



EXCESSIVE FORCE: A LEGAL ANALYSIS OF ISRAEL'S OPERATION IN JENIN REFUGEE CAMP

QUESTIONS AND ANSWERS

JULY 2023

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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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The objective of this Q&A is to clarify the international legal framework governing Israel's most recent operation in Jenin refugee camp, focusing particularly on the use of force.

CONTEXTUAL BACKGROUND

On 3 and 4 July 2023, the Israeli army carried out a large-scale operation, which it named “Operation Home and Garden”, in Jenin refugee camp in the northern occupied West Bank. In the following, a short overview of relevant facts about the operation, based on information publicly available at the time of writing, is presented.

According to [data](#) from the United Nations (UN) Office for the Coordination of Humanitarian Affairs (OCHA) in the occupied Palestinian territory (oPt), at least 12 Palestinians were killed – four of them children – and a further 143 wounded during the operation, [marking](#) “the highest number of Palestinian fatalities in a single operation in the West Bank” since the commencement of systematic recording by OCHA in 2005. This comes against the backdrop of recent reports by OCHA that 151 Palestinians have been killed and [thousands more injured](#) by Israeli forces in the West Bank since the start of the year, with 2023 on course to become [the deadliest year since 2005](#).

The operation involved [air and ground forces](#), and has been deemed the “[most intense](#)” in the West Bank since the Second Intifada in the early 2000s, when a [major Israeli military incursion](#) left at least 52 Palestinians and 23 Israeli soldiers dead, and reduced parts of Jenin refugee camp to rubble. Over the last 1.5 years, Jenin has again been the site of frequent military raids, including in [January](#) and [June](#) this year, in response to what the Israeli authorities allege to be an increased threat of terrorism.

The Jenin refugee camp is a densely populated urban space. According to the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the camp's size is 0.42 square kilometres, and in 2022 [23,628 residents of the camp](#) were registered as Palestine refugees with the organization. The residents were either displaced, or are descendants of those who were displaced, in [1948](#).

“Operation Home and Garden” commenced in the early hours of 3 July and lasted [around 48 hours](#). Initially, the Israeli military [carried out airstrikes](#), then [bulldozed roads](#) leading to and in the camp – allegedly to uncover [explosives hidden underneath](#) – and deployed an estimated [1,000 ground forces](#) to the camp. During the course of the operation, the Israeli military entered and damaged or destroyed private homes, [reportedly drilling holes in the walls of houses](#) to move from one to the next. [Electricity, water, and sewage networks](#) suffered extensive damage, leaving a significant number of residents [without water and electricity](#). The internet was also [reportedly](#) cut off, according to residents. Because some roads in and around the camp were bulldozed, [ambulances were reported to have encountered difficulties](#) reaching the wounded and injured inside. For [two days](#), access to the camp was restricted mainly to one entrance, with Israeli forces imposing access and movement restrictions and carrying out inspections of incoming vehicles, including ambulances. There were also reports about sound grenades and tear gas canisters fired in close proximity to and landing on the premises of hospitals, and [a video emerged depicting the Israeli military](#) targeting [the equipment of journalists](#) documenting

the operation. Finally, estimates regarding the number of Palestinians who were displaced due to the fighting and destruction range from [3,500](#) to [4,000](#). OCHA has reported that as of 11 July, [at least 40 families remain displaced](#), while others have returned to “their uninhabitable homes” for lack of other options.

Eight Israelis were [injured](#) in a car-ramming and stabbing attack in Tel Aviv on 4 July – allegedly in retaliation for the operation. One Israeli soldier was [killed](#) apparently by [friendly fire during the Israeli military's withdrawal from Jenin](#), and in the early hours of Wednesday 5 July, Palestinian groups fired five [rockets](#) from the Gaza Strip. The Israeli military responded with airstrikes on Gaza.

[Several States](#) and the [European Union](#) (EU) expressed concern over the situation in Jenin and called for compliance with applicable rules of international law. [UN Secretary-General Antonio Guterres](#) condemned the operation, while three UN Special Rapporteurs [referred to](#) “egregious violations of international law and standards on the use of force” that “may constitute a war crime”. “The military assault on Jenin was painful. What happened is a violation of international law”, Sven Kühn von Burgsdorff, the EU Representative to Palestine, was [quoted saying](#) on a visit to Jenin on 8 July. “We are concerned about the deployment of weaponry and weapons systems which question the proportionality of the military during the operation”.

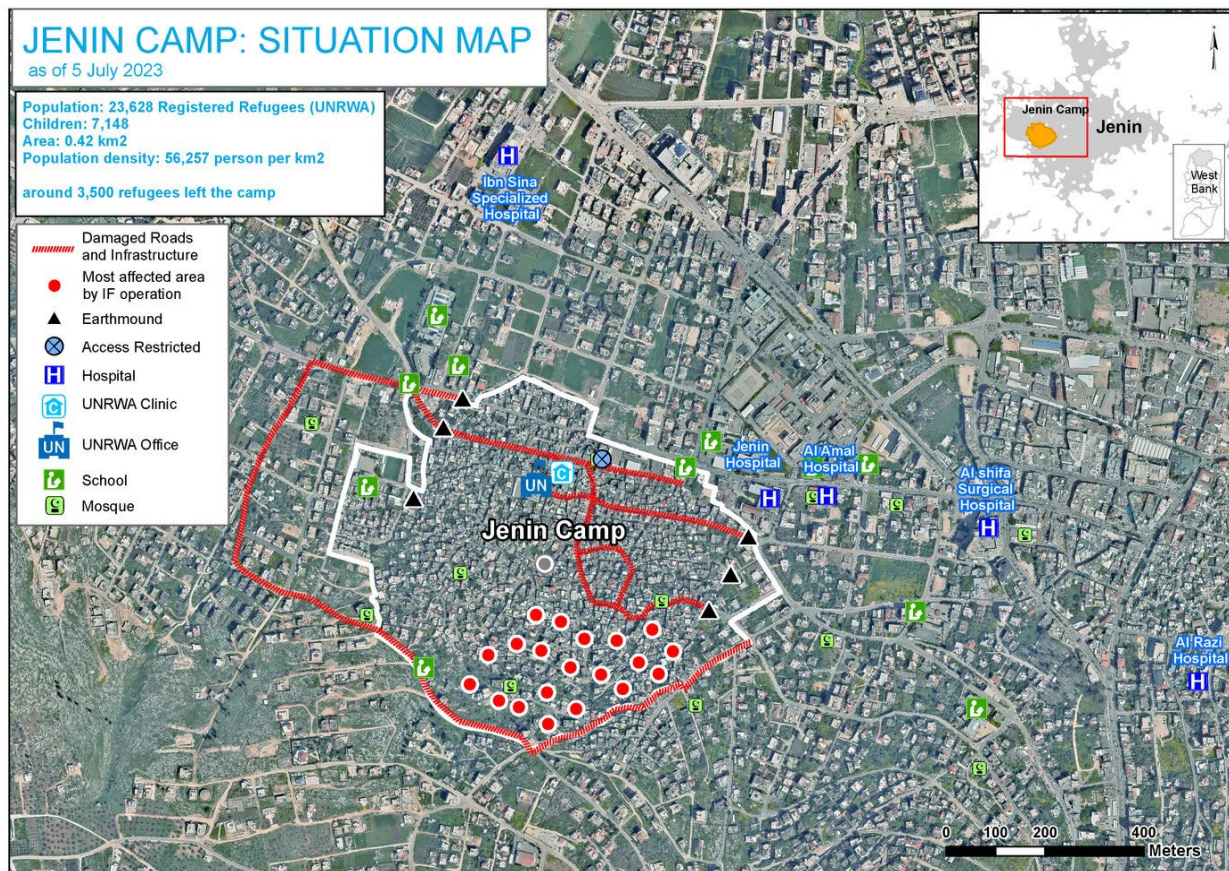


Image: OCHA Situation Report #1 on Israeli forces' operation in Jenin, as of 17:00, 6 July 2023

Official positions of the Israeli military and government

The Israeli military [described](#) the operation as a “counterterrorism strike”, alleging that Jenin had become a “safe haven for terrorists”, and that significant parts of the population are affiliated with Hamas and Palestinian Islamic Jihad (PIJ). “There’s a mindset that we want to break, which was basically having the camp as a safe haven for terrorists”, a spokesperson [emphasized](#). The military further [claimed](#) that since the start of the year, “over 50 shooting attacks have been carried out by terrorists” hailing from Jenin, and that “19 terrorists fled to the Jenin Camp after carrying out attacks since September 2022”. Days before the operation, the Israeli military also [reported](#) the launching of a rocket from the Jenin area towards Israeli territory.

While the operation was ongoing, the military [announced](#) that they would “continue operating until the terrorists of Jenin are no longer a threat to the stability of the area”, and that they were “[removing the source of terrorism before it results in further attacks](#)”. [Speaking](#) at the US Embassy in Jerusalem about the raid, Israeli Prime Minister Benjamin Netanyahu commended Israeli soldiers, denounced terrorist activity, and affirmed that “anyone who kills, murders Israelis, anyone who pushes to murder us, belongs either in prison or in the grave” – reiterating a remark which he also [made](#) during a cabinet meeting a day prior to the start of the operation.

The Israeli military viewed the operation as successful, [claiming](#), *inter alia*, that the authorities confiscated more than 1,000 weapons; questioned more than 300 suspects, 30 of whom were arrested; and dismantled “hideouts”, “operational situation rooms used for terrorist activity”, and “explosives manufacturing facilities”. A spokesperson for the Israeli military [stated](#) after the conclusion of the operation that “the camp has lost capability”, while Israeli Defence Minister Yoav Gallant [claimed](#) that due to activities of the Israeli Security Forces (ISF) Jenin is no longer “a ‘production site’ for terrorism”.

At the highest political echelon, Netanyahu [maintained](#) that Jenin was not a one-off event. A spokesperson for the military echoed the Prime Minister’s remarks, [stating](#) that the “fight against terrorism has not ended”.

The analysis that follows is applicable to similar operations that the Israeli military may conduct in the future.

1. What is the applicable legal framework regulating the use of force by Israel in its most recent operation in Jenin (dubbed “Operation Home and Garden”)?

Israel’s conduct in the oPt is governed by [two branches of law](#): international humanitarian law (IHL), which applies by virtue of Israel’s belligerent occupation of the territory, and international human rights law (IHRL), which applies at all times, both on a State’s own territory and extraterritorially when a State exercises control over territory or over persons and the enjoyment of their rights.

These two branches of law provide for [two distinct sets of rules](#) that regulate the use of force: the law enforcement paradigm rooted in IHRL, and the conduct of hostilities paradigm rooted in IHL. The law enforcement paradigm imposes greater constraints when it comes to the use of potentially lethal force and is thus more protective than the conduct of hostilities paradigm. Which paradigm is applicable depends on the particulars of a given situation.

The law enforcement paradigm applies to law enforcement operations carried out as part of the State’s [obligation](#) “to maintain public order, and to ensure human rights and the rule of law”. An occupying power is authorized – and may frequently be required – to carry out such operations as part of its [obligation to maintain public order and civil life in the occupied territory](#).

The conduct of hostilities paradigm applies exclusively in situations of hostilities – that is, where opposing sides in an armed conflict employ “[means and methods of warfare](#)” against one another.

In the West Bank, there have not been hostilities in the context of the international armed conflict that exists by virtue of Israel’s prolonged occupation of the oPt in over a decade.

Furthermore, there are, at present, insufficient grounds to support a claim that there are distinct [non-international armed conflicts](#) (NIACs) between Israel and Palestinian armed groups in the occupied West Bank, in the context of which hostilities could take place. This would require that (i) the armed violence between these parties has reached a certain level of intensity; and that (ii) the armed groups in question display a sufficient degree of organization.

Factors indicating sufficient intensity [include](#), for example, “the number, duration and intensity of individual confrontations” and “the type of weapons and other military equipment used”, as well as “the number of persons and type of forces partaking in the fighting”.

A sufficient level of organization may be demonstrated by [common leadership and common purpose](#), and [factors](#) such as “the existence of a command structure” as well as the “ability to plan, coordinate and carry out military operations”.

To date, publicly available evidence does not support the conclusion that groups such as the Jenin Brigades – which appear to consist of armed individuals who are only [loosely affiliated](#) with one another – have a sufficiently well-established command structure, as well as joint strategy and organization that mirrors the level of State armed forces, to cite but a few factors. Similarly, it does not appear that the intensity criterion has been satisfied – indeed, during the operation it was [reported](#) that “there were relatively few gunfights”, and that a majority of allegedly armed Palestinians fled from the soldiers (the Israeli military [estimated](#) the total number of armed individuals in the camp to be around 300).

It should be noted that “[internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature](#)” do not amount to armed conflict (but they are nevertheless governed by IHRL). Nor does the use of a high level of force or tactics that resemble those employed during hostilities by one side – the Israeli military – transform the situation into one of armed conflict and hostilities, absent organized armed violence on the other side. Furthermore, States are not at liberty to “pick and choose” different parts of the law enforcement and conduct of hostilities paradigm that best suit their alleged purposes. Rather, this indicates poor adherence to the applicable legal framework.

In the absence of hostilities between parties to an armed conflict, Israel’s operation in Jenin refugee camp was governed by the law enforcement paradigm. The fact that the operation was carried out by the State armed forces of Israel, that it was called a “[fight against terrorism](#)” and “[war](#)” by the Israeli authorities, that there were armed individuals present, and that these individuals were referred to as “terrorists” or “[combatants](#)”, is irrelevant for this determination and does not change the applicable legal framework (see Q3).

More generally, in situations of belligerent occupation, there may be [antagonism](#) towards the occupying power resulting in patterns of recurring tensions between its military and security forces and the occupied population, and the latter may at times resort to (armed) resistance. Any measures that an occupying power takes in response will nonetheless be subject to the more protective rules of the law enforcement paradigm, unless the situation can be classified as one of hostilities in an armed conflict (see Q2). Israel remains bound by other applicable rules of IHL, for example with regards to the protection of property in occupied territory (see Q6), the provision of humanitarian aid (see Q7), and the prohibition of transfer (see Q8).

The above assessment on the correct legal framework governing the operation in Jenin, that of law enforcement, notwithstanding, the terminology adopted by Israel in its statements regarding the operation seems to suggest that it was applying the conduct of hostilities paradigm (e.g., “[no non-combatants were killed](#)”). Additionally, in a document that Israeli officials circulated to media outlets, Hamas and PIJ were identified as “terrorist organizations in the Jenin area”. In recent years, Israel has repeatedly clashed with both the armed wing of Hamas (the Izz ad-Din al-Qassam Brigades) and PIJ in confrontations in the Gaza Strip that are widely recognized to form part of an ongoing armed conflict governed by the conduct of hostilities paradigm. Given these factors, it might be argued that Israel’s operation against the members of these groups in the West Bank is an extension of its ongoing armed conflict with those same groups in Gaza and is therefore also governed by the conduct of hostilities paradigm. However, it is doubtful whether the geographical scope of the armed conflict in Gaza can rightly be said to extend to the West Bank. Particularly when it comes to cross-border NIACs – which is arguably the correct characterization of the armed conflict between Israel and non-State armed groups in Gaza – there is support for the view that the conduct of hostilities paradigm applies only in the geographical area where hostilities are actually taking place.

2. To what extent does Israel's conduct during this operation comply with the applicable rules on the use of force?

The use of force against individuals in law enforcement operations is governed by IHRL (see Q1). The lawfulness of the use of force in law enforcement operations depends on compliance with a set of rules which does not only regulate the act of use of force, but also stipulates obligations which apply before and after the conduct.

First of all, the right to life must be protected by law ([International Covenant on Civil and Political Rights](#) (ICCPR), Art. 6). States must enact appropriate legislation, codes of conduct, and rules of engagement to ensure that their officials comply with the applicable international legal framework on the use of force. Israel's rules of engagement in the West Bank are not in their entirety available to the public; however, they have been [partially disclosed](#), for example during procedures before the Israeli Supreme Court sitting as High Court of Justice.

The forces responsible for carrying out law enforcement operations must be appropriately trained to execute their duties in compliance with the international legal standards to minimize risk to human life. This is particularly important for forces operating in occupied territories, where it is the armed forces of the occupying power who discharge law enforcement duties. Ordinarily being trained to operate in situations of hostilities, their training must ensure that they are able to distinguish between their law enforcement- and conduct of hostilities-related roles, and to comply with the IHRL rules on the use of force while performing the former.

Law enforcement operations must be designed in a way to minimize risk to human life (Human Rights Committee, [General Comment 36](#), para. 13); a failure to adequately plan an operation, leading to loss of life or injury which could have been otherwise avoided, constitutes itself a violation of the right to life. This is particularly so for pre-planned operations, which include those relating to search and arrest of individuals. The lawful implementation of such operations depends on the adequacy of their planning, in which the law enforcement officials must consider factors which may have an impact on the conduct of the operation and prepare appropriate responses to different scenarios. In line with international legal standards, forces who carry out the operations must be equipped with adequate protection and less lethal means of intervention to avoid as far as possible situations where recourse to (potentially or intentionally lethal) force is warranted. "Operation Home and Garden" was a pre-planned operation, with specific objectives and taking place in territory under the control of Israel. The circumstances allowed the ISF to adequately plan the operation taking into account different possibilities and devise adequate responses. If the planning itself did not adopt a restrictive approach or failed to take into account reasonably foreseeable possibilities which led to loss of life or injury, this would entail the responsibility of Israel (see Q9).

During the actual discharge of law enforcement operations, resort to force is an exceptional measure. Any use of force, first of all, must have a legitimate objective, such as effecting an arrest. Where a legitimate objective is identified, force can only be used if it is strictly necessary – meaning as a means of last resort and once non-violent means have been exhausted – and in a manner that is proportionate to achieve a legitimate objective – meaning there is a balance between the harm caused by the use of force (to the persons posing a threat and any other persons) and the benefit gained by achieving the objective. Potentially lethal force may only be used to protect life or prevent serious injury from an imminent threat ([General Comment 36](#),

para. 12; [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials \(Basic Principles\)](#), para. 9). Intentionally lethal force, as the most extreme measure, is only allowed when strictly unavoidable to protect life from an imminent threat (General Comment 36, para. 12; Basic Principles, para. 9). Accordingly, in general, when resort to force is unavoidable, it should be employed in a graduated manner, abiding by the principles of necessity and proportionality.

Law enforcement officials who plan and carry out the operations must take precautionary measures to avoid resort to force and minimize risk to human life at the planning stage, and must implement such measures throughout the operation. They must be equipped with protective gear to avoid to the extent possible resort to force in self-defence, and with a variety of weapons, including less-lethal means, to allow them to respond in a manner that corresponds to the threat.

Lastly, force may not be used in a discriminatory manner; it can only be employed following an individualized assessment of the threat at hand. The principle of non-discrimination is of significance both in assessing the lawfulness of individual incidents of use of force and when evaluating the general conduct of the law enforcement authorities. If the conduct of the authorities in comparable situations differs based on the characteristics of the group engaged (for example, religion, ethnicity, or political affiliation), this may imply a systemic problem.

Israel's conduct throughout "Operation Home and Garden" raises serious concerns as to its compliance with the applicable international norms.

One can contend that the operation, and the instances of resort to force, had the legitimate objective to search for and arrest persons who were suspected of involvement in criminal activities (the self-defence justification for *targeting* persons notwithstanding, see Q3). However, even if Israel was pursuing a legitimate objective, the way it chose to pursue its objectives appears to have entailed excessive use of force resulting in multiple violations of international law.

For one thing, Israel carried out several [airstrikes](#), mainly at the outset of operation (see Q4 for more on targeted killings). Airstrikes, if employed against individuals, are by nature incapable of complying with IHRL standards, unless it can be proved that they were strictly unavoidable to protect life from an imminent threat, and after ensuring that they can be employed without harming any other person. Such strikes clearly constitute potentially lethal force, and barring an imminent threat to life or limb, are never allowed (see also Q4). In other words, they lack a legitimate objective, and do not appear to comply with the principles of necessity and proportionality.

If the strikes were directed against objects which the Israeli military regarded as "terrorist infrastructure", rather than at persons, but nevertheless affected persons who were not posing an imminent threat, once again, they would constitute excessive use of force. It should be noted that the subject matter of the rules on use of force during law enforcement is the use of force against *individuals*. However, it is submitted that they govern any use of force which may potentially harm persons. Lastly, Israel remains bound by its obligations regarding the protection of property under the law of occupation (see Q6).

In other instances, members of the ISF used [live fire](#) and [tear gas](#). Use of firearms, which inherently constitutes (at least) potentially lethal force, once again, is only permissible when

strictly necessary to protect life or prevent serious injury from an imminent threat. It has been reported that during the operation there were several instances of *exchanges* of fire. Use of potentially or even intentionally lethal force in these cases – where it is strictly unavoidable due to an imminent threat to life of a person, in other words, in self-defence – is not necessarily prohibited. However, this does not mean that the use of force in these cases was in fact lawful. First, a failure in the planning phase – to foresee the circumstances that brought about the threat and to mitigate or avoid them – would in itself engage the responsibility of the law enforcement authorities. Second, even when confronted by such an extreme situation, precautionary measures to minimize harm, including to the person posing the threat, must be taken. Lastly, even when the use of potentially or intentionally lethal force is unavoidable, it must be proved that it is strictly necessary, and proportionate to the objective aimed to be achieved. It should be noted that the ISF were properly equipped with protective gears, and were often operating from inside armoured vehicles, which may have in itself eliminated any risk to life or limb of the soldiers, thereby also eliminating the need to resort to potentially lethal force. Similarly, under these circumstances, acts such as responding to persons throwing stones or Molotov cocktails with live fire would be unwarranted, and thus constitute excessive use of force. To be sure, even in circumstances where potentially lethal force can be used lawfully, the degree of force employed must not exceed that which is a necessary and proportionate response to the threat at hand.

Tear gas, which is often categorized as a less lethal means, can nevertheless cause serious injury or be fatal depending on how, and how much, it is employed. [Reports](#) of injuries by tear gas canisters raise concerns about the way in which tear gas was used, and possible lack of compliance with the lawful and appropriate use of such weapons. There were also reports of exposure to heavy tear gas, including in closed spaces. When employed as a means of crowd control, the use of tear gas in “[densely populated or confined areas](#)” has raised concerns due its especially harmful effects.

What if the rules on conduct of hostilities were applicable to the operation?

As specified above (see Q1), currently available information points decisively to the conclusion that the rules on the use of force applicable to the ISF operation in Jenin are those established in the law enforcement paradigm. However, the terminology used in [statements](#) issued by the ISF suggests that a different paradigm was being applied – either that applicable during conduct of hostilities, or perhaps a [third paradigm](#), such as that of “law enforcement in the law of armed conflict” which the Israeli military has previously relied upon, but which does not have any basis in international law. While there is no apparent justification for the application of the conduct of hostilities paradigm to the ISF’s operation in Jenin, it may be worth noting that even under that more permissive paradigm, the lawfulness of Israel’s conduct during the operation is open to question.

In the hypothetical scenario that the ISF operation in Jenin was governed by the rules on conduct of hostilities, Israel would only be allowed to engage [lawful targets](#) – “fighters” and military objectives such as weapons labs or command and control centres.

Even if the NIAC taking place in Gaza is understood to extend to the West Bank (see Q1), [it has been argued](#) that the level of force employed in such conflicts should not cause more death, injury or destruction than is actually necessary for the accomplishment of a legitimate military

purpose in the prevailing circumstances. Accordingly, the killing of Hamas and PIJ operatives in Jenin should have in any case been avoided if the threat posed by them could have been neutralized by less harmful means, such as by arresting them (provided this would not result in added risk to the operational forces or to civilians in the area). A similar conclusion arises from the fact that IHRL would in any case continue to apply alongside IHL and, depending on the specific circumstances at hand, may prevail over it.

Moreover, even if it were accepted that the geographical scope of the armed conflict between Israel and armed groups in Gaza extends to Jenin, only those persons in Jenin who actually fulfil a combat function in an armed group that is party to the armed conflict in Gaza could be considered a legitimate target of attack. Individuals merely affiliated with Hamas or PIJ, but lacking a combat function in those organizations, as well as members of other organizationally distinct militant groups, such as the Jenin Brigades, do not fall within this category and should not have been targeted. Any force used against such persons would instead be regulated by the law enforcement paradigm.

In any event, the [principle of proportionality](#) applicable in the conduct of hostilities would require Israel to refrain from launching attacks expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. The assessment must be made for each individual attack; the expected civilian harm and the direct military advantage anticipated must pertain thereto. It has been submitted that nevertheless, assessment must be of the “[attack as a whole](#)”, and not of its isolated parts.

The proportionality assessment must be made prior to attacks based on the information available to those planning the attack; in other words, compliance with the principle of proportionality does not depend on the *actual*/impact of an attack but on its *expected* impact. Nevertheless, the *actual*/impact of the attacks (in terms of military advantage gained and civilian harm caused) may be helpful in identifying what could have been reasonably foreseen. Given that they were undertaken in a densely populated civilian environment, the ISF should have foreseen that the attacks they conducted in Jenin would result in extensive harm to civilians and civilian infrastructure (in fact they resulted, among other things, in 143 persons wounded, and up to 4,000 displaced, and caused massive damage to homes and to water, sewage, and electricity infrastructure with possibly far-reaching [reverberating harmful effects](#)). On the other hand, Israel has announced that the attack(s) “neutralized” 12 “terrorists” and “terrorist” material and infrastructure, including weapons manufacturing sites and command and control centres. Presumably, the military advantage anticipated was then to impair the military capacities of its adversary. For the purposes of the principle of proportionality, the actual value of this military advantage, however, must be assessed taking into consideration whether the groups in Jenin can relatively easily replace or repair their loss, which seems probable. Under these circumstances, it is questionable whether the concrete and direct military advantage that Israel anticipated it would gain from these attacks was sufficiently weighty to satisfy the demands of the principle of proportionality.

Furthermore, the extensive damage caused to civilian objects during the operation, including bulldozing of roads and drilling holes in the walls of houses, raises questions as to whether the ISF could claim to have complied with [the obligation to take constant care](#) to spare the civilian population, civilians and civilian objects in the conduct of military operations. Lastly, while it was [reported](#) by some residents of the Jenin camp that they received [warning calls](#) prior to the

airstrikes, there is no clear publicly available information on any other precautionary measures taken during the course of the attacks.

3. Israeli officials have stated that they were operating to “neutralize the threat of terrorism from the area of Jenin”, purportedly acting in self-defence. How do these stated objectives conform with international law?

Self-defence has a distinct meaning under IHRL and *jus ad bellum* (the international legal framework regulating use of force between States). This is one of the [common confusions](#) when analysing the legality of specific law enforcement operations. IHRL [allows](#) the use of potentially lethal force for self-defence, against individuals, if it is necessitated by an imminent threat to the life and/or serious injury of law enforcement officials or other persons. In *jus ad bellum*, the right to self-defence, which is recognized in customary international law and affirmed by Article 51 of the [UN Charter](#), operates as an exception to the rule prohibiting States from the threat or use of force against the territorial integrity or political independence of any other State. Accordingly, States retain an inherent right of individual or collective self-defence if an armed attack emanating from another State occurs against them.

Any effort to justify Israel's use of force in Jenin on the basis of the right of self-defence in the *jus ad bellum* sense of the term is problematic for a number of reasons.

First, international law is not very clear as to whether and under what circumstances an armed attack carried out by a non-State armed group – as opposed to a State – can trigger a State's right of self-defence.

Second, and more significantly, a State can invoke this right to self-defence only when it has been subjected to an “armed attack” or, at the very least, and more controversially, when it is faced with an imminent threat of such an attack which would justify pre-emptive strikes in self-defence. In this case, no armed attack against Israel had been launched from Jenin, nor was there an indication of an imminent attack. Israel cited intelligence about Jenin being a “[safe haven for terrorism](#)”, but produced no evidence to suggest that there was an “instant and overwhelming necessity of self-defence, leaving no choice of means, and no moment of deliberation”, which is the [threshold](#) required by customary international law to justify pre-emptive strikes.

Third, and perhaps most importantly, [the ICJ has already determined](#) that Israel cannot invoke the right to self-defence under Article 51 of the UN Charter to justify the use of force in the oPt. Indeed, [as commentators have pointed out](#), the means of defence available to occupying powers with respect to the territory they occupy are governed exclusively by the rules of international law constituting the law of occupation – that is, by rules contained in IHL and in complementary provisions of IHRL.

International law does not recognize a separate legal regime for self-defence while fighting terrorism. So, even if the Israeli raid of the Jenin camp is characterized as a “counterterrorism operation”, this does not alter the legal framework regulating its use of force.

The upshot of these observations is that – the purported objectives of self-defence and counterterrorism notwithstanding – Israel’s use of force in Jenin must be assessed on the basis of the law enforcement paradigm as discussed above (see answers to Q1 and Q2).

4. Is the intentional killing of alleged “terrorists” in Jenin lawful?

During the course of the operation, Israeli forces carried out more than ten air strikes, most likely with drones, on multiple targets inside the Jenin camp. As a result, 12 Palestinians were killed. The Israeli military [did not deny](#) that they used unmanned aerial vehicles to detect and strike targets. This raises concerns over the use of so-called “targeted killings” against (armed) Palestinians. The use of this method, which is sometimes referred to as “extra-judicial execution” or “assassination”, raises serious concerns regarding compliance with IHRL. Because the operation in Jenin is governed by the law enforcement paradigm (see Q1), the legality of the targeted killings should be assessed in light of the applicable rules of IHRL (see Q2).

Notably, a few days prior to the operation in Jenin, Israel’s ultranationalist National Security Minister Itamar Ben-Gvir [publicly called](#) for tougher actions against “terrorism”, including targeted killings. The resumption of the policy of targeted killings by Israel has already drawn [criticism](#).

[Article 6](#) of the ICCPR recognizes that “every human being has the inherent right to life” and that “no one shall be arbitrarily deprived of their life”. “Arbitrariness” does not merely mean illegality, but is [interpreted](#) more broadly “to include elements of inappropriateness, injustice, lack of predictability and due process of law as well as elements of reasonableness, necessity, and proportionality”. During law enforcement operations, potentially lethal force may be [used](#) only as a method of last resort and against suspected individuals who jeopardize the lives of others, and when less extreme measures would be ineffective to restrain that person. If an individual does not pose an imminent threat to life or of causing serious injury, the use of potentially lethal force during law enforcement operations constitutes a violation of the right to life.

The use of force for the purpose of intentionally killing a suspect is [prohibited](#) except in circumstances in which it is strictly unavoidable to protect life from an imminent threat, provided that law enforcement officials are identified as such and give a clear warning to the suspect about their intention to use lethal force.

Applying these rules to the facts that occurred during the operation in Jenin, it appears that Israeli forces intentionally killed alleged suspects as part of their “counterterrorism” operation. However, the labelling of persons as “terrorists” by Israel does not change its obligations under IHRL. The rules on the use of lethal force during law enforcement operations remain identical whether Israel conducts strikes against alleged “terrorists” or other suspects. Unless the persons who were killed posed an imminent threat to the life of law enforcement officials or others or of causing them serious injury, Israel’s attacks against those persons amount to arbitrary deprivation of life, which constitutes a violation of their right to life.

Alternatively, if it was accepted that the operation in Jenin was governed by the conduct of hostilities paradigm, the use of the targeted killing method still raises serious doubts regarding compliance with IHL. The status of “terrorist” is not envisaged under the applicable rules of IHL,

therefore – unless they fulfil a combat function in an armed group that is a party to the armed conflict in which hostilities are being waged – the persons allegedly suspected of terrorism by Israel are civilians for the purposes of IHL. Civilians [enjoy](#) protection from attack “unless and for such time as they take a direct part in hostilities”. The notion of direct participation in hostilities [encompasses](#) “acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces”. Only in these circumstances can a civilian person be attacked by the enemy forces.

To conclude, Israel’s use of targeted killings against Palestinians in Jenin refugee camp violates IHRL as it constitutes an arbitrary deprivation of life, prohibited under the ICCPR. There do not appear to be any grounds to conclude that the rules on the conduct of hostilities applied in this case, but even if these rules were applicable, the legality of the practice of intentionally targeting alleged “terrorists” could still be challenged.

5. Did Israel discharge its obligations with regards to medical care for persons injured during the course of the operation?

There have been [reports](#) that access to health care was severely restricted not only due to the destruction of roads, but also due to inspections of vehicles passing through the single entrance of the camp left open during the operation, which were at times denied passage. These measures were in place at least until the second evening of the operation. It was moreover reported that hospitals were affected by the ongoing operation. At least on one occasion, the [emergency room had to be evacuated](#) due to heavy exposure to tear gas (which was either directed at the hospital, or otherwise used in such high amounts elsewhere as to impact the hospital in this manner). In other instances, [live fire and other weapons](#) were used in the proximity of the hospital or [targeting persons](#) in its premises.

When it comes to Israel’s obligations, it should first of all be noted that in the planning of the operation, the authorities ought to account for the possibility of injuries occurring and should implement the measures needed to ensure that they will be able to intervene appropriately in such event. This may include training of the forces in first aid, including on appropriate intervention against harm caused by typically used means, such as tear gas.

When it comes to ensuring access to medical care, Israel has obligations stemming both from IHL and IHRL. First of all, under IHRL, whenever force is used during a law enforcement operation, it must “[ensure](#) that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment” (Basic Principles, Art. 5(c)). This first and foremost entails that Israel, at the very least, must not interfere with the functioning of the (emergency) medical services. Moreover, Israel has positive obligations under IHRL, most notably stemming from the right to life, to provide the required medical aid to the injured.

Under IHL, the wounded and sick, regardless of the cause of their condition, are protected by a [special regime](#), according to which they must be respected, protected and cared for with the least possible delay as required by their condition. The responsibility lies with the power under whose control they find themselves; in Jenin, Israel is ultimately responsible for the treatment of those injured as the occupying power.

[Ambulances](#) and [hospitals](#) are likewise granted special protection under IHL as medical vehicles and medical units respectively and, as such, must be respected and protected in all circumstances. As a result, they may not be attacked, or their functioning may not be arbitrarily hindered.

While it can be argued that a party to the conflict may subject ambulances to searches, or impose on them certain routes, this may not adversely affect the care of the wounded and sick persons dependent on the vehicle. Completely obstructing the access of ambulances, without otherwise providing care for the persons, cannot be justified. The protection of medical transports against interference with their work ceases only if they are used to commit, outside their humanitarian function, acts harmful to the enemy, such as transportation of armed forces or ammunition. Absent any verified information in this regard, the reported obstruction of access of ambulances is in violation of Israel's obligations under IHL. It must be noted that even if this was the case, if the ambulances were nevertheless *a/so* still being used for their intended purpose, meaning the transport of the wounded and sick, this harmful use would be without effect on the obligations of the occupying power vis-à-vis the wounded and sick depending on the ambulance. Israel must ensure that they are provided the medical assistance they require.

As the occupying power, alongside the national and local authorities, Israel [must ensure](#) access to medical services in the occupied territory. This entails that at a minimum, it should refrain from conduct that would adversely affect the functioning of medical establishments, including during law enforcement operations. In case use of force is rendered unavoidable against persons in or in the vicinity of hospitals, in line with the principle of proportionality under the law enforcement paradigm, the possible effects of the preferred means – for example, tear gas – on the persons working or being treated in the hospital must be taken into account.

6. What are Israel's responsibilities with respect to homes and infrastructure damaged or destroyed in the course of its operation?

During the operation, the Israeli military conducted airstrikes that resulted in significant damage and destruction of homes and infrastructure, particularly roads and water, electricity, and sewage networks. According to official Israeli accounts, these strikes were intended to "[minimize friction](#)" on the ground and targeted at so-called "[terrorist infrastructures](#)". In the ground operation, members of the ISF also [reportedly](#) drilled through the outer walls of homes and moved through the city that way. This was reportedly to reduce the threat to members of the ISF on the streets where they are more physically exposed as they moved through the refugee camp during the conduct of the operation. The Israeli military also bulldozed [3.9 km of the roads](#) in and around Jenin refugee camp, rendering most of the roads leading to the camp inaccessible. Furthermore, this also impacted the delivery of medical care (see further in Q5). The reasons for the destruction of these roads by the Israeli military was reportedly to locate and destroy improvised explosive devices (IEDs) that were suspected to have been hidden along/under the roads. This was apparently based on the experience of a recent [operation](#) in June 2023, where several members of the ISF were reportedly injured by an IED on the road that hit an armoured personnel carrier they were travelling in.

As the occupying power, Israel's [core obligations](#) include ensuring public order, and the basic needs and well-being of the population living under its occupation. The specific content of these obligations is derived from both the IHL rules comprising the law of occupation and IHRL. [Article 4](#) of the Fourth Geneva Convention (GC IV) defines protected persons as those who find themselves in the hands of an occupying power of which they are not nationals. As [protected persons](#), residents of Jenin are entitled to benefit from the special protective regime under IHL, including certain [fundamental guarantees](#) in their treatment by the occupying power.

The destruction of both private and public property in occupied territory is prohibited by [Article 53 of GC IV](#), unless this is “rendered absolutely necessary by military operations”. There are at least two views on the interpretation of the prohibition of destruction. A stricter interpretation of the prohibition of destruction would apply a narrow reading of military operations as understood in IHL to refer only to conduct related to hostilities. The application of this first view to Jenin would proceed along these lines: as the so-called “Operation Home and Garden” was a law enforcement operation rather than one involving the conduct of hostilities (as established in Q1), the destruction of property in this operation cannot fall within the scope of the limited exception of being absolutely necessary for a military operation and was thus by default unlawful.

A second interpretation of the prohibition of destruction would consider this protection for property in occupied territory and its limited exception even absent hostilities. The authoritative interpretation of GC IV establishes the scope of this provision to be “[concerned with property situated in occupied territory](#)”, and in fact distinguishes this from a similar provision in [Article 23 of the earlier 1907 Hague Regulations](#), under the rules regulating hostilities, which protects “enemy property” and is understood to be inclusive of “all property in the territory involved in a war”. According to this authoritative commentary, occupying forces are permitted to destroy property in occupied territory “when imperative military requirements so demand”. Applying this view, this means that destruction of property in Jenin by the ISF during the recent operation is not necessarily unlawful, if it may be justified by imperative military requirements. The security of the occupying power's forces may constitute part of this military necessity, but a reasonable interpretation requires the maintenance of proportionality in the damage inflicted. Therefore, it must be determined if and what threat to the ISF existed in fact, and whether all of the destruction inflicted was indeed absolutely necessary for sufficient force protection (in relation to the alleged IED threat and risk of moving through streets). It is more doubtful that the airstrikes against so-called terrorist infrastructure can be justified through this military necessity exception to property protection, especially if they entailed the intentional use of lethal force against individuals in those locations, which in itself was, in all likelihood, unlawful (see Q2 for further explanation regarding the legality of such use of force against individuals).

During the operation, the ISF reportedly raided homes and used private homes as [bases](#) for the operation. There are more specific and differentiated protections for other interferences with private property, beyond protection against destructions. Private immovable property such as homes [may be seized for imperative military necessity](#), if it is temporary and for a fixed time period, and the owner must be granted compensation for any use or damage caused to the property. Again, the question remains if such interference was militarily necessary and indeed proportionate. Furthermore, there has not been any public information suggesting that owners of these homes have been compensated for the use or damage caused to their property.

Additionally, under IHL, the occupying power is also prohibited from imposing on protected persons “[collective penalties and likewise all measures of intimidation or of terrorism](#)”. [UN](#)

[independent experts](#) have denounced the operation in Jenin and contended that “the attacks constitute collective punishment of the Palestinian population, who have been labelled a ‘collective security threat’ in the eyes of Israeli authorities”. Some support for this position can be gleaned from [remarks by an official spokesperson for the Israeli military](#) who stated that the goals of the operation included “dismantling terrorist infrastructure” and “trying to break the mindset of the camp as a safe haven for terrorists”. Interpreting these remarks, the force used in the air and on the ground was not only directed at alleged tangible “terrorist infrastructure”, but also at the psycho-social fabric of the camp, with a preventive logic. Absent due process for any offence an individual is alleged to have personally committed, the sweeping impact on the residents of Jenin raises concerns about possible contravention of the protection against collective penalties, intimidation, and terrorism, aside from the violations associated with the destruction of property.

These property protections in IHL are complemented by provisions of IHRL protecting housing. The right to adequate housing is specifically protected as part of the right to an adequate standard of living, enshrined in [Article 11 of the International Covenant on Economic, Social and Cultural Rights](#) (ICESCR). Israel is a party to the ICESCR, and its treaty obligations therein extend to the oPt. The right to adequate housing means the right to live somewhere in security, peace, and dignity. The right to adequate housing is important not only in itself but also integral to the enjoyment of other human rights. Habitability, and the availability of infrastructure (such as safe drinking water, energy, and sanitation), are some of the [main factors that constitute adequacy in housing](#). While the right to adequate housing is not an absolute right, arbitrary or unlawful interference with one’s home is prohibited pursuant to [Article 17\(1\) of the ICCPR](#).

Residents of Jenin refugee camp were already living in poor conditions and infrastructure prior to the most recent operation. The conduct of the large-scale air and ground operation resulted in significant damage or destruction to hundreds of homes (such as from the air strikes and the drilling through homes), rendering some of them uninhabitable. Furthermore, the damage or destruction of public infrastructure such as electricity, water, and sewage networks, as well as water tanks in households, severely limited residents’ access to essential services and facilities. The damage or destruction, as well as the threat to physical safety, displaced thousands of people from their homes, without any apparent lawful justifications or due process for such limitations on their right to adequate housing and consequently their other rights.

Given the lack of legitimate grounds that would justify otherwise, it could be concluded that violations of IHL rules protecting property and IHRL rules protecting housing rights (and other rights such as privacy) have occurred during the ISF’s so-called “Operation Home and Garden”.

Violations of the right to adequate housing (and other related rights as a result) require access to [appropriate means of redress or remedies](#). In the context of the damage and destruction to homes and infrastructure, reparation for the harm suffered includes restoring the situation of Jenin refugee camp, and compensation for the damage incurred. Particularly where such damage and destruction was not lawfully justified, Israel would bear primary responsibility for remedying such violations (see further, Q7 and Q9).



People stand by rubble and the remains of a destroyed vehicle outside a mosque in the occupied West Bank city of Jenin on July 5, 2023, after the Israeli army declared the end of a two-day military operation in the area. © AFP/ Ahmad Gharabli

7. Who is responsible for the provision of humanitarian aid in the aftermath of the operation?

Aside from the injured requiring medical care, the damage and destruction to homes and infrastructure has left residents of Jenin refugee camp with further diminished housing conditions, limited access to electricity, water, and sanitation, and disruption to their livelihoods. Health, shelter, water, sanitation and hygiene, and food security are some of the [immediate humanitarian needs](#) in the aftermath of the operation.

As the occupying power, Israel has the duty to restore and ensure civil life in the oPt, including welfare of the civilian population living under occupation. While Jenin is categorized as Area A

pursuant to the [Oslo Accords](#), where the Palestinian Authority (PA) is supposed to exert civilian and security powers, such [special agreements](#) do not relieve Israel of its obligations under IHL, and the Palestinian population [cannot be deprived of the requisite protection](#). As the occupying power, Israel also has to [ensure and maintain public health and hygiene in the occupied territory](#), with the cooperation of national and local authorities. If the PA is unable to ensure adequate health conditions in Jenin refugee camp, Israel must provide the requisite supplies. Israel also bears the [responsibility of ensuring the food and medical supplies](#) of the population and has to bring in necessary supplies if the resources of the occupied territory are inadequate, to the fullest of its capacity.

In the event that the occupied population is inadequately supplied and the occupying power fails to comply with its obligation to supply humanitarian relief, it must [allow and facilitate](#) the passage of such supplies by third States or humanitarian organizations. The occupying power has the right to control the passage of such consignments, but humanitarian access cannot be arbitrarily denied.

Third States have a responsibility in this regard. Pursuant to the UN Charter and commitments enshrined in the ICESCR, the Committee on Economic, Social and Cultural Rights has [affirmed](#) that “international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States”. All States have to take steps, including through international assistance and cooperation, and to the maximum of their available resources, to progressively achieve the full realization of the right to an adequate standard of living and other rights contained within this right, provided in [Article 11 of the ICESCR](#). This is [particularly incumbent upon States which are in a position](#) to assist others in this regard. In practical terms, this means that third States, especially those with more available resources, should offer assistance for the humanitarian relief effort in Jenin following the most recent operation and its devastating consequences on the local population.

8. What are Israel’s obligations towards people who were displaced as a result of the operation?

Palestinians who were forced to leave their homes in Jenin and flee the violence are protected persons under IHL and, as such, benefit from the special protective regime established in IHL.

[Article 49\(1\)](#) of GC IV prohibits the individual or mass forcible transfer of protected persons in occupied territory. If a group of persons is forced to leave their homes and flee within the occupied territory, such displacement amounts to forcible transfer (as opposed to deportation, which generally refers to displacement taking place across an internationally recognized border). The prohibition of forcible transfer is absolute (“prohibited, regardless of ... motive”). However, this provision outlaws only [forcible transfers](#) and does not cover voluntary transfers.

Residents of the Jenin camp fled the violence due to safety concerns, but also because of massive damage to infrastructure and facilities in the camp, which made their living places uninhabitable. Israeli forces created a coercive environment and allegedly instructed residents to vacate their homes and leave the area. However, even without being directed and carried out by Israeli forces, such displacement would still qualify as “forcible”, because it was caused by conditions created as a result of the operation in Jenin. Inhabitants of the city simply did not have a choice, as staying in their homes would pose a considerable risk to their lives and health.

A group of UN experts already [described](#) this displacement as “arbitrary”, which, according to their assessment, and together with other alleged violations, may constitute a war crime.

The absolute ban on forcible transfer notwithstanding, IHL does [authorize](#) an occupying power to evacuate the occupied territory wholly or partially in certain confined circumstances. Evacuation can only be justified on two grounds: to ensure the safety of the local inhabitants, or based on imperative military reasons. When implementing the evacuation of civilians, the occupying power must ensure that suitable accommodation, proper food, and sanitary arrangements are provided for displaced persons, and that their family rights are respected. The rules of evacuation also require that once the *hostilities* in the area have ended, protected persons who have been evacuated must be allowed to return home.

When the presence of civilians is deemed as an obstacle to a military operation, which is required by “imperative military reasons”, it is the duty of the occupying power to evacuate protected persons for security reasons. [Article 58\(a\)](#) of Additional Protocol I to the Geneva Conventions suggests that, once an object in occupied territory becomes a military objective, the occupying power must remove civilians under its control from the vicinity of such objectives. So, it is an [obligation](#) of the occupying authorities to evacuate the civilian population from areas where the risk of attack is greatest, and such evacuation requires preparatory measures, often taken even in peacetime.

Whether the need to carry out such a large-scale operation was dictated by imperative military reasons can be challenged; nevertheless, if it was dangerous for the civilian population to remain at their places of residence in Jenin, it would have been the Israeli authorities who would have been obliged to take measures and evacuate civilians in accordance with the conditions set out in [Article 49\(3\)](#). Since Israel neither declared nor coordinated the evacuation of Palestinians from the camp, self-organized escape from the violence would not amount to an “evacuation” under IHL.

Israel has an obligation to prevent displacement under IHRL too. [Article 12](#) of the ICCPR (to which Israel is a party) envisages that “[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose [their] residence”. The right to reside in a place of one’s choice within the territory includes, *inter alia*, protection against all forms of forced [internal displacement](#).

Moreover, the [UN Guiding Principles on Internal Displacement](#) recognize the right of every human being to be “protected against being arbitrarily displaced from their home or place of habitual residence” (Art. 6(1)). The Guiding Principles further provide that States are under the international obligation “to prevent and avoid conditions that might lead to displacement of persons” (Art. 5). They also have the “primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction” (Art. 3(1)). Furthermore, all internally displaced persons must be allowed to return “voluntarily, in safety and with dignity, to their homes or places of habitual residence” (Art. 28(1)), and authorities should provide assistance to the returned persons in recovering their “property and possessions which they left behind or were dispossessed of upon their displacement” (Art. 29(2)).

Israel’s actions in Jenin, which resulted in the mass displacement of thousands of Palestinians, disregarded its obligations under IHL and IHRL. Based on available information, such displacement amounted to forcible transfer and, among other things, constituted a violation of the freedom to choose residence and multiple international legal rules on internal displacement.

9. Which measures are required to ensure accountability for any violations of international law committed during the operation?

Measures required by Israel and third States to ensure accountability for any violations of international law committed during the operation stem from their obligations under IHL and IHRL.

All States have undertaken “to respect and to ensure respect” for the Geneva Conventions in all circumstances ([Common Art. 1](#)). The commitment to respect the Geneva Conventions reiterates the principle that any breach of the Conventions constitutes an internationally wrongful act that gives rise to State responsibility ([Art. 1, Draft Articles on the Responsibility of States for Internationally Wrongful Acts \(ARSIWA\)](#)).

The duty to ensure respect requires States to ascertain, in the first instance, that [their own State organs \(for example, the armed forces\) and individuals within their jurisdiction](#) do not commit any violations of the Conventions, and of [IHL more generally](#). It is generally accepted that this also comprises an external obligation for third States to ensure that [other States and non-State armed groups](#) do not commit [violations of IHL](#). This entails both a [duty](#) not to “encourage, nor aid or assist in violations”, and to “do everything reasonably in their power to prevent and bring such violations to an end”.

Furthermore, certain violations of IHL amount to [grave breaches](#) of the Geneva Conventions (for example, forcible transfer or wilful killing), and thus war crimes. All States have an [obligation](#) to search for and try the individuals allegedly responsible for grave breaches before their domestic courts, or to extradite them for prosecution elsewhere. States also have an [obligation](#) to “take measures necessary for the suppression of all acts contrary to the provisions” of the Geneva Conventions that do not constitute grave breaches, and an [obligation under customary IHL](#) to investigate and prosecute war crimes (not limited to grave breaches of the Geneva Conventions) over which they have jurisdiction.

International crimes allegedly committed in the oPt since 13 June 2014 fall within the ambit of the [investigation of the International Criminal Court \(ICC\)](#) into the [Situation in Palestine](#). A particular [focus](#) of the investigation may be on the conduct of the ISF.

As parties to the ICCPR and the ICESCR, States have also undertaken [to respect, protect, and fulfil human rights](#). Violations of IHRL require States to provide an effective remedy. Under [Art. 2\(3\) of the ICCPR](#) – and, [by analogy, the ICESCR](#) – this [entails](#) investigating alleged violations of Covenant rights “promptly, thoroughly and effectively through independent and impartial bodies”; bringing to an end present and ongoing violations of Covenant rights; making reparations (in the first instance, paying compensation, or providing “restitution, rehabilitation and measures of satisfaction”); holding the individuals responsible for rights violations to account; and taking measures to prevent such violations from happening again in the future. The latter may entail structural adjustments such as “changes in ... laws or practices”.

It should also be noted that the [Geneva Conventions](#) (and arguably the two human rights Covenants as well) entail obligations *erga omnes partes*, which protect universal values and community interests that all parties to these treaties have an interest in upholding, and hence these obligations are owed to the community of State parties as a whole. In case of violations,

this means that not only a directly injured State can invoke the responsibility of the State that is in breach of its obligations – for example, by instituting proceedings before the [International Court of Justice \(ICJ\)](#) – but any State that is party to the treaty may do so. Since the Geneva Conventions are [universally ratified](#), any State would have a right to invoke Israel's international responsibility for alleged violations of IHL that were committed during the operation in Jenin refugee camp.

Finally, to the extent that the Geneva Conventions and the two Covenants contain [jus cogens norms](#) (arguably, [higher-order norms](#) from which [no derogation is permitted](#)), and should Israel's conduct amount to serious violations of such norms ([Art. 40, ARSIWA](#)), third States would have legal obligations in addition to Israel, the injuring State.

Concrete measures that flow from these legal obligations and recommendations for action are listed below.

Israel should:

- Apply the correct legal framework – the protective rules of the law enforcement paradigm instead of the conduct of hostilities paradigm or another, [third category](#) that has no basis in international law in future, similar operations. This would entail, in particular:
 - Providing adequate training to law enforcement officials and supplying them with appropriate weapons and self-defence equipment;
 - Planning operations in advance so as to minimize the need to resort to force in practice;
 - Setting a lawful objective for operations in accordance with the strict criteria of IHRL;
 - Having in place [reporting and review mechanisms](#) for any use of potentially lethal force;
 - In case that excessive, and thus unlawful, force is suspected, investigating such incidents “[promptly, thoroughly, and effectively](#)”;
 - Disciplining [perpetrators](#) or, where appropriate, holding them criminally accountable;
- Provide an effective remedy for other violations of IHRL, such as payment of compensation, providing restitution (restoring the situation that existed before the breach, for example, by means of reconstruction), or offering [public apologies and guarantees of non-repetition](#);
- Take particular caution to ensure that any measures it takes allegedly to counter a threat of terrorism are [in line with its obligations under IHRL more generally](#). While many rights are not absolute in nature, there are stringent criteria as to when and how their application can be limited;
- Issue “[military manuals, orders, regulations, instructions and rules of engagement](#)” that oblige its forces to comply with IHRL and other rules of IHL, for example regarding the protection of property and the prohibition of transfer in occupied territory, that remain applicable, as part of its obligation to ensure respect for IHL;
- To the extent that any violations committed by its forces during the operation amount to war crimes, investigate the alleged material acts and prosecute the alleged perpetrators;

- To the extent that any violations committed during the operation amount to grave breaches of the Geneva Conventions, search for and prosecute the alleged perpetrators, or extradite them for prosecution in third States;
- Take measures to suppress other violations of the Geneva Conventions that do not amount to war crimes;
- Comply with its obligations under the law of State responsibility:
 - Continue complying with its obligations under IHL and IHRL ([Art. 29, ARSIWA](#));
 - Cease ongoing violations of IHL and IHRL and, if appropriate, offer assurances and guarantees of non-repetition ([Art. 30, ARSIWA](#));
 - Make full reparation for injury ([Art. 31, ARSIWA](#)), which may be in the form of restitution, compensation, or satisfaction ([Arts. 34-37, ARSIWA](#)); and
- Cooperate with the investigation of international accountability mechanisms such as the ICC.

Third States should:

- Insist that the Israeli authorities apply the correct and more protective law enforcement framework in future operations, in accordance with IHRL;
- Ensure that operations carried out by Israel for the alleged objective of counterterrorism abide by the applicable rules of IHRL;
- Insist that the Israeli authorities provide an effective remedy for any violations of IHRL committed during the operation;
- Refrain from [encouraging, aiding or assisting](#) in any violations of IHL committed by Israel, as part of their obligation to ensure respect for IHL;
- Exercise “[due diligence](#)” and exert pressure on Israel to end ongoing violations of IHL (for example, by means of [withholding support](#)), as part of their obligation to ensure respect for IHL;
- To the extent that any violations committed during the operation amount to war crimes over which they have jurisdiction, investigate the alleged material acts and prosecute the alleged perpetrators;
- To the extent that any violations committed during the operation amount to grave breaches of the Geneva Conventions, search for and prosecute the alleged perpetrators, or extradite them for prosecution elsewhere;
- To the extent that any violations committed during the operation amount to breaches of obligations *erga omnes/erga omnes partes* (for example, violations of the Geneva Conventions), consider invoking the international responsibility of Israel;
- To the extent that any violations committed during the operation amount to serious violations of [jus cogens norms](#) ([Art. 40, ARSIWA](#)), comply with their obligations under the law of State responsibility ([Art. 41, ARSIWA](#)):
 - Refrain from recognizing as lawful a situation resulting from such a breach;
 - Refrain from rendering any aid or assistance in the maintenance of the situation;
 - Cooperate to bring the situation to an end through lawful means; and
- Cooperate with the investigation of international accountability mechanisms such as the ICC.

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Cover photo: Smoke billows from houses inside a refugee camp in the occupied West Bank's city of Jenin on July 3, 2023, after an Israeli strike.

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