

STANDARD ARREST?: THE KILLING OF AN UNARMED STUDENT *A Legal Analysis*

In the early morning hours of July 13, 2011, the Israeli army entered the Far'a Refugee Camp, located between the Northern Palestinian West Bank cities of Tubas and Nablus, supposedly to perform arrests of "wanted" individuals. During the incursion, 21-year-old university student Ibrahim Sarhan was shot by Israeli soldiers and died soon after.

That morning, Ibrahim attended the dawn prayer at his local mosque as was his custom. After the prayer, he left the mosque with his uncle and headed to the main road of the Camp to say goodbye to his parents, who were preparing to leave on a trip to Mecca. While walking down a narrow alley with Ibrahim approximately 5-7 meters behind his uncle, the pair encountered a group of Israeli soldiers who yelled "Stop!" in Hebrew. Ibrahim's uncle stopped and was arrested but Ibrahim turn and ran up the alley they had come from and then turned left at the next intersection and continued to run. The soldiers followed him and opened fire from the point of the intersection, approximately 40 meters behind Ibrahim. The first fire reportedly did not hit Ibrahim, but seconds later, he was engaged by a second group of soldiers who fired at him from a distance of approximately 25 meters. A bullet pierced Ibrahim's thigh and ruptured his femoral artery. Ibrahim continued to run approximately 50 meters after being shot, leaving a trail of large blood stains, and then collapsed in front of a house. Although residents attempted to assist Ibrahim, Israeli soldiers ordered them away from Ibrahim and some residents report that soldiers shot at people who attempted to approach him. After about 10 minutes, residents were able to drag Ibrahim around the corner and carry him to the safety of another home, where he received basic first aid.

Israeli soldiers followed Ibrahim's blood trail to the second home and entered by force, taking Ibrahim, who lay in a pool of blood, from the house despite the residents' pleas that he be left there to wait for the ambulance. The residents of the home reported that the soldiers broke the leg off of a stool and tied it to Ibrahim's leg before carrying him from the house. The soldiers then took Ibrahim, who was barely conscious, to another area of the Camp.

The Palestinian Red Crescent in Tubas received a call at around 5:00am and arrived at the Camp approximately 10 minutes later, and then had to reroute from the house in which Ibrahim had been to his new position with the Israeli army. One of the paramedics reported that Israeli soldiers initially denied them access to Ibrahim but after a brief argument between the soldiers, they were allowed through. One of the paramedics reported that the Israeli medical care had consistently mainly of bandaging the wound but that the Israeli medics had not administered vital liquids or provided other necessary life-saving care. Ibrahim was driven to Rafidiya Hospital in Nablus, where he was pronounced dead shortly after arriving.

The Israeli authority and military spokespersons have said very little publicly about the shooting of Ibrahim Sarhan, other than issuing a cursory statement that he was shot during a standard arrest procedure and that he received medical attention from Israeli soldiers on the scene. In fact, both the shooting of Ibrahim and the subsequent acts that blocked life- saving medical attention from reaching Ibrahim constitute grave violations of international humanitarian and human rights law.

Applicable Law

As the occupying power in the West Bank, Israel has legal obligations under both international humanitarian and human rights law towards the population under its control, which limit the means of law enforcement operations, and the conduct of the military carrying out these operations.

Israel is governed in its conduct in the occupied Palestinian territory by the provisions of International Humanitarian Law (IHL), which is applicable in situations of armed conflict and occupation. The 1907 Hague Regulations state that the occupying power must “take all the measures in his power to restore, and ensure, as far as possible, public order and safety,”¹ indicating that law enforcement by the occupant is anticipated and, if necessary, required. However, the overarching IHL principles of distinction and proportionality still apply. That is, noncombatants who do not take direct part in hostilities are never a legitimate military target, and the harm from a military action cannot be disproportionate to the military advantage gained.

Israel is additionally governed by International Human Rights Law and is signatory to all of the major conventions. The UN Human Rights Commission has affirmed that with regards to law enforcement activities, Israel remains bound not only by the provisions of IHL but also by Human Rights Law, and specifically the guidelines of the 1979 Code of Conduct for Law Enforcement Officials [hereinafter “1979 Code of Conduct”] and the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials [hereinafter “1990 Basic Principles”]. According to both human rights documents, the term “law enforcement officials” applies to more traditional policing entities but also to military authorities who exercise powers of arrest and detention.²

In accordance with its obligations under international law, Israel is expected to integrate human rights and humanitarian norms into their internal laws and regulations. Israel’s justification for the shooting death of Ibrahim as having occurred during a “standard arrest procedure” begs the question of what exactly “standard arrest procedure” is according to the Israeli military operating in the occupied Palestinian territories and whether the policies conform with Israel’s obligations under international law. Unfortunately, it is impossible to answer this question because Israel has consistently refused to publish its rules of engagement, citing security concerns – a decision that has been validated by the Israeli High Court. Furthermore, even soldiers serving in the Israeli military

¹ International Conferences (The Hague), *Hague Convention (IV) Respecting the Laws and Customs of War on Land* and Its Annex: Regulations Concerning the Laws and Customs of War on Land, 18 October 1907, Art. 43.

² Code of Conduct for Law Enforcement Officials, U.N. Doc.A/ 34/169 (17 Dec. 1979), Art. 1, Commentary B; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, FN 1.

have reported that they are often unclear about what the open fire regulations are, as they tend to be communicated orally and are prone to ad hoc changes by different commanding officers.³

Prior to the outbreak of the second Intifada in 2000, the Israeli military open-fire regulations were based on domestic Israeli criminal law. These regulations permitted soldiers to fire only in the case of “life threatening danger” or, in the case of the arrest of a person suspected of committing a dangerous offense, soldiers were allowed to fire at the suspect’s legs⁴ but only as a last resort and after warning shots had been fired into the air.⁵ However, since 2000, the Israeli military’s rules of engagement have diverged from the domestic norms, as the military classified the situation in the OPT as a zone of armed conflict short of war, governed by more lax open-fire rules. These rules have never been fully disclosed and any evaluation of them must rely on piecemeal releases of certain protocols and public statements made by military and political officials.

In the case of the July 13 shooting of Ibrahim Sarhan, Israeli military officers violated the relevant provisions of both International Humanitarian and Human Rights Law as well as Israeli military open-fire regulation, insofar as they are known.

a. Threshold test for lawful arrest

Because Israel claims that Ibrahim was killed during an arrest procedure, the threshold question is whether the attempted arrest of Ibrahim was lawful in the first place. Public statements made by the Israeli military immediately after his killing do not suggest that the military entered the camp with an order to arrest Ibrahim and the circumstances prior to his killing do not indicate any legitimate reason for which he would have been targeted for arrest.

Although the 1979 Code of Conduct makes reference to “lawful arrest,” it does not define this term. The European Convention on Human Rights, however, defines a lawful arrest as requiring “reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.”⁶ The Israeli domestic criminal code states that a lawful arrest requires a judicial order or an “overt act is committed to perform the arrest.”⁷

The Israeli military has explained that it entered the camp in order to carry out arrests, supposedly of “wanted” individuals. However, the army has at no point indicated that Ibrahim, who had no prior arrest record with Israeli police or military, was “wanted” or that the soldiers had entered the camp intending to arrest him that night pursuant to the authority of a valid judicial order.

³ See, e.g., B’tselem, *Take No Prisoners: The Fatal Shooting of Palestinians by Israeli Security Forces during “Arrest Operations”*, May 2005, available at http://www.btselem.org/download/200505_take_no_prisoners_eng.pdf; Breaking the Silence, *Testimonial Booklet #2*, available at http://www.breakingthesilence.org.il/wp-content/uploads/2011/02/Testimonial_Booklet_2_Eng.pdf

⁴ Although Israeli procedure apparently assumes firing at the lower extremities mitigates the danger of the force used, this distinction is not supported by human rights law, which does not classify shooting at certain parts of the body as more “permissible.” Rather, the 1979 Code of Conduct categorizes the mere use of firearms against a person as an “extreme measure.” Ibrahim’s death underscores the lethal nature of firearms use even if “only” aimed at the legs.

⁵ B’tselem, *supra* note 3, p.17.

⁶ European Convention on Human Rights (Cmd. 8969, 1950) Art. 5(1)(c).

⁷ Israeli Criminal Procedure Law (Powers of Enforcement – Detainment), 1996, Chapter A, Article 5.

Furthermore, there is no indication that Ibrahim committed an “overt act” that would justify his arrest or that he acted in such a way as to give rise to a “reasonable suspicion” that he had committed an offense. Although during the military incursion into the camp, residents responded to the soldiers’ presence with stone-throwing, there is nothing to suggest that Ibrahim was engaged or could have been perceived as engaging in this activity. Ibrahim had left his house in order to attend the dawn prayer as was his daily custom, and he had been in the mosque immediately preceding the shooting. When the soldiers encountered him, Ibrahim was merely walking down the street on his way home.

Finally, the Israeli soldiers’ momentary interaction with Ibrahim before shooting him does not support the position that Ibrahim could have been legitimately identified as a suspect for arrest. A visual identification would have been near impossible as the soldiers were approximately ten meters from Ibrahim when they called out for him to stop and it was still dark out at the time. Indeed, the fact that Ibrahim’s uncle was released hours after being arrested and that 12 of the 15 people arrested and taken from the camp that night were released the next day indicates that soldiers were arresting young men at random as they encountered them on the street. Most likely, Ibrahim became a “suspect” simply for being a young man out in the streets in the early morning.

b. Use of Legal Force in Effectuating Arrest

The Israeli military’s use of lethal force against Ibrahim in their attempt to apprehend him is unjustified by the circumstances and constitute a flagrant violation of International Humanitarian Law, relevant Human Rights Law instruments pertaining to law enforcement’s use of firearms, and Israel’s own open-fire regulations.

Additional Protocol I to the IV Geneva Conventions states that “the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”⁸ It further affirms that that “The civilian population as such, as well as individual civilians, shall not be the object of attack.”⁹ The principle of distinction between combatants and noncombatants and the concomitant prohibition on targeting noncombatants has been described by the International Court of Justice as a “cardinal principles” of IHL and one of the “intransgressible principles of international customary law.”¹⁰

The 1979 Code of Conduct states that law enforcement officials may only use force when “strictly necessary and to the extent required for the performance of their duty.” It further clarifies that the use of firearms is an “extreme measure” and may only be used when officers are met with armed resistance or other acts that jeopardize the lives of others, and alternative means are insufficient. (Art. 3, Commentary C). The 1990 Basic Principles reiterates this principle, stating the law enforcement must “as far as possible, apply non-violent means before resorting to the use of force and firearms,” and specifies that “[t]hey may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.” (Para. 4) The 1990 Basic Principles further states that when use of firearms is “unavoidable”, officers must “exercise

⁸ International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3, Art. 48.

⁹ *Id.*, Art. 51(2).

¹⁰ *Legality of the Threat or Use of Nuclear Weapons*, 1996 I.C.J. 95 (July 8), ¶¶78, 79.

restraint... and act in proportion to the seriousness of the offence and the legitimate objective to be achieved." (Para. 5(a)).

With reference to a person attempting to escape arrest, the 1990 Basic Principles affirms that "intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life." (Para. 9) Furthermore, it requires that law enforcement officials must give sufficient warning of intent to use firearms unless such a warning would "create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident." (Para. 10)

Section 8 of the Army Rules of Engagement released in 2005 proscribes the use of firearms against stone-throwers except when the attack is massive, endangers the lives of the soldiers or others, and is implemented at the time of the incident, or when an "imminent real threat to life is perceived." Further guidelines issued in 2006/2007 explain that deadly force may be used during an arrest if the suspect continues to present a threat to the soldiers after warning shots have been fired and the soldiers have called out for the suspect to stop in both Hebrew and Arabic.

During the brief seconds that Ibrahim was headed in the direction of the soldiers, most likely unaware of their position, he was unarmed and at no point did he pose a threat or could he be perceived as posing a threat to the safety of the soldiers or anyone else. Despite strict IHL prohibitions against targeting noncombatants and Human Rights norms that lethal force may only be used "when strictly unavoidable in order to preserve life," or when met with armed resistance, Israeli soldiers opened fire on Ibrahim without any imperative to protect their own safety or that of others.

Both the 1990 Basic Principles as well as Israeli military regulations require that law enforcement give a warning before using firearms against a person, barring that such a warning would endanger lives or be futile under the circumstances. The soldiers called out a perfunctory "stop" only in Hebrew and fired no warning shots or otherwise indicated to Ibrahim that he risked being shot if he did not submit to their orders. There was nothing that prevented the soldiers from giving warnings, such as a threat to their safety. The immediate shooting of Ibrahim for the simple fact that he turned and fled after a command was yelled out in a language not his own is legally unjustifiable.

Even had Ibrahim been suspected of throwing stones that night, there is no legal justification either under IHL or Israeli open fire norms for his shooting death. As stated earlier, IHL prohibits the intentional targeting of noncombatants. While a non-combatant may lose his/her status if taking direct part in hostilities, the United Nations Human Rights Commission has stated that stone-throwing at heavily-armed Israeli military posts "hardly seems to involve participation in hostilities," and thus does not alter the non-combatant status of those throwing stones. Thus, under IHL, Ibrahim remained a non-combatant and immune from direct military targeting. Even under Israel's open-fire regulations released in 2005, which are already arguably contrary to IHL standards Israel is legally bound by, stone throwers are not to be targeted except when the military response is contemporaneous with massive attacks that threaten the lives of soldiers, or where "imminent real threat to life is perceived." As previously stated, the soldiers faced no threat to their lives by the approach of Ibrahim or his uncle, nor is there any indication that they could have perceived such a threat, especially considering that Ibrahim was shot as he ran away from the soldiers and not towards them.

c. Denial and Prevention of Crucial Medical Assistance

The bullet fired by Israeli soldiers at Ibrahim ruptured his femoral artery and caused immediate massive blood loss. Although this kind of wound is often fatal, Ibrahim may have survived had he received the urgent medical attention he required. Instead, Israeli soldiers through continuous violent acts, hindered lifesaving assistance.

Under IHL, both combatants and non-combatants becomes immune from further attacks once they have been injured and rendered *hors de combat* ("outside the fight"). According to the 1990 Basic Principles, if law enforcement officers use firearms against a person, they must "[e]nsure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment" (para. 5.c.)

In the case of Ibrahim's shooting death, Israeli soldiers not only did not render immediate medical assistance but endangered the lives of those who attempted to assist him and then forcibly stopped the medical attention that he was receiving to staunch the bleeding. After Israeli soldiers aimed and shot Ibrahim in the leg, they then followed him to the street where Ibrahim had run back to. Despite large blood stains along the street indicating the severity of the wound, and despite the fact that Ibrahim lay prone on the street semi-conscious, the soldiers took position and reportedly fired shots at Ibrahim and the residents from the first house who had come out to help him, in flagrant violation of IHL.

In violation of International Human Rights norms to provide medical attention at the earliest possible moment, Israeli soldiers delayed treatment of Ibrahim and failed to provide adequate life-saving medical aid. After Ibrahim was dragged and carried to safety in the second home, the soldiers followed the blood trail and forcibly removed him, ignoring pleas from the home's residents that he was near death. Witnesses in the second home reported that the only medical assistance the soldiers provided before carrying him to a side alley in the camp was to tie the leg of a stool to his leg presumably to stabilize a fracture, a treatment which was inconsistent with his urgent medical needs at the time.

Although the Palestinian ambulance that responded to the shooting was able to enter the camp unhindered, they lost precious minutes getting to Ibrahim's new location, where the soldiers had taken him, and then more time as a soldier initially refused the Palestinian paramedics access to the victim. It is not clear how much time Ibrahim was in Israeli custody after the soldiers removed him from the second house and transferred him to the other area of the Camp, but the Palestinian medic who was on scene reported that the soldiers did not provide Ibrahim with the kind of urgent medical care needed to save his life. He died shortly after arriving at the hospital in Nablus due to the already massive blood loss.

Conclusion

Israeli military sources and virtually all media coverage of the shooting death of Ibrahim Sarhan have reported only that he was wounded during "standard" arrest procedure. In fact, the circumstances surrounding his death indicate serious violations of international law as well as Israeli military procedure. Unfortunately, while the shooting of Ibrahim as part of an alleged arrest operation is legally unjustifiable, it appears in fact to be fairly "standard." Since the start of the

second Intifada, “standard arrest procedures” have led to the deaths of at least 410 Palestinians, including civilians who were not targeted for arrest.¹¹ On August 1, only weeks after Ibrahim was killed soldiers killed two other men by gunshot wounds to the head, during a raid into Qalandia camp near Ramallah to perform “routine arrests.” The men were not the target of the supposed “routine arrests” which cost them their lives.

The UNESCO Chair on Human Rights and Democracy calls on the Israeli military to conduct an immediate and thorough investigation into the shooting death of Ibrahim Sarhan and appropriately punish soldiers and commanders whose actions or omissions caused this tragic death. The Chair asks the international community to hold Israel to its obligations to respect international law and be held accountable for harm done to civilians by Israeli forces. The Chair further calls on the Israeli military to publicly release and reform its open fire regulations and arrest procedures in conformity with international humanitarian and human rights law, and to ensure that all Israeli soldiers understand their duties and the limits imposed on them in their law enforcement capacity in the occupied Palestinian territories.

¹¹ The 2004 B'tselem report “Take no Prisoners” stated that 89 Palestinians had been killed during arrest operations in 2004, including 14 civilians who were not “wanted” by the military. (p. 6). Since then, however, new research and data has upped the casualty figure to 98. B'tselem researchers caution that the figure of 410 is a low estimate as it is based only on cases where B'tselem had information on the circumstances that led to the deaths.