



The Use of Force in Law Enforcement in the Occupied Palestinian Territory

Questions and Answers

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About the Diakonia International Humanitarian Law Centre

The Diakonia International Humanitarian Law Centre promotes respect for the laws of war through independent research, advice, and advocacy. Since its establishment in 2004, the Centre's Jerusalem Desk has been a source of legal expertise supporting humanitarian and human rights action in the Israeli-Palestinian context.

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About this Q&A

The objective of this Q&A is to clarify the international legal framework governing the use of force in law enforcement operations by Israeli forces in the occupied Palestinian territory (oPt), specifically in the context of demonstrations.

1. Which bodies of international law regulate the use of force in armed conflict?

The term “use of force” refers to acts by State officials that can, either potentially or intentionally, cause death or injury. When occurring in the context of armed conflict, including situations of occupation, such use of force is regulated by two distinct bodies of international law. Firstly, the rules regulating the conduct of hostilities derived from international humanitarian law (IHL), and secondly, the rules regulating law enforcement derived mainly from international human rights law (IHRL).¹ The conduct of hostilities paradigm regulates the use of force during active hostilities, while the law enforcement paradigm regulates the use of force in the context of ensuring public security, law, and order. More specifically, it delineates the limited circumstances in which law enforcement officials can resort to the use of force and the scale of such force.

In armed conflict, IHL and IHRL may both be applicable and thus overlap. In this case, the protective dimension of rules that do not contradict each other can interact in a complementary manner, influencing and reinforcing one another. Where the two bodies have conflicting norms, as is the case with the rules on the use of force, those that are more specific to the situation at hand will take precedence. In situations of law enforcement, the conduct of hostilities paradigm, which places less stringent constraints on the use of force, is not applicable. Further, the wrongful application of the conduct of hostilities paradigm in situations of law enforcement would likely result in the use of excessive and unlawful force. The risk of such unlawful use of force is especially high in situations where a State is conducting hostilities and law enforcement operations simultaneously (see [Diakonia Easy Guide to IHL](#), questions 11 & 17).

2. How does international law regulate the use of force in law enforcement?

The rules on the use of force in law enforcement derive primarily from IHRL, which continues to apply during armed conflict, including occupation. Due to the risks involved in the use of force, “[essential international legal standards](#)” and safeguards apply. Notably, this includes the right to life, which constitutes a “[prerequisite for the enjoyment of all other human rights](#)”. Its crucial importance notwithstanding, the right to life is not an absolute right; as international law subjects it to certain, strictly regulated, exceptions, and limitations. Nevertheless, there is a strict prohibition against the arbitrary deprivation of life under Article 6(1) of the International

¹ This concerns the use of force by States against individuals or groups. It leaves aside the branch of international law that regulates when States are allowed to resort to the use of force internationally (*jus ad bellum*), which will not be addressed in this Q&A.

Covenant on Civil and Political Rights (ICCPR). In the context of the use of force, this means that States must protect the life and bodily integrity of individuals from infringements by other persons and take measures to limit force used by State authorities. This means that law enforcement officials (any State authority involved in law enforcement duties) may only be authorized to use force when strictly necessary and only to the extent required in the achievement of a legitimate purpose.

In that vein, States must establish rules which set out firstly, when and for what purpose force may be used, namely in the case of self-defence or defence of others against imminent threat of death or serious injury; secondly, that force may be used only when absolutely necessary, as a last resort, while giving precedence to and exhausting non-violent means; thirdly, that the use of force must be proportionate to the level of threat, minimising the damage and injury caused; and lastly, that law enforcement officials effectively plan for reasonably foreseeable eventualities and prepare operations with a view to prevent, avoid and minimise the need to resort to force. These rules must be reflected in the manuals and training for law enforcement personnel as well as in the equipment they are provided with. For example, law enforcement officers must be trained in de-escalation techniques and equipped with defensive gear that minimises their need to use force to defend themselves. Importantly, aside from being reflected in domestic law, these demands must also be implemented in a non-discriminatory as well as contextual and individualised manner. Thus, the determination that non-violent means have been exhausted, as well as assessment as to what type and degree of force is absolutely necessary to address the particular threat posed by a specific individual, and whether the objective for using force meets a legitimate aim, must all be based on an analysis of the circumstances of the case at hand.

IHRL also mandates investigations and accountability mechanisms to address alleged violations of the rules regulating the use of force in law enforcement, while also obliging States to prevent such violations from occurring in the first place. Such [accountability mechanisms](#) should range from tracking the use of force and firearms, using disaggregated data to identify discriminatory or otherwise problematic practices, and implementing safe reporting procedures, to internal and external oversight, and, where necessary, sanctions (see also question 7). With regard to using force against children in the context of law enforcement, the Committee on the Rights of the Child, tasked with monitoring the implementation of the Convention of the Rights of the Child (which Israel has ratified), [has stated](#) that no level of violence against children is allowed or justifiable. Respecting the special protection of children from violence requires, amongst other measures, that every effort be made to exclude the use of [firearms against children](#).

3. Does the existence of an armed conflict, including occupation, influence how force can be used for law enforcement?

In armed conflicts, including situations of occupation, IHL applies alongside IHRL, which the rules on the use of force in law enforcement stem from (see question 1). In fact, the law of occupation, forming part of IHL, requires an occupying power to discharge certain administrative tasks in lieu of the sovereign authorities it has displaced, such as maintaining public order and security of the population of the occupied territory. Force used in the context of carrying out these administrative duties is governed by the law enforcement paradigm. In prolonged occupation in particular, there are likely to be extended periods devoid of active hostilities, during which the use of force may nevertheless be necessary for law enforcement purposes. For instance, demonstrations taking place in occupied territory are subject to the rules on the use of force in law enforcement.

The only exception to the applicability of the rules on the use of force in law enforcement in occupied territory comes into play when active hostilities erupt, triggering the rules on the conduct of hostilities found in IHL. While under IHL civilians are normally protected from direct attack, they lose this protection if and only for such time that they “directly participate in hostilities”. During this time, the person in question may be directly targeted, provided that the requirements for a lawful attack under IHL are respected (see [Diakonia Easy Guide to IHL](#), question 17). Seeing as the application of the conduct of hostilities paradigm displaces the more protective rules of the law enforcement paradigm, the instances where persons are considered as “directly participating in hostilities” must be interpreted narrowly to avoid a wrongful application of the law and excessive use of force. There are thus specific criteria setting out when a person’s conduct may amount to “direct participation in hostilities”. The threshold for meeting these is high and cannot be easily assumed to have been met, not even if a person is shooting with a rifle. Throwing stones, for example, ordinarily does not amount to an act of “direct participation in hostilities”. Even where one person meets this threshold, this does not affect the rules on the use of force applicable to an entire group of persons or area. On the contrary, targeted use of force against persons around the individual who is “directly participating in hostilities” continues to be governed by the law enforcement paradigm. Therefore, force used for law enforcement purposes is generally subject to the same limitations and requirements in times of peace or armed conflict, as well as in own or occupied territory.

4. What is Israel's approach to law enforcement in the oPt and to what extent does this conform with international law?

Israel's "rules of engagement" in law enforcement operations in the oPt remain secret and unavailable for the public. These classified "rules of engagement" include guidance on when and in what circumstances force, including lethal force, may be resorted to and what actions, if any, must be taken beforehand (for example, whether warnings are required). A few specific aspects of these rules have been disclosed on rare occasions, for instance during proceedings before Israeli military courts or the Supreme Court. One such disclosure was provided in Israel's [submission](#) to the Israeli Supreme Court (sitting in its capacity as High Court of Justice) in the case of [Yesh Din v IDF Chief of Staff](#) following the "Great March of Return" demonstrations at the Gaza border fence in 2018. There Israel claimed that the use of force by its forces was not governed by existing rules on law enforcement, but by a new set of rules it called "law enforcement in the law of armed conflict" ("LE in LOAC"), which it considered to be part of IHL but separate from the rules on the conduct of hostilities. Israeli forces' conduct more recently suggests that Israel continues to rely on this law enforcement approach in the context of [demonstrations in other parts of the oPt](#).

A number of arguments were put forward by the Israeli government to substantiate the notion of "LE in LOAC". First, it disputed the applicability of IHRL in the oPt. Israel argued that human rights law does not apply extraterritorially or to border events, nor alongside IHL, as Israel [continues to object](#) to the concurrent application of IHRL and IHL. Therefore, given the pre-existing armed conflict in Gaza, IHRL was in Israel's view not applicable during the "Great March of Return" and is not applicable in occupied territory. Second, as an alternative argument, the government claimed that "policing" operations governed by IHRL and domestic law are only required in fully occupied territory, which Israel does not consider [Gaza](#) (nor [the West Bank](#)) to be. Third, Israel referred to [Article 42 of the Third Geneva Convention](#), [Article 43 Hague Regulations of 1907](#), the [Turkel Report](#) as well as a select number of field manuals and expert discussions as evidence of two separate use of force paradigms within IHL. Lastly, Israel maintains that in any event its approach of "LE in LOAC" is in line with IHRL, claiming that it authorizes only such use of force that would similarly be authorized by the law enforcement paradigm grounded in human rights law.

The international consensus on the use of force is, however, that there are only two distinct legal frameworks governing this, namely the conduct of hostilities paradigm found in IHL and the law enforcement paradigm rooted in IHRL. IHRL is widely accepted as continuing to apply during armed conflict, including in occupied territory. For instance, the concurrent applicability of IHRL and IHL in the West Bank was confirmed by the International Court of Justice ([Advisory](#)

[Opinion](#) on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, paras 108-113), regardless of Israel's opposition to this view. The Independent International Commission of Inquiry (COI) on the Protests in the Occupied Palestinian Territory, [mandated](#) to investigate alleged violations of IHL and IHRL in the context of operations against the "Great March of Return", also specifically discussed the continued application of IHRL-based law enforcement rules in relation to the civilian population not involved in hostilities (COI [Report](#), paras 85-86). Furthermore, the Commission reaffirmed that Gaza continues to be under Israeli occupation (paras 64-67) and that IHL regulates almost exclusively the use of force during hostilities and does not contain a separate paradigm for using force in the context of law enforcement operations (para 83). Indeed, the legal documents invoked by Israel do not sufficiently substantiate the existence of a "LE in LOAC" framework. The IHL provisions referred to above do not create a new paradigm in IHL: [Article 42 of the Third Geneva Convention](#) is limited to a very specific situation related to prisoners of war, and neither the language nor the prevailing understanding of [Article 43 of the Hague Regulations of 1907](#), which obliges the occupying power to restore and ensure public order and civil life, offer any support for the view that it establishes law enforcement rules other than those provided for in IHRL. Lastly, the [Turkel Report](#), authored by a Commission appointed by the Israeli government, and other non-legal or quasi-legal documents referred to by Israel cannot be used to create an authoritative understanding that displaces the prevailing view in international law.

Looking at the substance of "LE in LOAC", the Israeli military stated that it allows for the use of potentially lethal force in cases of real and imminent danger to human life or bodily integrity posed by either an individual or by a mob. The Israeli approach to what constitutes an "imminent" danger includes threats that have not yet materialized and where the danger is both spatially and temporally removed from the person presumed to pose a threat, thereby permitting the use of potentially lethal force in a preventive manner. Under IHRL, however, potentially lethal force may only be used to address dangers that have already materialised or are just about to do so, accordingly "imminence" is understood as "[a matter of seconds](#)". IHRL also mandates that any determination that potentially lethal force may be used against someone must be based on an individualised assessment of the threat posed by that person in particular. It thus requires a direct connection between the individual that force is directed against and the threat of harm, in contrast to "LE in LOAC" according to which a (potential) threat may emanate from an entire crowd of persons collectively and not specifically from the individual against whom force is directed. Since it expands the limited circumstances under which an individual may be the subject of potentially lethal force, "LE in LOAC" is less protective than IHRL and therefore does not comply with international rules regulating the use of force in law enforcement.

Considering the [high number of casualties and injuries](#) in operations where Israel has relied on "LE in LOAC", there is further concern that neither the Israeli approach as described above nor its manifestation in practice are in line with IHRL. These concerns are not only pertaining to its

conduct vis-à-vis persons participating in protests in general, but include where children are affected, or where journalists and medical personnel are obstructed from carrying out their work. It is important for both Israeli policy and practice to be reviewed and brought in line with the internationally recognised rules on the use of force in law enforcement, and for Israel to investigate and hold to account anyone responsible for unlawful and excessive use of force (see question 7).



Palestinians protesting near the Israel-Gaza fence.

5. Who are “main instigators” and which rules on the use of force apply to them?

The concept of “[main instigators](#)” is part of the Israeli “LE in LOAC” approach. During the demonstrations in Gaza, which commenced in 2018, the Israeli security forces repeatedly shot at persons they claim were “key rioters” or “main instigators” inciting other protestors to violence. The designation of “main instigator” is used to justify considering individuals as an imminent threat to life or bodily integrity and using live ammunition against them even if they do not appear to be physically threatening any person’s safety at any moment in time. Israel claimed it exercised restraint in this approach by only aiming below the knees of such “main instigators”, therefore shooting to stop, not to kill.

The concept of “main instigator” highlights further that Israel’s understanding of what constitutes an “imminent threat” in law enforcement is contrary to the demands of IHRL. IHRL only allows for potentially lethal force to be used against a person when strictly necessary to address a danger to life or serious injury that will manifest *within the next seconds* posed by them. Shooting live ammunition, even when used with the intention to stop – and not to kill – a person, is *per se* considered potentially lethal force and must comply with the requirements on the use of such force in law enforcement. Additionally, a graduated use of force procedure must be complied with. Automatically resorting to live ammunition when encountering an imminent threat to life or bodily integrity, as opposed to relying on less harmful means in responding to a threat whenever possible, is in itself a violation of the rules on the use of force in law enforcement.

6. Can Israel use live ammunition to control demonstrations and protests?

In principle, the role of law enforcement is to protect the safety and rights of persons participating in demonstrations as well as of others who might be affected by the demonstrations. A restriction on a protest may only be imposed if it has a basis in law, is necessary (the least intrusive restriction available) and proportionate (appropriate to achieve a legitimate purpose). Using force in the context of law enforcement does not only pose a threat to the right to life and security of person, but also entails the restriction of other rights, notably, the rights to freedom of peaceful assembly (Article 21 ICCPR) and freedom of expression (Article 19(2) ICCPR), and may even in [some cases](#) encroach on the right to be free from torture and ill-treatment. To protect these rights, the use of force in the context of demonstrations is governed by the same restrictions set out in question 2 above, which apply in equal measure to assemblies that are prohibited or not authorized on the domestic level, or demonstrations where one or

more protestors turn to violence. Thus, Israel is for instance also bound by the rules on the use of force in law enforcement situations, as well as IHRL in general, in its policing of demonstrations that contravene its [extensive restrictions](#) of the right to freedom of peaceful assembly in the West Bank.

It follows that according to international law the use of potentially lethal force must be exceptional and should be avoided whenever possible. The use of live ammunition constitutes potentially lethal force, including when it is aimed below the knees of a person. Therefore, also in the context of demonstrations, live ammunition can only be employed by law enforcement personnel in specific situations against particular individuals where it is strictly unavoidable in self-defence or the defence of others against an imminent threat to life or of serious injury. When it comes to dispersal of an assembly, this must be justified and a measure of last resort. Using live ammunition for the purpose of dispersing assemblies, even unlawful ones, [does not meet the criteria](#) for the lawful use of force.

Israel has in the past referred to the European Convention of Human Rights (ECHR) to claim that it can use live ammunition to control demonstrations. The ECHR sets out that deprivation of life that is absolutely necessary to quell a riot or insurrection is not prohibited (Article 2(2)(c) ECHR). The European Court of Human Rights [has ruled](#) that this does not allow for “the immediate shooting and killing of one or more other individuals who are not themselves posing a threat” based on the potential illegal or violent action from a group of persons. Israel is however not a State party to this European regional instrument, and as such it does not apply to Israeli security forces or the Israeli military, neither within Israel nor in the oPt. In any case, if Israel wishes to infer from the ECHR for the purpose of interpreting the law applicable to its crowd-control actions, by the same token it should also take into account the instrument’s authoritative interpretation by the European Court of Human Rights.

Use of live ammunition for the purpose of *intentionally* killing a protestor (“shooting to kill”) is prohibited save for confined circumstances in which it is [strictly unavoidable](#) to protect life from an imminent threat, provided that the force used is limited to the minimal degree necessary and strictly proportionate to the threat posed.

In sum, live ammunition can only be used in very restrictive circumstances against individual persons within a demonstration, ensuring that international rules on the use of force binding on Israel are respected in the specific context at hand, but not for the purpose of controlling the demonstration itself.

7. Which measures are required to ensure accountability for the use of force in law enforcement?

Compliance with States' obligations under IHRL generally requires "[legislative, judicial, administrative, educative and other appropriate measures](#)", and the same applies to their obligations under the rules for the use of force in law enforcement. As discussed also in question 2, such compliance measures must include preventative mechanisms, such as appropriate domestic rules, training, and equipment. Respect for human rights and accountability also require setting up clear chains of commands and decision-making processes as well as reviewing, reporting and complaint mechanisms that allow for the continuous evaluation of the legality of each law enforcement action. For example, [every instance where a firearm is discharged](#) in a law enforcement context should encompass a reporting obligation, allowing the incident to be reviewed properly. External oversight is essential to supervise the effectiveness of such internal review and compliance mechanisms. Thus, law enforcement agencies, along with all levels of their chains of command, need to be accountable to the government, the legislator, the judiciary, and national human rights institutions. International mechanisms can provide supplementary oversight over law enforcement and State action.

Alleged non-compliance of law enforcement actions with internal rules, domestic law or IHRL must be investigated and met with appropriate corrective measures. Regarding the use of force, lethal and life-threatening incidents are clear indications of potential human rights violations, and must be "[promptly, effectively and thoroughly](#)" investigated by "[independent and impartial bodies](#)". Patterns of actions, such as [discriminatory practices](#), can also constitute human rights violations and must equally be reviewed and responded to. When an investigation determines a violation of the applicable rules, this must invoke compensating victims and holding those responsible accountable, including "[superior officers who order human rights violations or fail to prevent them](#)". While some acts of non-compliance can be dealt with via internal disciplinary proceedings, violations that amount to criminal offences must be met with the according criminal law consequences. Importantly, steps must also be taken to ensure the cessation of the violation as well as to prevent its recurrence. This may demand that changes be made to legislation or policies on the use of force by law enforcement officials. Failure to comply with these requirements on investigations, remedies and imposing appropriate responses for non-compliance may in itself amount to a violation of a State's human rights obligations.

[Serious doubts](#) have been raised as to the effectiveness, independence, impartiality, promptness, thoroughness, and transparency of the Israeli accountability mechanisms. One reason for this is the failure on the part of Israel to review its security forces' "rules of engagement" and "open-fire orders" themselves, focusing instead on non-compliance with and violations of these rules and orders only. For instance, despite human rights obligations to the contrary, there has been no investigation into the responsibility of Israeli commanders and

decision makers in the context of its “Great March of Return” operations. Additionally, there has been only one [conviction](#) of a comparatively low-level offence in the wake of at least [214](#) Palestinian casualties during these operations, and no effective remedies have yet been made available to victims affected by excessive use of force at the hand of Israeli law enforcement officials. There are therefore strong grounds for concern that Israel is not complying with its accountability-related obligations under the law enforcement paradigm. Applying and complying with the correct legal framework for the use of force in law enforcement is an essential step in rectifying this situation.



Further resources

For more on the use of force see our [thematic note on law enforcement in Israel-Palestine](#) and the Diakonia Easy Guide to IHL (available in [English](#) and [Arabic](#)).

Other relevant resources can be found here:

- [UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#)
- [UN Code of Conduct for Law Enforcement Officials](#)
- [ICRC International Rules and Standards for Policing](#)
- [OHCHR Guidance on Less-Lethal Weapons in Law Enforcement](#)

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