

## Legal Brief on the Extrajudicial Killing of Shireen Abu Aqleh

1. On 11 May 2022, 51-year-old Palestinian-American journalist Shireen Abu Aqleh, along with other five journalists, arrived at Balat Al Shuhada Street in Jenin city to cover the Israeli Occupying Forces' (IOF) military raid and incursion into Jenin refugee camp. The journalists wore clear 'PRESS' signs, before slowly approaching the IOF position, which was a convoy of five armored vehicles parked along the same roadway, about 200 meters to the south of the journalists. At 06:31 am, the first burst of six bullets was fired at the journalists, through a sniper hole in the front military vehicle. Journalist Ali Samoudi, who was leading the way, turned around and screamed "bullets being fired" and started running back when he was struck by one of the bullets in his left shoulder, which entered from his back and exited the front of his body. Eight seconds later, as the group of journalists sought to take cover, a second burst of seven bullets was fired at them. During these seconds, Ms. Abu Aqleh who was standing against a wall and a tree, screamed "Ali is hit" before she was hit by a bullet in her head; killing her. Two minutes later, three bullets were fired at Sharif Azab, an unarmed citizen, who was attempting to provide and deliver first aid to Ms. Abu Aqleh.
2. Having created a 3D precise, measurable, and geo-locatable photogrammetry model of the scene, Forensic Architecture, working with Al-Haq's new Forensic Architecture Investigation Unit were able to establish and reconstruct, through digital modelling, the exact positions of Ms. Abu Aqleh, the five journalists, and the Israeli military vehicles, throughout the incident. The analysis determines and shows beyond doubt that the distinctive journalists' blue vests with 'PRESS' written on them are plainly and clearly visible, in the moments leading up to, and during, the targeting of Mr. Samoudi, Ms. Abu Aqleh, and the other journalists.
3. Israel's final conclusions from its 'investigation' into the killing of Ms. Abu Aqleh stated that: "it is not possible to unequivocally determine the source of the gunfire which hit Ms. Abu Aqleh. However, there is a high possibility that Ms. Abu Aqleh was accidentally hit by IDF gunfire that was fired toward suspects identified as armed Palestinian gunmen, during an exchange of fire in which life-risking, widespread and indiscriminate shots were fired toward IDF soldiers... Another possibility which remains relevant is that Ms. Abu Aqleh was hit by bullets fired by armed Palestinian gunmen".<sup>1</sup>
4. Contrary to Israel's superficial and biased 'investigation', the visibility and audio analysis clearly confirms that no other persons can be seen or heard in the location between the IOF and the journalists, at the time of the incident. Furthermore, the shrapnel retrieved from Ms. Abu Aqleh's skull indicates that the bullet is commonly used by the IOF's marksmen.

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<sup>1</sup> IOF, 'Final Conclusions from the Investigation into the Shooting Incident which Resulted in the Death of Journalist Shireen Abu Akleh', 5 September 2022, available at: <https://idfanc.activetrail.biz/ANC0509202205>.

Therefore, it can only be IOF fire that killed Ms. Abu Aqleh. The analysis further establishes that no other shots were fired at or near the scene, in the two minutes and five seconds prior to the IOF's first burst of bullets. While a single bullet was fired two minutes and five seconds before the first burst of shots, the audio analysis identified that it too was most likely fired by the IOF. Therefore, the IOF's attempt to blame the killing of Ms. Abu Aqleh on armed Palestinians is nothing but an empty attempt to evade accountability, and contradicts the evidence and the findings of Forensic Architecture's comprehensive investigative analysis.

5. Furthermore, the trajectory analysis carried out by Forensic Architecture along with Al-Haq's new Forensic Architecture Investigation Unit reveals a close proximity of impact points. This is indicative of the IOF's intentional and repeated targeting of journalists as a precise aim. This is further evident in the IOF's continued shooting at the journalists, even after they attempted to take shelter, and at Mr. Azab, while he was trying to provide Ms. Abu Aqleh with first aid following her injury.
6. Israel, as Occupying Power, is obliged to administer the territory under the laws governing belligerent occupation, i.e., the Hague Regulations (1907), the Fourth Geneva Convention (1949) in addition to customary international law and the general principles of international law.<sup>2</sup> Further, Israel is bound by the international human rights treaties that it has ratified, to respect protect, and fulfil and international human rights law in the Occupied Palestinian Territory (OPT), including the International Covenant on Civil and Political Rights (ICCPR),<sup>3</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>4</sup>
7. According to international humanitarian law and customary international law, journalists are entitled to protection as civilians. Specifically, Article 79(1) of the First Additional Protocol to the Geneva Conventions, provides that "journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians".<sup>5</sup> Similarly, Rule 34 of the International Committee of the Red Cross (ICRC) Customary International Humanitarian Law, requires that, "[c]ivilian journalists engaged in professional missions in areas of armed conflict must be respected and protected as long as they are not taking a direct part in hostilities".<sup>6</sup> Such protection is echoed in many United Nations (UN) Security Council and General Assembly resolutions, including UN Security

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<sup>2</sup> 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 (henceforth "Fourth Geneva Convention").

<sup>3</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entry into force 23 March 1976) 16 December 1966, 999 UNTS 171 (henceforth the "ICCPR").

<sup>4</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entry into force 3 January 1976) 993 UNTS 3 (henceforth the "ICESCR").

<sup>5</sup> 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, Article 79(1).

<sup>6</sup> ICRC, Customary IHL Database, Rule 34, available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule34](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule34).

Council Resolution 1738 (2006),<sup>7</sup> UN Security Council Resolution 2222 (2015),<sup>8</sup> and UN General Assembly Resolution 68/163 (2013).<sup>9</sup>

8. The inherent right to life is enshrined as “the supreme right from which no derogation is permitted even in situations of armed conflict and other public emergencies”.<sup>10</sup> As recognised by the UN Human Rights Committee, the right to life “should not be interpreted narrowly.”<sup>11</sup> Any deprivation of life “must represent a method of last resort after other alternatives have been exhausted or deemed inadequate”,<sup>12</sup> with “the threat responded to [involving] imminent death or serious injury”.<sup>13</sup> Accordingly, any deprivation of life is arbitrary when it is carried out in the absence of a threat to life or serious injury and in the case of Ms. Abu Aqleh, amounts to an extrajudicial killing .<sup>14</sup>
9. As a protected person,<sup>15</sup> Ms. Abu Aqleh was entitled to special protection under both international human rights law and international humanitarian law. Yet, she was shot and killed in disregard of that protected status, thereby violating the duty of the Occupying Power to protect civilian persons. Accordingly, the killing of Ms. Abu Aqleh further amounts to wilful killing, a grave breach of the Fourth Geneva Convention and a war crime under the Rome Statute of the International Criminal Court,<sup>16</sup> giving rise to individual criminal responsibility.
10. The IOF further violated Ms. Abu Aqleh’s right to health, which is enshrined in Article 12(1) of the ICESCR.<sup>17</sup> As highlighted by the UN Committee on Economic, Social and Cultural Rights (CESCR), “States are under the obligation to *respect* the right to health by, *inter alia*, refraining from denying or limiting equal access [to healthcare] for all persons”.<sup>18</sup> Furthermore, ensuring the prompt access to medical treatment, healthcare and other necessary services is critical to the protection of the right to life.<sup>19</sup> In particular, the UN Basic Principles on the Use of Force require law enforcement officials who resort to

<sup>7</sup> UN Security Council, ‘Resolution 1738’ (23 December 2006) UN Doc S/RES/1738.

<sup>8</sup> UN Security Council, ‘Resolution 2222’ (27 May 2015) UN Doc S/RES/2222.

<sup>9</sup> UN General Assembly, ‘Resolution 68/163 on the Safety of Journalists and the Issue of Impunity’ (18 December 2013) UN Doc A/RES/68/163.

<sup>10</sup> 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”).

<sup>11</sup> CCPR, General Comment No. 36, para. 3.

<sup>12</sup> *Ibid.*, para. 12

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> Article 4, the Fourth Geneva Convention.

<sup>16</sup> Rome Statute of the International Criminal Court (adopted 17 July 1998, entry into force 1 July 2002) 2187 UNTS 3 (hereinafter ‘Rome Statute’), Article 8(2)(a)(i).

<sup>17</sup> Article 12(1), ICESCR.

<sup>18</sup> CESCR, General Comment No. 14 (2000): The Right to the Highest Attainable Standard of Health (Art. 12) (11 August 2000) UN Doc E/C.12/2000/4, para. 34 (emphasis in the original) (henceforth “CESCR, General Comment No. 14”).

<sup>19</sup> CCPR, General Comment No. 36, para. 26.

firearms to “[e]nsure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.”<sup>20</sup> Moreover, the Code of Conduct for Law Enforcement Officials states that: “[l]aw enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.”<sup>21</sup> Completely disregarding these obligations, the IOF failed to provide first aid to Ms. Abu Aqleh. The IOF also further targeted and shot at Mr. Azab while he was attempting to provide critical medical care to Ms. Abu Aqleh.

11. Israel and its judicial system have illustrated, time and time again, including in regards to the killing of Ms. Abu Aqleh, an unwillingness to pursue accountability for international crimes committed against Palestinians.<sup>22</sup> “Elements of Crimes” issued by the International Criminal Court (ICC) lists the elements of the war crime of wilful killing as being that:

- “1. The perpetrator killed one or more persons.
2. Such person or persons were protected under one or more of the Geneva Conventions of 1949.
3. The perpetrator was aware of the factual circumstances that established that protected status.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict”.<sup>23</sup>

12. In the case of killing Ms. Abu Aqleh, the perpetrator, a member of the IOF, was doubtlessly aware of the existence of an armed conflict, considering the prolonged nature of the Israeli occupation of the OPT and their participation in a military incursion and raid into a Palestinian city therein. Moreover, the perpetrator, as illustrated and demonstrated by Forensic Architecture’s digital modelling, should have been clearly able to ascertain that Ms. Abu Aqleh was wearing her ‘PRESS’ vest, and thus, did not constitute a legitimate military target.

<sup>20</sup> Principle 5(c), Basic Principles on the Use of Force.

<sup>21</sup> Article 6, Code of Conduct for Law Enforcement Officials.

<sup>22</sup> Al-Haq, ‘Legitimising the Illegitimate: The Israeli High Court of Justice and the Occupied Palestinian Territory’, 20 July 2011, available at: <http://www.alhaq.org/publications/8085.html>.

<sup>23</sup> ICC, Elements of Crimes (2011), p. 9, available at: <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf> (footnotes omitted) (henceforth the “Elements of Crimes”).

13. Critically, the commission of the war crime of wilful killing within the meaning of Article 8(2)(a)(i) of the Rome Statute entails individual criminal responsibility of both the direct perpetrator, as well as the Israeli military commander and civilian officials who drafted and approved Israel’s rules of engagement for the use of live fire, in violation of international human rights law. On this, the UN Commission of Inquiry on the 2018 protests in the OPT found that those responsible for suspected war crimes and crimes against humanity included both “individuals who committed the violations directly, or who aided or ordered them to be committed”, adding that “relevant military and civilian structures in Israel... bear primary responsibility for the conduct of the [Israeli occupying] forces and their use of lethal force on Palestinians”.<sup>24</sup>
14. Moreover, the Rome Statute prohibits murder as a crime against humanity under Article 7(1)(a) “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”<sup>25</sup> Elements of Crimes issued by the ICC lists the elements of the crime against humanity of murder as being that:
- “1. The perpetrator killed one or more persons.
  2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
  3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population”.<sup>26</sup>
15. In light of Israel’s widespread and systematic shoot-to-kill policy and excessive use of force against Palestinians on both sides of the Green Line and the systematic resort to live fire according to rules of engagement which violate international human rights law,<sup>27</sup> the

<sup>24</sup> 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, para. 784.

<sup>25</sup> Article 7(1)(a), Rome Statute.

<sup>26</sup> Elements of Crimes, p. 4.

<sup>27</sup> See, for example, Al-Haq, ‘83 Organisations Send Urgent Appeal to UN Special Procedures on the Wilful Killing of Ahmad Erekat, Urging International Justice and Accountability for Israel’s Shoot-to-Kill Policy’ 14 July 2020, available at: <https://www.alhaq.org/advocacy/17112.html>; Al-Haq, ‘Al-Haq Sends Urgent Appeal to UN Special Procedures on the Extrajudicial Execution and Wilful Killing of Palestinian Person with Disability Iyad Al-Hallaq’ 9 June 2020, available at: <https://www.alhaq.org/advocacy/16963.html>; Al-Haq, ‘“Bloody Monday” – Documentation of the Shoot-to-kill, Egregious Killings Committed by the Israel Occupying Force (IOF) on 14 May 2018’, 26 May 2018, available at: <http://www.alhaq.org/advocacy/6196.html>. See also Al-Haq, ‘The Killing of Mahmoud Badran: The IOF’s Excessive Use of Force and Shoot to Kill Policy’, 23 June 2016, available at: <http://www.alhaq.org/advocacy/6403.html>; and Al-Haq, ‘Unlawful Killing of Palestinians by Israeli Occupying Forces’, 31 October 2015, available at: <http://www.alhaq.org/advocacy/6476.html>; see also Adalah, ‘17 years after October 2000 killings, Israeli police still kill Arab citizens with impunity’, 3 October 2017, available at: <https://www.adalah.org/en/content/view/9258>; and Adalah, ‘Closure of probe into Umm al-Hiran killing: Green light to continued deadly police violence against Arab citizens’, 28 December 2017, available at: <https://www.adalah.org/en/content/view/9336>.



elements of the crime against humanity of murder are satisfied. Accordingly, the killing of Ms. Abu Aqleh, as well as that of countless Palestinians, further contributes to the commission of the crime against humanity of murder, giving rise to individual criminal responsibility.

16. Accordingly, Forensic Architecture's comprehensive investigative analysis proves, without a doubt, that the IOF's intentional targeting of the journalists, including Ms. Abu Aqleh and Mr. Azab is clearly in violation of international humanitarian law and international human rights law. Specifically, the targeting and killing of Ms. Abu Aqleh amounts to wilful killing, a grave breach of the Fourth Geneva Convention and a war crime under the Rome Statute, and contributes to commission of the crime against humanity of murder, considering the IOF's widespread and systematic shoot-to-kill policy and excessive use of force against Palestinians on both sides of the Green Line.