 147.

3.2. International Human Rights Law

Article 6(1) of the ICCPR enshrines the inherent right to life as “the supreme right from which no derogation is permitted even in situations of armed conflict and other public emergencies”.⁴⁴ As recognised by the UN Human Rights Committee, the right to life “should not be interpreted narrowly”.⁴⁵ Any deprivation of life “must represent a method of last resort after other alternatives have been exhausted or deemed inadequate,”⁴⁶ with “the threat responded to [involving] imminent death or serious injury.”⁴⁷ Accordingly, any deprivation of life is arbitrary when it is carried out in the absence of a threat to life or serious injury.⁴⁸ It is quite clear that the use of force ‘should be exceptional’.⁴⁹ It can therefore never be weighed against anything other than another life and all lives have equal value.⁵⁰

³⁹ See below, section 3.5 Targeted killings under international law.

⁴⁰ Al-Haq, Joint Urgent Appeal to the United Nations Special Procedures on the Extrajudicial Execution and Wilful Killing of Ahmad Erekat by the IOF on 23 June 2020 (13 July 2020), available at: https://www.alhaq.org/cached_uploads/download/2020/07/14/joint-urgent-appeal-to-un-special-procedures-on-the-killing-of-ahmad-erekat-final-1594706298.pdf

⁴¹ Rule 65, Perfidy, ICRC Customary IHL, available at: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule65>

⁴² Al-Haq, Joint Urgent Appeal to the United Nations Special Procedures on the Extrajudicial Execution and Wilful Killing of Ahmad Erekat by the IOF on 23 June 2020 (13 July 2020), available at: https://www.alhaq.org/cached_uploads/download/2020/07/14/joint-urgent-appeal-to-un-special-procedures-on-the-killing-of-ahmad-erekat-final-1594706298.pdf

⁴³ Article 147, Fourth Geneva Convention

⁴⁴ UN Human Rights Committee, General Comment No. 36 (2018) on Article 6 of the ICCPR on the right to life (30 October 2018) UN Doc CCPR/C/GC/36, para. 2 (henceforth “CCPR, General Comment No. 36”).

⁴⁵ CCPR, General Comment No. 36, para. 3.

⁴⁶ CCPR, General Comment No. 36, para. 12.

⁴⁷ CCPR, General Comment No. 36, para. 12.

⁴⁸ CCPR, General Comment No. 36, para. 12.

⁴⁹ OHCHR, Commentary to Article 3, Code of Conduct for Law Enforcement Officials, available at: <https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>.

⁵⁰ UN Human Rights Council, Report of the independent international Commission of Inquiry on the protests in the Occupied Palestinian Territory (25 February 2019) UN Doc. A/HRC/40/74, para. 54, available at: https://www.un.org/unispal/wp-content/uploads/2019/06/A.HRC_40.CPR_2.pdf

The two requirements under IHRL for the use of force is that it must be only used where necessary and that once force is deemed necessary, its use must be proportionate.⁵¹ In such cases where no other option exists but the choice between two lives, the force necessary to repel an *imminent* attack is allowed to protect the life of the person being attacked.⁵²

Further, the IOF, as security agents within the OPT, are expected to consider the guidance given in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials ('UN Basic Principles').⁵³ The basic principles provides that the "intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life", and "when less extreme means are insufficient to achieve these objectives".⁵⁴ Moreover, the Code of Conduct for Law Enforcement Officials requires that "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty".⁵⁵ Firearms are "considered an extreme measure" in which "[e]very effort should be made to exclude the[m]".⁵⁶ The UN Basic Principles require that, "law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed".⁵⁷ As noted above, no such actions were taken by the IOF in this case, which instead opened fire without warning upon the men.

From the evidence gathered by Al-Haq, it is clear that the IOF did not operate in an absolutely necessary or proportionate manner in killing Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah. There is no evidence to show the men posed an imminent threat when their car was attacked. Witnesses did not hear or see any gunshots fired from the car by the three men that would justify the use of live fire in self-defence.⁵⁸ Witnesses also did not see the weapons that were in the car until they were removed by the IOF soldiers at the end of the shooting.⁵⁹ The men were also significantly outnumbered by the group of approximately ten armed soldiers, who should of used non-lethal measures such as arresting and detaining the three men, if evidence warranted such a course of action. This would meet the requirements under the basic

⁵¹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, A/HRC/26/36 (1 April 2014), p.10-11, available at: https://ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A-HRC-26-36_en.doc ; Ibid., p.11-12.

⁵² International Committee of the Red Cross (ICRC), 'International humanitarian law and the challenges of contemporary armed conflicts' (October 2015), available at: <https://www.icrc.org/en/download/file/15061/32ic-report-on-ihl-andchallenges-of-armed-conflicts.pdf>, p.34.

⁵³ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 (henceforth the "UN Basic Principles").

⁵⁴ Principle 9, UN Basic Principles,

⁵⁵ Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979 (henceforth the "Code of Conduct for Law Enforcement Officials").

⁵⁶ Article 3, Code of Conduct for Law Enforcement Officials,

⁵⁷ Principle 10, UN Basic Principles

⁵⁸ Al-Haq Field Report on the killing of Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah prepared on 10/2/2022, on file with Al-Haq.

⁵⁹ Ibid.

principles and rules of law as well as Israel's own laws to follow due process.⁶⁰ The IOF use of lethal force was not used as a last resort when all other measures had been exhausted.⁶¹

The applicable test remains whether the individual, at the time of their targeting, posed an imminent threat to life.⁶² Based on the evidence provided, there is no indication that the men posed such a threat to the Israeli soldiers. All evidence shows that the shooting was unnecessary, and the soldiers could have and should have used other methods to neutralize the three men, such as arrest and detention.⁶³ By targeting with live bullets and by continuing to fire when the three men were clearly incapacitated, the IOF acted arbitrarily and extrajudicially executed them, amounting to a gross violation of their right to life as guaranteed under IHRL.⁶⁴

Further, The IOF also left the scene shortly after the operation and it was residents who were left to contact the emergency services.⁶⁵ Under the UN Basic Principles, law enforcement officials who resort to firearms must "Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment".⁶⁶ Leaving the scene without calling for medical aid, represents a callous disregard for Palestinian life and further constitutes a violation of the right to health.

3.3. International Criminal Law

As indicated above, the intentional and unjustified killings of protected persons during law enforcement operations amounts to a wilful killing, a grave breach of the Fourth Geneva Convention.⁶⁷ The Rome Statute of the International Criminal Court (ICC) enshrines grave breaches of the Fourth Geneva Convention as war crimes, which give rise to individual criminal responsibility at the ICC.⁶⁸

In particular, wilful killing amounts to a war crime under Article 8(2)(a)(i) of the Rome Statute. According to the ICC's Elements of Crimes, the war crime of wilful killing comprises the following five elements:

- i. The perpetrator killed one or more persons;
- ii. Such person or persons were protected under one or more of the Geneva Conventions of 1949;

⁶⁰ Constitution for Israel, The Right to Due Process of Law, (13 February 2013), available at: https://knesset.gov.il/constitution/ConstP21_eng.htm#:~:text=Every%20person%20has%20the%20right%20to%20be%20present%20in%20court,is%20innocent%20until%20proven%20guilty.

⁶¹ Commentary to Article 3, Code of Conduct for Law Enforcement Officials, available at: <https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>.

⁶² UN Human Rights Council, Report of the independent international Commission of Inquiry on the protests in the Occupied Palestinian Territory, 25 February 2019, UN Doc. A/HRC/40/74, para. 106, available at: https://www.un.org/unispal/wp-content/uploads/2019/06/A.HRC_40.CPR_2.pdf

⁶³ CCPR General Comment No.36, para.12.

⁶⁴ CCPR General Comment No.36, para.10.

⁶⁵ Al-Haq Field Report on the killing of Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah prepared on 10/2/2022, on file with Al-Haq.

⁶⁶ Principle 5(c), UN Basic Principles

⁶⁷ Al-Haq, 'A Demonstration of Power. Israel's Excessive Use of Force resulting in the Killing of Non-Violent Palestinian Protestors and Demonstrators during 2014 and 2015.' (May 2016), available at: https://www.alhaq.org/cached_uploads/download/alhaq_files/publications/papers/Excessive.Use.of.Force.pdf

⁶⁸ Rome Statute of the International Criminal Court (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3 (hereinafter 'Rome Statute').

- iii. The perpetrator was aware of the factual circumstances that established that protected status;
- iv. The conduct took place in the context of and was associated with an international armed conflict; and
- v. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.⁶⁹

As shown in the legal analysis above, in the present case, Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah were killed while they held the status of protected persons under Article 4 of the Fourth Geneva Convention. The IOF killed these three Palestinian men knowing that they were civilian persons at the time, within the context of Israel's prolonged military occupation of the OPT.

The International Criminal Tribunal for the Former Yugoslavia (ICTY) discussed the issue of wilful killing extensively in the *Celebici* case. The Tribunal accepted the definition of 'wilful killing' as found in the official Commentary to Article 85 of Additional Protocol I of the Geneva Conventions that the accused must have acted consciously and with intent.⁷⁰ Article 30 of the Rome Statute provides that the *mens rea* or mental element consisting of intent and knowledge shall make the person criminally responsible and liable for punishment.

The manner in which Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah were killed; the lack of warning or any attempt of arrest; the use of intense rounds of live ammunition when the three men were clearly incapacitated; and the failure by the IOF to contact the emergency services after the shooting operation, amounts to an unlawful deprivation of life within the meaning of Article 8(2)(a)(i) of the Rome Statute. This can entail the individual criminal responsibility of the perpetrator or perpetrators of the crime, as well as that of Israeli military and civilian officials who drafted and approved Israel's rules of engagement for the use of live fire.

3.4. Targeted Killings under International Law

The killing of Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah has been described both in the media and by Israeli officials as a "targeted killing"⁷¹ a concept brought into common usage by Israel which has no definition under international law.⁷² As identified by the former UN Special Rapporteur on extrajudicial, summary or arbitrary executions, 'targeted

⁶⁹ ICC, Elements of Crimes (2011), pp. 13-14, available at: <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>.

⁷⁰ Official Commentary to Article 85 of Additional Protocol I, paragraph 3474. [Emphasis added]. *The accused must have acted consciously and with intent, i.e., with his mind on the act and its consequences, and willing them ('criminal intent' or 'malice aforethought'); this encompasses concepts of 'wrongful intent' or 'recklessness', the attitude of an agent who, without being certain of a particular result, accepts the possibility of it happening; on the other hand, ordinary negligence or lack of foresight is not covered, i.e., when a man acts without having his mind on the act or its consequences.*

⁷¹ Al Jazeera, 'Israeli soldiers open fire at car in Nablus killing Palestinians.' (8 February 2022), available at: <https://www.aljazeera.com/news/2022/2/8/israel-troops-kill-three-palestinians-in-occupied-west-bank>; and Middle East Eye, 'Israeli forces shoot and kill three Palestinians in Nablus in targeted operation.' (8 February 2022), available at: <https://www.middleeasteye.net/news/israel-palestine-forces-shoot-kill-nablus>; and Electronic Intifada, 'Media use of "targeted killing" whitewashes Israeli attacks. (14 November 2019), available at: <https://electronicintifada.net/blogs/michael-f-brown/media-use-targeted-killing-whitewashes-israeli-attacks>

⁷² UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston: Study on targeted killings* (28 May 2010) UN Doc. A/HRC/14/24/Add.6 at para 7.

killings’ are pre-meditated attacks, directed towards a pre-identified target, with the express intention to kill, which may be conducted using a wide array of means and methods of warfare.⁷³ As such, ‘targeted killings’ are a form of extrajudicial executions, summary executions, and assassinations, all of which are illegal under international law.⁷⁴

The effects of such language show an attempt to legitimise an indiscriminate use of force, instead of investigating the excessive use of force by the IOF in the shooting in Nablus, the operation outcome was congratulated by Israeli politicians and IOF commanders.⁷⁵ In an address to Israeli officers in response to the Nablus shooting, Israeli Border Police Commander Amir Cohen stated:

*‘Once again, you have proved that the citizens of the State of Israel have someone to rely on, you acted with courage and brought about the thwarting of a dangerous terrorist cell that intended to continue carrying out terrorist activities...I’m proud of you. The corps will continue its joint activities with all security forces in order to thwart terrorism and protect the citizens of the State of Israel.’*⁷⁶

These statements by senior members of the IOF towards the illegal actions made in Nablus highlights the wilful lack of oversight and accountability by Israeli Authorities. States are required to take measures to prevent arbitrary killings by their own security forces.⁷⁷ The protection against arbitrary deprivation of life is a matter of ‘paramount importance, and therefore the law must ‘strictly control and limit’ the situations in which a person may be deprived of his life by the authorities.⁷⁸ Despite this requirement, Israel continues to defend its arbitrary killings of Palestinians. The UN Office of the High Commissioner for Human Rights, in the context of the ongoing Great Return March and closure of Gaza, noted that “[i]f Israel will not take credible and effective steps to investigate, and indeed, where it has congratulated its military forces for their use of force, then the international community must fill the investigatory void to ensure respect for international law”.⁷⁹ The UN Commission of Inquiry has noted that third states, particularly those party to the Geneva Conventions, have treaty obligations to “take action to safeguard compliance with the Conventions”.⁸⁰ It is incumbent upon the international community to investigate these incidents, as well as the wider situation in the OPT. Therefore, Al-Haq urges the international community to recognise its obligations and ensure accountability that is currently lacking towards the consistent illegal use of force and other measures in the OPT. Al-Haq requests the engagement of third state responsibility

⁷³ Ibid., paras 8-9.

⁷⁴ Michael N. Schmitt, ‘State Sponsored Assassination in International and Domestic Law’ (1992) 17 Yale Journal of International Law 611-612.

⁷⁵ Jerusalem Post, ‘3 Palestinian terrorists killed in clash with Israeli forces in Nablus.’ (8 February 2022), available at: <https://www.jpost.com/breaking-news/article-695858>

⁷⁶ Ibid.

⁷⁷ Al-Haq, A Demonstration of Power. Israel’s Excessive Use of Force resulting in the Killing of Non-Violent Palestinian Protestors and Demonstrators during 2014 and 2015 (May 2016), available at:

https://www.alhaq.org/cached_uploads/download/alhaq_files/publications/papers/Excessive.Use.of.Force.pdf

⁷⁸ CCPR General Comment No. 6, Article 6 (Right to Life) (30 April 1982) UN Doc. HRI/GEN/1/Rev.9 (Vol. I), para. 3.

⁷⁹ Office of the High Commissioner for Human Rights, UN human rights experts condemn killings of Palestinians near Gaza fence by security forces (17 April 2018), available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22950>

⁸⁰ UN Human Rights Council, *Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory* (18 March 2019) UN Doc. A/HRC/40/CRP/2, at para 775.

mechanisms guaranteed in international law given the failure of Israel to implement any such accountability.⁸¹

4. Crime against Humanity of Apartheid

Israel's systematic resort to lethal and other excessive force against Palestinians must be considered within the broader context of Israel's institutionalised regime of systematic racial oppression and domination over the Palestinian people, defined by the Rome Statute as the crime of apartheid.⁸² In December 2019, the Committee on the Elimination of Racial Discrimination (CERD) concluded, for the first time, that Israel is in violation of Article 3 of International Convention on the Elimination of Racial Discrimination (ICERD) through policies and practices of racial segregation and apartheid, which disproportionately impact Palestinians on both sides of the Green Line.⁸³

In particular, the 1973 Apartheid Convention considers the “denial to a member or members of a racial group or groups the right to life and liberty of person” an element of the crime of apartheid.⁸⁴ Similarly, Article 5(b) of ICERD requires States parties “to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone... the enjoyment of... the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution”.⁸⁵ The excessive use of armed force by the IOF, is reflective of an increasingly violent and repressive apartheid regime.⁸⁶ The killings of Ashraf Mubaslat, Mr. Mohammad Dakhil, and Mr. Adham Mabrukah may amount to prohibited acts of apartheid by Israel to maintain its apartheid regime of systematic racial oppression and domination over the Palestinian people as a whole.⁸⁷

4.1 Israel's Unwillingness to investigate Grave Breaches and International Crimes

In incidents where excessive use of force has been used, law enforcement officials are under an obligation to establish effective reporting and review procedures. Such reports must be sent

⁸¹ Al-Haq, ‘Al-Haq condemns practice of “targeted killings” in Gaza, calls for an immediate investigation into deaths of Gazan civilians, including children.’ (16 November 2019), available at: <https://www.alhaq.org/advocacy/16190.html>

⁸² Rome Statute, Article 7(2)(h).

⁸³ Al-Haq, Human rights organisations welcome Concluding Observations of the UN Committee on the Elimination of Racial Discrimination on racial segregation and apartheid on both sides of the Green Line (21 December 2019), available at: <http://www.alhaq.org/advocacy/16324.html>; and UN Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to nineteenth reports of Israel (27 January 2020) UN Doc CERD/C/ISR/CO/17-19.

⁸⁴ Article II(a), International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted 30 November 1973, entry into force 18 July 1976) UN Doc A/RES/34/27.

⁸⁵ *International Convention on the Elimination of All Forms of Racial Discrimination* (adopted 7 March 1966, entry into force 4 January 1969) 660 UNTS 195 (ICERD) available at: <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

⁸⁶ Al-Haq, Special Focus: Use of Excessive Force by the Israeli Occupying Forces, the Case of Abdallah Abu Baker, (7 December 2021), available at: <https://www.alhaq.org/advocacy/19288.html>

⁸⁷ Al-Haq, Joint Urgent Appeal to the United Nations Special Procedures on the Extrajudicial Execution and Wilful Killing of Ahmad Erekat by the IOF on 23 June 2020 (13 July 2020), available at: <https://www.alhaq.org/cache/uploads/download/2020/07/14/joint-urgent-appeal-to-un-special-procedures-on-the-killing-of-ahmad-erekat-final-1594706298.pdf>

to competent authorities for administrative review and judicial control.⁸⁸ Accordingly, in situations where such incidents occur regularly, law enforcement agencies should also review their training programs and operational procedures.⁸⁹

Under international human rights law, the duty to protect victims requires states, *inter alia*, to embrace positive obligations necessary to give effect to the rights of individuals, and to prevent the infringement of their rights.⁹⁰ Article 2 of the ICCPR guarantees the right to legal recourse when any person's rights or freedoms guaranteed under the Covenant are violated. Such infringements may be the result of the state 'permitting or failing to take appropriate measure or to exercise due diligence to prevent, punish, *investigate* or redress the harm caused by such acts'.⁹¹ Governments and law enforcement agencies need to ensure that commanders are also held responsible if they knew or should have known about the acts of their subordinates.⁹²

5. Conclusions and Recommendations

The killing of Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah by the IOF amounts to an extrajudicial execution and a wilful killing in violation of international human rights law and international humanitarian law. The practice of targeted killings constitutes an inherent violation of the right to life as enshrined in binding customary and conventional international law.⁹³ Despite this, as well as condemnation by the international community, the practice has been officially endorsed by the Israeli executive and judicial branches.⁹⁴ The conduct of the IOF contributes to the commission of crimes against humanity through the systematic targeting and harassment of the Palestinian people, including the crime of apartheid.

Considering the above, Al-Haq calls on the relevant UN Special Procedures mandates to:

1. Publicly condemn the extrajudicial execution and wilful killing of Ashraf Mubaslat, Mohammad Dakhil, and Adham Mabrukah by the IOF, which amounts to a war crime under the Rome Statute and contributes to the commission of the crime against humanity of apartheid over all Palestinians, giving rise to individual criminal responsibility at the ICC;
2. Send a communication to Israel, the Occupying Power, and call on the Israeli occupying authorities to immediately review their rules of engagement for the use of live fire and bring their rules of engagement in line with international human rights law, as

⁸⁸ United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials Adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders (1990), General Provision No 22.

⁸⁹ Ibid, Provision No 20.

⁹⁰ International Covenant on Civil and Political Rights (1976), Article 2(2); A Cohen, 'Beyond the Grave Breaches Regime: The Duty to Investigate Alleged Violations of International Law Governing Armed Conflicts' (2012) Yearbook of International Humanitarian Law, 49.

⁹¹ UN Human Rights Committee, General Comment 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant (26 May 2004), UN Doc. CCPR/C/21/ Rev.1/Add.13, paragraph 8. [Emphasis added]

⁹² Additional Protocol I of the Geneva Conventions (1949) Article 86(2) and UN Basic Principles (n 15) Provision No 24.

⁹³ Al-Haq, 'Israeli Forces Carry out Targeted Assassination of Palestinian in Ramallah.' (11 October 2010), available at: <https://www.alhaq.org/advocacy/7306.html>

⁹⁴ Supreme Court of Israel, *Public Committee against Torture in Israel v. Government of Israel*, Case No. HCJ 769/02, 13 December 2006, available at: http://elyon1.court.gov.il/files_eng/02/690/007/A34/02007690.a34.pdf

recommended by the UN Commission of Inquiry on the 2018 protests in the OPT and adopted by Member States of the Human Rights Council in accountability resolution 40/13 of 22 March 2019;

3. Recognise the institutionalised impunity towards Israel's widespread and systematic human rights violations against Palestinians, from within Israeli judicial mechanisms, forming part and parcel of Israel's apartheid regime of systematic racial oppression and domination over the Palestinian people as a whole;
4. Condemn Israel's continued lack of cooperation with UN human rights mechanisms, including the denial of country visits to UN Special Rapporteurs as well as UN investigatory mechanisms, thereby undermining international efforts to establish the facts surrounding Israel's widespread and systematic human rights violations and entrenching Israel's pervasive impunity;
5. Urge Member States of the UN to uphold their responsibility as third States and refrain from recognising as legitimate the illegal situation established and maintained in the OPT by Israel, the Occupying Power, and to refrain from rendering aid or assistance towards its maintenance, and to cooperate, through lawful means, including through sanctions and arms embargoes, to bring the illegal situation to an end;
6. Call on Member States and the UN at large to address the root causes prolonging the oppression of the Palestinian people, including by bringing an end Israel's prolonged occupation and illegal annexation of Jerusalem, lifting the Gaza closure with immediate effect, and dismantling Israel's apartheid regime over the Palestinian people, in order to uphold the rights of the Palestinian people to self-determination and to return to their homes, lands, and property, as mandated by international law; and
7. Call for international justice and accountability for widespread and systematic human rights violations committed against the Palestinian people, including war crimes and crimes against humanity, by urging third States to activate universal jurisdiction mechanisms, as recommended by the UN Commission of Inquiry on the 2018 protests in the OPT, and by calling for the immediate opening of a full, thorough, and comprehensive investigation by the ICC into the Situation in Palestine.