



**If the heart be not callous:
On the unlawful shooting
of unarmed demonstrators
in Gaza**

בִּתְּשֵׁלֶם
BTSELEM
بتسيلم

On 30 March 2018, demonstrations were held throughout the Gaza Strip along the fence separating from Israel. That day marked the beginning of a six-week protest that Gazans plan to hold until mid-May, to call for a lifting of the decade-long blockade imposed on the Strip by Israel and for fulfilling Palestinians' right of return.

The plans to demonstrate were made public in advance, and Israel prepared accordingly. Israeli officials were quick to undermine the legitimacy of the protest, claiming it was the sole initiative of Hamas, and some went so far as to call it a "terror parade". Participants were collectively pegged as "terrorists" who are a danger to national security and as yes-men for the authorities in Gaza. In keeping with this framing, various officials took measures to thwart the demonstrations. For example, the Coordinator of Government Activities in the Territories, Major General Yoav Mordechai, [stated](#): "We contacted more than 20 bus companies in Gaza, who were paid by Hamas to take people to violent demonstrations, and warned that we'll take personal steps against their owners."

Israeli officials [made it clear](#) that the open-fire regulations would permit lethal fire at anyone attempting to damage the fence, and even at any person coming within 300 meters of it. On the Morning of 30 March 2018, when the protestors started gathering, Defense Minister Lieberman [warned](#) the residents of Gaza that "anyone who approaches the fence is putting his life in jeopardy. I suggest that you get on with your lives and do not participate in the provocation".

The threats were carried out: Since the demonstrations began, the military has killed 32 Palestinians in the Gaza Strip, 26 of them demonstrators. More than 1,000 have been injured by live fire. Nine of the casualties were killed on the second Friday of demonstrations, 6 April, by which time the lethal outcome of the open-fire regulations was undeniable. Nevertheless, all state and military officials have steadfastly refused to cancel the unlawful orders and continue to issue – and justify – them.

Friday, 30 March 2018: Twelve protesters killed, more than 750 injured by live fire

On Friday, 30 March 2018, tens of thousands of Gazans attended demonstrations held in five locations near the Gaza-Israel fence. The participants varied widely in age and included men, women and entire families.

Over the past week, B'Tselem investigated what took place that day, based on testimonies given to our field researchers in Gaza – Khaled al-'Azayzeh, Muhammad Sabah and Olfat al-Kurd – by people who demonstrated at the various sites, and on eyewitness reports by the field researchers themselves. According to the investigation, as well as reports and footage circulated by the press and on social media, most of the protesters stayed close to tents erected in the area, some 400 to 700 meters from the fence. Others came within 150 meters of the fence – in some cases mere meters away – and some of them torched tires and threw stones at soldiers positioned behind dirt mounds on the other side of the fence.

B'Tselem's investigation found that soldiers – including snipers – fired for hours on end at protestors who were less than 300 meters from the fence. The soldiers also fired rubber-coated metal bullets and teargas, some of which was sprayed by a drone on demonstrators hundreds of meters from the fence.

Mahmoud Wishah, a 19-year-old accounting student from al-Bureij Refugee Camp, came in the early afternoon to the area of Umm Husniya, where tents had been pitched about 450 meters from the fence. In a testimony he gave B'Tselem field researcher Khaled al-'Azayzeh on 1 April 2018, he related:

I stood in an area between the tents and the Jakar road, about 400 meters from the fence. I was there from the afternoon until the evening. In that time, I saw a lot of people hit, especially those closer to the fence. The soldiers opened live fire every few minutes, and every time one of the youths was hit. Most of the strikes were in the legs. Also, a lot of teargas canisters were launched at people gathered far from the fence. Most of the injuries I saw – about fifty people – were from live fire to the legs, and only three youths were injured by rubber-coated metal bullets fired at their legs.

About half an hour before evening prayers, my friend Shihab, who was standing next to me, headed west to buy a slushy from vendors who came there with their carts. Suddenly I heard live fire and saw Shihab lying injured on the ground about four meters from me. A lot of people gathered around him. He was taken by ambulance, unconscious, to Shuhadaa al-Aqsa Hospital in Deir al-Balah, where they found that a bullet had entered his abdomen. The minute I saw Shihab lying on the ground, I feared for his life and wellbeing. I also feared for myself, because I realized the soldiers were aiming directly at people, even onlookers or people standing and protesting peacefully.

'Adali 'Awad, a 39-year-old married father of three from al-Bureij Refugee Camp, came to a demonstration east of the camp at approximately 9:00 A.M. In a testimony he gave B'Tselem field researcher Khaled al-'Azayzeh on 4 April 2018, he described what happened at the demonstration:

The shooting began at around 9:00, as the protestors began to arrive in the area. Snipers fired at protestors, some of whom stood about 100 meters from the fence, but many others stood further away, on Jakar road, about 300 meters from the fence or near the tents, and the snipers hit them, too. Some people waved Palestinian flags. The youths who were in front and threw stones didn't hit the soldiers, who were hiding behind tall dirt barriers and were far away. The soldiers fired teargas canisters near the people who were injured, and the youths and paramedics had a hard time reaching them and giving them first aid.

A friend of mine from a-Nuseirat Refugee Camp was standing next to me, about 300 meters from the fence, and we watched what was going on together. He waved a Palestinian flag. The soldiers fired at him and hit him in the leg. We carried him to an ambulance that took him away.

Throughout the demonstration, from the morning until the muezzin called out for the first evening prayer, I saw about 100 people injured, all of them youths who were 100 to 300 meters from the fence. Most were hit in the legs. Some had been throwing stones, and others had just been standing there watching what was happening. Most of the injuries occurred after midday prayers, because a lot more demonstrators arrived.

Fadi Abu Hamad, a 30-year-old married father of three from Bani Suheila, east of Khan Yunis, arrived at about 9:00 A.M. to an area where tents had been pitched some 400 meters from the fence, north of the town of Khuza'a. In a testimony he gave B'Tselem field researcher Khaled al-'Azayzeh on 2 April 2018, he stated:

When we reached the tents, which were about 400 meters from the fence, north of Khuza'a, we stood nearby and looked towards the fence. There were a lot of soldiers there, in groups of ten or so standing on dirt barriers on the other side of the fence. I could see about eight dirt barriers a few meters apart and another three jeeps or so, which were parked and then patrolled along the fence.

After midday prayers, at around 1:30 P.M., a lot more people arrived and then clashes began with the soldiers. I went up to about 100-150 meters from the fence with another hundred or so young men and several young women. The others stayed about 200 meters behind us, some next to the tents. The soldiers opened live fire at us. They were snipers and they fired shots every few minutes. Every time they fired, one of the young people who were closer to the fence was hit.

From the end of midday prayers at about 1:30 P.M. to the call to for the first evening prayer at about 7:00 P.M., I saw lot of people injured. My estimate is that about 80 were hit in the lower body, including people who were 100 meters from the fence, 200 meters away, and even some 400 meters away. Whenever a youth was hit, the soldiers fired teargas canisters and the others had a hard time reaching him and carrying him away.

We torched tires about 50 meters from the fence to block the soldiers' field of vision, so we could tend to the wounded and carry them to the many ambulances waiting on Jakar road. Because so many people were injured, by late afternoon there weren't enough ambulances and people used cars and even motorcycles to transport the wounded from the area near the fence to the first-aid tent that was pitched in the tent area. There, the injured were given first aid until ambulances came to take them to hospital.

Noura Habib, a 45-year-old homemaker, wife and mother of one from Gaza City, came to an area where tents had been pitched east of Gaza City, about 700 meters from the fence, at around 3:00 P.M. with her husband, their daughter and the husband's other children. In a testimony she gave B'Tselem field researcher Olfat al-Kurd on 2 April 2018, she described what happened then:

I was amazed to see the amount of people there. About one kilometer from the fence there were whole families, a lot of tents, young people reading poetry, others dancing, young men and women singing patriotic songs. I saw families and women sitting on the ground having lunch with fruit baskets next to them, as if they were at a picnic. There were also vendors walking around.

But about 15 minutes later, when I got closer to the fence, I saw a lot of young people some 100 meters from it. Behind the fence there were a lot of soldiers and several jeeps and military vehicles. Some of the youths waved Palestinian flags and torched tires. Snipers fired at the young people from behind dirt mounds, and I saw several people hit. They were shot straight in the legs, and other youths carried them to ambulances that were waiting 100 meters or more away. Some were treated in field clinics and then taken to a-Shifaa Hospital in Gaza. I saw five people injured by gunfire at once.

I had thought it was going to be a quiet procession. I was surprised at how much shooting there was and how many people were injured and killed. They had done nothing and had in no way

endangered the soldiers' lives. A military drone sprayed teargas where my family and I were standing, which made us choke and tear up. There were women using onion, and others handing protestors who had inhaled the gas perfume they had to help them.

I was deeply affected by what I saw there. There was no justification for the occupation soldiers to use live gunfire against the people marching quietly to call for fulfilling the right of return. I was especially affected by the sight of scared and even terrified people, and the sight of people bleeding or dead. My daughter couldn't sleep that night – she kept recalling the frightening sights.

Saber Muhsen, a 30-year-old unemployed married father of two from Gaza City came to the demonstration east of Gaza City at around 10:00 A.M. In a testimony he gave B'Tselem field researcher Olfat al-Kurd on 1 April 2018, he described what he saw:

I was surprised to see youths playing soccer on a soccer pitch. I went up to about 100-150 meters from the fence. I saw some 15 soldiers and sharpshooters on dirt mounds on the other side, firing live rounds and teargas at the protestors, none of whom were armed. Every bullet hit someone, either injuring or killing them. A friend who was next to me got hit in the leg by a bullet and fell down. I picked him up together with some other people who were there and we carried him to an ambulance that was about 500 meters away.

At around 2:00 P.M., the military sent out drones for the first time and they sprayed us and the other protestors with teargas. That made a lot of the women and children who were there choke. Some were taken away for medical treatment.

The official response: We acted by the book

That Friday, and over the following days, Israeli officials were quick to state that the soldiers had acted appropriately and that there was no need to investigate the incidents or change the orders. At the same time, the officials laid the responsibility for the high number of deaths and injuries on Hamas, adding that many of those injured or killed were Hamas operatives. For instance, the IDF Spokesperson [said](#) the same day that “since the morning, live fire has been used with much discretion and force against anyone trying to damage the fence or breach it”. A day earlier, he had already [made clear](#) that, “We will not allow a violation of Israel’s sovereignty or an attack on the infrastructure defending the fence. IDF troops are deployed on the ground. The Hamas terrorist organization is putting Gazans at risk and using them as a cover for terrorist activity. The Hamas terrorist organization is responsible for all the incidents and their consequences.”

Even after details of what took place on the first protest day emerged – mostly video footage of live fire at civilians endangering no one and standing far from the fence or moving away from it – and despite growing international criticism of the military’s open-fire policy, officials stated that the orders would not be altered. The IDF Spokesperson declared that “anyone taking part in the violent demonstrations is putting himself at risk”. In a similar vein, Defense Minister Avigdor Lieberman said that “We have defined the rules of the game clearly, and we do not intend to change them. Anyone trying to approach the fence is putting their lives at risk.”

After the second Friday of protest, 6 April 2018, Lieberman said in a radio interview that “in the entire terrorist march we have seen, there were no civilians. I have heard, read, all sorts of commentaries. There were no innocent civilians. None of the civilians joined the terrorist march. That was all Hamas people... And those who were disguised as civilians were all well-known Hamas operatives. We know and have identified many of the operatives who were killed while trying to break into Israel, harm Israeli citizens, threaten our sovereignty.”

Why is it unlawful to shoot demonstrators who are endangering no one?

Israel’s position that it may use live and potentially lethal fire against unarmed demonstrators who are endangering no one undermines every moral principle, contradicts the provisions of international law and is unlawful. The same holds true for Israel’s insistence on continuing to apply the same directives despite the resulting high number of deaths and injuries. The identity of the demonstrators and their organizational affiliation make no difference; blaming Hamas, as if it were Hamas operatives who shot the demonstrators, is baseless.

Israel has refrained from presenting an official legal opinion to support this position. However, officers formerly serving in the Military Judge Advocate (MAG) Corps have alluded to the legal justifications on which Israel relies. For example, Lieut. Col. (Res.) David Binyamin, a former officer at the MAG Corps International Law Department, explained that it is forbidden to shoot at unarmed demonstrators and that an unarmed person does not pose a security threat. However, he added, this rule does have exceptions: if, for instance, a mass of unarmed individuals crossing the fence creates a security threat and crowd control measures fail, live fire may be used against them. Binyamin addressed the widely-circulated video footage showing a Palestinian being shot in the back, and clarified that a fleeing unarmed demonstrator is not considered a legitimate target. However, he explained, if the same person participated in hostilities earlier, he will be considered a legitimate target even when fleeing.

Col. (Res.) Liron Libman, who headed the MAG Corps International Law Department and is now a researcher with the Israel Democracy Institute, made similar statements in an interview aired on Israeli TV on 1 April 2018. Libman subscribes to the general principle that shooting at civilians is prohibited, but was quick to point out the exceptions to this rule:

Less lethal means should be used against unarmed civilians who approach the fence, to the extent possible. Ultimately, there may be an extreme situation where there is concern, if such a situation arises, that a mass of civilians is about to tear down the fence under Hamas directives, the objective being to commit acts of terrorism under cover of this protest – to bury explosive devices or send terrorist cells in. You can’t ignore the fact that there are hostilities in that sector and in such an extreme situation, these civilians might be considered civilians who are directly taking part in hostilities.

Both Binyamin and Libman subscribe to the general principle that prohibits shooting unarmed persons who pose no danger to anyone. This principle is reflected in international human rights law, which prohibits such shooting – certainly in the case at hand, with demonstrators on one side of the fence throwing stones at well-protected soldiers on the other side. Lethal use of gunfire as a means of law

enforcement is permitted only in response to clear and immediate danger to life, when there is no other way to avert the danger. Damage to the Gaza-Israel fence by an unarmed individual is not considered such danger even if, as argued by Israel, the fence is meant to protect the citizens of the country. This has been clarified in an [opinion](#) written by Prof. Mordechai Kremnitzer, Prof. Yuval Shany, Prof. Amichai Cohen and Dr. Eliav Lieblich and published by the Israel Democracy Institute:

Where ordinary law enforcement actions are concerned, according to international human rights law, Israel must use whatever law enforcement measures are permitted under international human rights law – primarily, crowd control measures. Where necessary, protestors who damage property or cross the border may be taken into custody. We stress that use of live fire outside of hostilities is permitted only in the face of a concrete threat to life posed by a specific individual. Leading or organizing protests do not constitute such a threat, nor does the shouting of slogans. Even approaching the fence or crossing it do not, in and of themselves, constitute cause to use live fire where it is not possible to point to a specific threat to life that can only be averted by shooting at the persons crossing the fence.

An analysis of the Gaza events through the prism of international humanitarian law, which provides the rules applicable to parties engaged in hostilities, leads to the conclusion that the same principle applies: targeting civilians is prohibited. These rules were designed to minimize the extent of harm caused to civilians; therefore, they permit attacking military targets only, and even then on condition that the harm caused to civilians is proportionate to the anticipated military advantage. While civilians who directly take part in hostilities lose this protection, participating in protests and even damaging the fence other than as part of hostilities do not constitute such direct participation and do not render civilians engaged in such acts legitimate targets. These rules are anchored, in part, in Additional Protocol (I) to the Geneva Conventions and Israel is obligated to uphold them in all its actions, including in the Gaza Strip.

Yet after agreeing on this principle, Binyamin and Libman proceeded to drain it of meaning by citing a litany of exceptions that are entirely irrelevant to what has transpired in the demonstrations held in Gaza over the last two weeks. True, thousands of Palestinians might try to cross the fence, the demonstrations may just be a cover for attempts by Hamas to commit terror attacks inside Israel, and armed Palestinians might fire at the soldiers stationed on the other side of the fence – but none of this detracts in any way from the general principle that prohibits firing at unarmed people who pose no danger to anyone. The open-fire policy cannot be dictated by worst-case scenarios that may or may not materialize, nor can the existence of such scenarios justify the widespread shooting of persons who in no way participate in realizing them. In any case, none of these scenarios has, in fact, materialized in the protests held in the Gaza Strip and Israel appears to be putting them forward in order to pass the blame for the high number of deaths and injuries onto Hamas.

This is not the first time that Israel has ignored the general principle and instead relied on worst-case scenarios or on exceptions in international law to justify human rights violations. For years, Israel [relied](#) on the extreme “ticking bomb” scenario to justify torturing tens of thousands of Palestinians, most of whom were suspected of involvement in minor offenses, despite the absolute and unequivocal

prohibition on torture in international law. To justify the destruction of hundreds of hectares of farmland at the beginning of the second intifada, mostly in Gaza, Israel [relied](#) on a narrow exception in international humanitarian law that permits destruction of private property in cases of “pressing military need”. To justify its routine use of administrative detention, Israel [relies](#) on a provision that permits resorting to this measure in exceptional cases only and subject to numerous conditions.

Israel uses international law to justify human rights violations, instead of seeing it as a tool meant to provide protection, albeit minimal, to the people subject to Israel’s power. These rules, like any other body of law, are obviously open to interpretation. However, the interpretation espoused by Israel is so extreme that it drains them of meaning. Small wonder, therefore, that this interpretation has been rejected by most jurists working on international law both in Israel and abroad.

First kill, then whitewash – standard procedure

For two weeks now, Israeli soldiers have been shooting at unarmed demonstrators who pose no danger on the other side of Gaza-Israel fence. An order to open live fire at unarmed civilians is manifestly unlawful. As Justice Benjamin Halevy ruled in the Kafr Qasem case back in the 1950s, the illegality of such orders “is not a question of form, nor is it imperceptible, or partially imperceptible.” On the contrary, it is a case of “unmistakable illegality patently evident in the order itself, it is a command that bears a clearly criminal nature or that the actions it orders are of a clearly criminal nature. It is an illegality that pains the eye and outrages the heart, if the eye be not blind and the heart be not callous or corrupt.”

The responsibility for issuing these unlawful orders and for their lethal outcomes rests with the policy makers and – above all – with Israel’s prime minister, defense minister and chief of staff. They are also the ones who bear the obligation to change these regulations immediately, in order to forestall any further casualties. That said, it is also a criminal offense to obey manifestly illegal orders. Therefore, as long as soldiers in the field continue to receive orders to use live fire against unarmed civilians, they are duty-bound to refuse to comply.

In light of international criticism, which increased after the second day of protest on 6 April 2018, the military [announced](#) that the special general staff investigation mechanism headed by Brig. Gen. Motti Baruch would look into incidents in which Palestinians were killed, focusing on civilian deaths. The findings will be forwarded to Military Advocate General Brig. Gen. Sharon Afek, who will decide whether a criminal investigation is warranted.

The announcement means nothing, save for pure propaganda purposes. This mechanism is part of the whitewashing toolkit that the MAG Corps uses to create a semblance of an efficient law enforcement system that works to uncover the truth and ensure accountability. By design, the special mechanism focuses on a handful of incidents and on the responsibility of field soldiers, completely ignoring the responsibility of policy-makers and commanders. As Prof. Mordechai Kremnitzer [wrote](#):

According to statements made by the minister of defense, the policy whereby attempting to damage the fence, crossing it and perhaps even approaching it justify

the use of firearms came from the ministerial level. Therefore, what needs to be investigated is not the actions of a particular sniper or commander (which can be looked into by a general staff panel), but the conduct of Israel's top military and political officials; the open-fire regulations and the legal concept underlying them. I fear that if such a task is defined as an internal military affair, it will be an investigation for the purpose of whitewashing. It is not reasonable to assume that the military can investigate its own highest command or the ministers who oversee it.

The special mechanism [began](#) operating after Operation Protective Edge in 2014, yet did not lead to measures taken against the decision-makers who formed the policy employed during the fighting, or against the soldiers who implemented it. Then, too, the mechanism was simply part of the [facade](#) created by Israel to give the impression of fulfilling its duty to investigate alleged breaches of law. Almost four years later, the only indictment reportedly served was against three soldiers accused of looting.

The sole purpose of this special mechanism appears to be preventing investigations by international bodies. The prosecutor of the International Criminal Court (ICC) in The Hague has already issued a [statement](#) voicing concern over the high number of deaths and injuries and stressing that violence against civilians may constitute crimes that fall under the jurisdiction of the ICC.

Since the ICC cannot investigate suspected offenses that the state concerned has already investigated, it is important for Israel to appear to have done so, just as [described](#) by Maj. Gen. Noam Tibon:

It's meant to protect our commanders. Right now, everyone can take an aggressive tone and say the right things. In the end, tomorrow morning, an officer's name or a soldier's name ends up at the International Criminal Court in The Hague, and he's prosecuted. That person can hardly leave the State of Israel, and the State of Israel has a very difficult time helping him. And so, this team comes and says: the IDF acted professionally here. If something was done wrong – we'll take care of it. We don't wait for anyone to check up on us. [This] provides IDF soldiers and commanders tremendous protection, and also our ability to come and say: Guys. We checked. We conducted a professional investigation led by a very experienced commander, who was in no way involved in the fighting on that front. The investigation proved that we acted okay. That's also important to say.

The legal analysis presented above establishes the clear moral and legal viewpoint that live fire cannot be used against unarmed individuals in non-life-threatening situations. Reaching that conclusion does not actually require expertise: It is the very same "unmistakable illegality patently evident in the order itself". Yet these are still the orders given to soldiers on the ground, with full backing from government ministers and top military officers, and these are the orders the soldiers have implemented a hundred times over, bullet after bullet, for hours on end, with obvious results.

Israel is highly experienced in breaking the law and trampling basic moral principles underfoot without being called to task in any way. It is certainly not held accountable domestically, as the judiciary fully

cooperates with this criminal state of affairs and the public generally supports the scope of the killings, injuries and destruction in Gaza, or at least remains indifferent to it, nor is Israel called to task by the international community.

Israel's successful recipe includes the following: (1) Coming up with unfounded legal interpretations that empty the norms of international law of real meaning, and using these norms not as a moral compass but a manual on how to violate them; (2) Employing a broad policy of using military force based on this criminal interpretation, with predictable extensive injurious outcomes (3) Upholding the unlawful policy, despite the horrific results, and thereby continued extensive harm, all the while disavowing responsibility for these outcomes; (4) Extensive whitewashing intended to create the impression that Israel conducts genuine, effective investigations into its own actions, while, in practice, the responsibility of the higher ranks and the illegality of the policy are never investigated, the incidents that are investigated are considered "exceptional" and even in these cases, the fundamental principles that have been stripped of their meaning supply the justification for closing the investigation.

The cumulative effect of this mode of operation is an understanding, shared by many in Israel, that no price will be paid for military action that involves well-documented, widespread, lethal harm to civilians, whether through air raids, shelling or sniper fire, even if it relies on a completely baseless legal interpretation. Explanations, excuses, diversions, deflections and whitewashing will always work.

This is exactly what Israel is doing in the face of the Gaza protests: circulating baseless legal interpretation that allows for the illegal, widespread use of military power that has already resulted and will continue to result in terrible bloodshed. All this, as the whitewashing of crimes begins within days, by protocol, for the world to see.

The combination of local public opinion ranging from ardent support to indifference and a judiciary skilled in draining moral rules of meaning and whitewashing crime produces a situation in which it is difficult to imagine the much-needed substantive change coming from inside Israel. True, many countries violate human rights. Yet Israel is unique in insisting that its unlawful actions are commensurate with international law. This challenges the very foundations of international law, unlike the conduct of states that make no attempt to lend a semblance of legality to their actions. If the international community does not come to its senses and force Israel to abide by the rules that are binding to every state in the world, it will pull the rug out from under the global effort to protect human rights in the post-WWII era. This is not a merely theoretical concern: Until Israel changes its policy, the Palestinians will continue pay for this state of affairs in life and limb.