



## **Decisions of the IDF Military Advocate General Regarding Exceptional Incidents that Allegedly Occurred During Operation 'Protective Edge' - Update No. 4**

**11 June 2015**

In accordance with the IDF Military Advocate General's (the 'MAG') policy to ensure transparency with regard to the examination and investigation of exceptional incidents that allegedly occurred during Operation 'Protective Edge' (7 July – 26 August 2014; the 'Operation'), and pursuant to previous Press Releases, additional information has been cleared for publication concerning decisions the MAG has reached with regard to several individual incidents.

The MAG Corps continues to receive complaints regarding exceptional incidents alleged to have occurred over the course of the Operation. Many of these complaints are filed on behalf of Palestinian residents from the Gaza Strip or by non-governmental organizations ('NGOs') – Israeli, Palestinian and international. In addition, the MAG Corps actively works to identify incidents warranting examination or investigation. Each complaint or piece of information suggesting a fault in the conduct of IDF forces undergoes an initial examination, in order to determine the credibility and concrete nature of the allegation. If the allegation is deemed credible, *prima facie*, and is sufficiently concrete, it is referred to the MAG, who shall decide whether a criminal investigation is warranted without further examination or whether a factual examination is required by the General Staff Mechanism for Fact-Finding Assessments prior to such a decision.

As previously publicized, soon after the commencement of the Operation, and whilst the hostilities were ongoing, the previous IDF Chief of General Staff, Lieutenant General Benjamin (Benny) Gantz, ordered that a General Staff Mechanism for Fact Finding Assessments (the 'FFA Mechanism'), headed by a Major General, examine exceptional incidents alleged to have occurred during the Operation. The FFA Mechanism was tasked with collating information and relevant materials in order to assess the facts of individual incidents. These efforts are intended to provide the MAG with as much factual information as possible in order to enable the MAG to reach decisions regarding whether or not to open a criminal investigation, as well as for the purpose of a 'lessons-learned' process and the issuance of operational recommendations that will assist in mitigating the risk of exceptional incidents occurring in the future. At the head of the FFA Mechanism is Major General (Res.) Yitzhak Eitan, who did not serve in the chain of command during the Operation.

To date, allegations with regard to approximately 190 alleged exceptional incidents have been referred by the MAG for examination by the FFA Mechanism. 105 of these incidents have already been examined and referred to the MAG for decision. Of these

incidents, it was decided by the MAG to refer seven for criminal investigation. Some of these investigations are still ongoing, while others have been completed with their findings having been submitted to the MAG for review, and a number have already been the subject of a decision by the MAG. With regard to an additional 19 incidents, the MAG decided to close the case without opening a criminal investigation, after reviewing the findings and materials collected by the FFA Mechanism and did not find that the circumstances of the incident gave rise to reasonable grounds for suspicion of criminal behavior. However, in relation to some of these incidents, the MAG recommended reviewing operational methods in order to assess whether any changes could be made. In relation to a few of the cases that were closed, the MAG found that no involvement of IDF forces was identified with regard to the incidents. In regard to some of the incidents that were examined and referred to the MAG, the MAG considered that further information was needed in order to reach a decision, and accordingly these incidents were referred back to the FFA Mechanism for further examination. Tens of additional incidents are still in various different stages of examination by the FFA Mechanism, and their findings will be submitted to the MAG in due course.

In addition, the MAG has ordered the opening of 15 criminal investigations without the need for prior examination by the FFA Mechanism on the basis of allegations that indicated *prima facie* grounds for a reasonable suspicion of criminal misconduct. Of these criminal investigations, the MAG decided to close two without undertaking any criminal or disciplinary proceedings. As the result of another criminal investigation, the MAG has decided to issue indictments against three IDF soldiers, as will be detailed herein. The remainder of the investigations are either still ongoing, or have been completed, with their findings having been submitted to the MAG for review.

All criminal investigations are carried out in a thorough and prompt fashion by a special investigation team assembled by the Military Police's Criminal Investigation Division (the 'MPCID') in order to investigate incidents alleged to have occurred during the Operation. This team has collected testimonies from many IDF soldiers and commanders, as well as from tens of Palestinians who were witnesses to some of the incidents in question.

Where a complaint had been submitted in a written form, a reply has been sent to the complainant organization or individual, who are entitled to challenge the decision before the MAG. The MAG's decision in regard to such a challenge may then be challenged before Israel's Attorney General. This procedure, which has been in operation for a number of years, was recently set forth in a directive issued by the Attorney General.

Pursuant to previous updates, information which has been cleared for publication follows below, regarding decisions the MAG has reached with regard to specific incidents.

## **Cases Closed by the MAG Following Examination by the FFA Mechanism**

### **1. Allegations Concerning the Death of 15 Individuals During an Attack on the Al-Salam Building in Gaza City (21 July 2014) –**

In IDF operational reports, as well as in complaints received by the MAG Corps from NGOs, it was alleged that on 21 July 2014, 15 individuals were killed as a result of an IDF aerial attack on the Al-Salam building in Gaza City. In these complaints, it was alleged that the deceased had been staying in the building after they had been evacuated from their homes in areas in which fighting was ongoing. Subsequently, and in accordance with the MAG's investigation policy, the incident was referred to the FFA Mechanism for examination.

According to the factual findings collated by the FFA Mechanism and presented to the MAG, on 21 July 2014, the IDF had conducted an aerial attack on Sha'aban Dachdouch, a senior commander in the Palestinian Islamic Jihad, at a rank equivalent to that of a Battalion Commander. The attack was carried out at a time when the target was present in an office in the Al-Salam building. The attack was carried out in the late evening hours, in light of the assessment, premised upon timely intelligence, that there would not be civilians present at that time in the building, which was known to be an office building. Additionally, the attack was planned in such a way – from the type of munition selected, to the method according to which the attack was executed – that the damage would be limited to that part of the building where the target was located. The aim was to minimize, to the extent feasible, the collateral damage that would result from the attack, without frustrating its success. Regrettably, after the fact, there was an unforeseen collapse in the upper floors of the building approximately half an hour after the attack. As a result of the attack, the senior commander in question was killed, and it was alleged that a further 14 civilians were killed, most of them members of the Kilani and Derbas families, who had been staying, according to the complaints received by the MAG Corps, on the same floor in the building as the target of the attack. As a result of this incident, operational lessons-learned regarding the IDF's methods for carrying out aerial attacks in similar cases were drawn, and were implemented whilst the Operation was still underway.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that the targeting process in question accorded with Israeli domestic law and international law requirements. The decision to attack was taken by the competent authorities and aimed at a lawful target – a senior commander in Palestinian Islamic Jihad, who was indeed killed as a result of the attack. The attack complied with the principle of proportionality, as at the time the decision was taken, it was considered that the collateral damage expected from the attack would not be excessive in relation to the military advantage anticipated from it, and this assessment was not unreasonable under the circumstances. Moreover, the attack was carried out while undertaking a number of precautionary measures which aimed to minimize the risk of collateral damage. Such measures included, *inter alia*, the choice of munition to be used, and the method according to which the attack was carried out. The fact that, in practice, a number of civilians who were not involved in the hostilities were

harmed, is a regrettable result, but does not affect the legality of the attack *ex post facto*.

In light of the above, the MAG did not find that the actions of IDF forces raised grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation or ordering further action against those involved in the incident.

## **2. Allegation Concerning the Death of Members of the Al Najjar Family in Khan Younis (29 July 2014) –**

In media reports, as well as in a complaint received by the MAG Corps from an NGO, it was alleged that on 29 July 2014, eight individuals were killed as the result of an IDF aerial attack on the house of the Al Najjar family. Subsequently, and in accordance with the MAG's investigation policy, the incident was referred to the FFA Mechanism for examination.

According to the factual findings collated by the FFA Mechanism and presented to the MAG, at the time in question the IDF had attacked a Hamas military command and control center located in a building in Khan Younis, as well as senior Hamas operatives who were manning the center at that time. During the attack planning process, it was assessed that there might be a number of civilians present in the building, but that the potential harm to them would not be excessive in relation to the significant military advantage anticipated to result from the attack. The attack on the building was planned for execution by means of a precise munition, and in a manner that would allow the operational purpose of the attack to be achieved, whilst minimizing the potential harm to the surrounding buildings. As a result of the attack, eight individuals were killed, among them two Hamas operatives, Asam Mohammad Ata Al Najjar and Ata Mohammad Ata Al Najjar.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that the targeting process in question accorded with Israeli domestic law and international law requirements. The decision to attack was taken by the competent authorities, and was aimed at lawful targets. The attack complied with the principle of proportionality, as at the time the decision to attack was made, it was considered that the collateral damage expected from the attack would not be excessive in relation to the military advantage anticipated from it, and this estimation was not unreasonable under the circumstances. Moreover, the attack was carried out after a number of precautionary measures had been undertaken, which aimed to minimize the potential for civilian harm, particularly with regard to any civilians present in adjoining buildings. It was also found that the provision of a specific warning prior to the attack, to the persons present in the structure, was not required by law and would have been expected to result in the frustration of the attack's objective.

In light of these findings, the MAG did not find that the actions of IDF forces gave rise to reasonable grounds for suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation or ordering further action against those involved in the incident. Nonetheless, the

MAG found it appropriate to recommend to the command authorities that a number of aspects relating to the implementation of the relevant operational instructions be clarified, with an emphasis on improving the documentation of planning procedures for attacks on targets of this type.

### **An Incident into which the MAG has Ordered a Criminal Investigation Following an Examination by the FFA Mechanism**

#### **3. Allegations Concerning the Death of 9 Individuals as the Result of an Attack on a Café on the Khan Younis Coast (9 July 2014) –**

The MAG Corps received reports, as well as complaints from NGOs, wherein it was alleged that as a result of an IDF aerial attack on 9 July 2014, nine individuals were killed in a beachside café on the Khan Younis coast. Subsequently, and in accordance with the MAG's investigation policy, it was decided to refer the incident to the FFA Mechanism for examination.

The factual findings collated by the FFA Mechanism and presented to the MAG, indicated the existence of grounds for a reasonable suspicion that the attack was not carried out in accordance with the rules and procedures applicable to IDF forces. As a result, the MAG has ordered the opening of a criminal investigation into the incident.

### **Incidents in Regards to which the MAG Ordered a Criminal Investigation Without Requiring Prior Examination by the FFA Mechanism**

#### **4. Allegation Concerning Abuse of a Detainee, Resident of Juhor ad-Dik (28 July 2014) –**

The MAG Corps received a complaint, on behalf of a resident of Juhor ad-Dik, alleging that after his capture by IDF forces, he was physically struck without justification. In response to this complaint, the MAG ordered the opening of a criminal investigation into the incident.

#### **5. Allegations Concerning Unlawful Fire on a Medical Clinic (23 July 2014) -**

In the wake of media reports, wherein it was alleged that IDF forces had intentionally fired tank shells at a medical clinic from which there had emanated fire resulting in the death of an IDF officer on the day prior, the MAG ordered the opening of a criminal investigation into the incident.

### **An Incident which has been the subject of a Criminal Investigation and in Regard to which the MAG has Decided to Issue an Indictment**

#### **6. Incident Involving Looting in the Shuja'iyya Neighborhood (20 July 2014) -**

As previously reported, in the wake of an IDF operational report giving rise to a suspicion that a soldier had looted a sum of cash, the MAG ordered the opening of a criminal investigation, while the Operation was still under way. The MPCID investigation has been completed, and after the MAG reviewed its findings, he decided to issue three indictments against three soldiers who were involved in the incident. Two soldiers stand accused of having looted a sum of cash, totaling

2,420 NIS, from the house in which the forces were staying in the Shuja'iyya neighborhood. Another soldier stands accused of having been an accessory to the commission of the offence. Two of the accused are charged with involvement in an additional offence of obstruction of justice. Efforts were made over the course of the investigation to locate the home owner, both in order to collect his testimony, as well as in order to return the money, should the accused be convicted of the offences for which they have been charged. These efforts were unsuccessful; however, after a sufficient evidentiary basis had been established, the indictments were issued.

### **A Criminal Investigation which was Completed and in Regard to which the MAG has Decided to Close the Investigation File**

#### **7. Allegations Concerning the Death of Four Children on the Gaza Strip Coast (16 July 2014) -**

As previously reported, the MAG Corps received reports, as well as complaints from NGOs, wherein it was alleged that as a result of an IDF attack on 16 July 2014, four children were killed (Ahed Atef Bakr, Zakariya Ahed Bakr, Mohammad Ramiz Bakr, and Ismail Mahmoud Bakr) on the beach, adjacent to the Gaza port. Subsequently, and in accordance with the MAG's investigation policy, the incident was referred to the FFA Mechanism for examination. The factual findings and materials collated by the FFA Mechanism, and which were presented to the MAG, indicated the existence of grounds for a reasonable suspicion that the attack was not carried out in accordance with the rules and procedures applicable to IDF forces. As a result, the MAG ordered the opening of a criminal investigation into the incident.

The MPCID investigation was recently completed, and after the MAG reviewed its findings, he decided to close the investigation file, in the absence of a suspicion regarding the commission of a criminal offence by IDF soldiers.

The investigation that was conducted was thorough and extensive. During the investigation process testimony was collected from a large number of IDF soldiers and officers who were involved in the planning and execution of the attack. Additionally, an extensive number of documents relating to the attack were reviewed, along with video footage documenting the attack in real time, as well as media images and video footage which documented parts of the incident. Moreover, MPCID investigators made efforts to collect the testimonies of Gaza Strip residents who were, allegedly, witnesses to the incident. In this context, the collection of testimony from three witnesses was coordinated. Regretfully, despite the prior coordination, the witnesses eventually declined to meet with the MPCID investigators, and instead provided affidavits in regard to the incident.

From the factual findings collected by MPCID investigators, it arose that the incident took place in an area that had long been known as a compound belonging to Hamas's Naval Police and Naval Force (naval commandos), and which was utilized exclusively by militants. The compound in question spans the length of the breakwater of the Gaza City seashore, closed off by a fence and clearly separated from the beach serving the civilian population. It further arose in the course of the investigation (including from the affidavits provided to the MPCID

by Palestinian witnesses), that the compound was known to the residents of the Gaza Strip as a compound which was used exclusively by Hamas's Naval Police. The IDF carried out a number of attacks on the compound in the days prior to the incident. In the course of one such attack, which took place on the day prior to the incident (15 July 2014), a container located inside the compound, which was used to store military supplies, was attacked.

Shortly before the incident, an intelligence assessment was established which indicated that operatives from Hamas's Naval Forces would gather in the military compound in order to prepare for military activity against the IDF. On 16 July, aerial surveillance identified a number of figures entering the compound at a running pace. These figures entered a shed adjoining the container which had been attacked the day prior. Against the backdrop of the aforementioned intelligence assessment, these were believed to be militants from Hamas's Naval Forces, who had arrived at the compound in order to prepare to execute the aforementioned military activity against the IDF. It should be stressed that the figures were not identified at any point during the incident, as children.

In light of the above, it was decided to conduct an aerial attack against the figures which had been identified, after all the necessary authorizations for an attack had been obtained, and after a civilian presence in the area had been ruled out. When one of the identified figures entered into the remains of the container which had been attacked on the day prior to the incident, one missile was fired from the air towards the container and the adjoining shed. As a result of this attack, it appeared that one of the figures identified was hit. Following this attack, the rest of the figures began to run in the direction of the compound's exit. Shortly before their exit from the compound, an additional missile was fired from the air towards them, which hit the figures in question after they had exited the compound. Tragically, in the wake of the incident it became clear that the outcome of the attack was the death of four children, who had entered the military compound for reasons that remain unclear. It further arose from the investigation that, under the circumstances in question, it would not have been possible for the operational entities involved to have identified these figures, via aerial surveillance, as children.

After reviewing the investigation's findings, the MAG found that the attack process in question accorded with Israeli domestic law and international law requirements. The decision to attack was taken by the competent authorities, and the attack was aimed at figures who were understood to be militants from Hamas's Naval Forces, who had gathered in order to prepare to carry out military activities against the IDF. At the time that the decision was made, the attack was not, according to the assessment of the operational entities, expected to result in any collateral damage to civilians or to civilian property. Moreover, the attack was carried out while undertaking several precautionary measures, which aimed to prevent any harm to civilians. Such measures included, *inter alia*, the choice of a munition which was not expected to cause any harm to civilians, and the deployment of real time visual surveillance. The MAG found that the professional discretion exercised by all the commanders involved in the incident had not been unreasonable under the circumstances. However, it became clear after the fact that the identification of the figures as militants from Hamas's Naval

Forces, was in error. Nonetheless, the tragic outcome of the incident does not affect the legality of the attack *ex post facto*.

Accordingly, the MAG ordered that the investigation file be closed without any further legal proceedings – criminal or disciplinary – to be taken against those involved in the incident. Nonetheless, *inter alia* as a result of this incident, the IDF has been working to improve a number of its operational capabilities, including technological capabilities, in order to minimize the risk of the recurrence of tragic incidents of this kind.