

**ISRAEL INSTITUTES PROCEEDINGS
IN RELATION TO GAZA WAR**

by

Katherine Iliopoulos

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Eighteen months after the end of the 2008-2009 Gaza War that claimed the lives of 1,300 Palestinians, the Israeli Defence Force has announced that it has instituted disciplinary and legal proceedings against Israeli soldiers in relation to four incidents, three of which had already been examined in detail in the Goldstone Report of September 2009.

The Goldstone Report pointed to evidence of the commission of war crimes and called upon both Israel and Hamas to conduct their own investigations. The announcement marks the first time that Israel has charged its soldiers with anything other than minor offences committed during the 22-day conflict, however the scope of the investigations remains strictly within the military framework, contrary to the advice of human rights organisations.

1. Majdi Rabbo, Human Shield

Gazan civilian Majdi Abed Rabbo claimed that he was used as a human shield in an account first described in The Independent. He spoke of how he was taken at gunpoint by Israeli soldiers and forced to search the neighbouring house for Hamas militants. In a 24 hour period, Rabbo made four perilous trips across dangerous terrain between the Israeli forces and three besieged but defiant fighters. After Rabbo went into the house four times and failed to persuade the militants to evacuate and surrender, the house was destroyed with rockets and bulldozers, and the militants were killed.

According to the Military Police, Rabbo had volunteered to persuade the Hamas unit holed up inside a house to surrender before the house was demolished, a conclusion that is not supported by Rabbo nor the Goldstone report. Despite accepting this version of events, the Military Advocate-General (MAG) Major General Mendelblit ordered a disciplinary hearing because the incident was in a violation of an Israeli Supreme Court ruling on the "neighbour procedure" by which Palestinian civilians are used to make first contact with militants barricaded in homes. The battalion commander was tried and received a warning.

The outcome appears to be based on the fact that the commander had violated a Supreme Court ruling, without any reference to the norms of international law. According to the Goldstone Report, this incident constituted a violation of the prohibition against the use of human shields, which is a war crime. According to Article 51 of the 1977 Additional Protocol I of the 1949 Geneva Conventions: "The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objects from attacks or to shield, favour or impede military operations".

2. 'White Flag' Deaths

Israel will also investigate the January 4 2009 killing of two Palestinian women, Majda Abu Hajaj and her mother, Rieyh, who were shot while trying to evacuate the area along with 28 other civilians after their homes were shelled. Eyewitnesses said that Majda and other members of the group were carrying white flags at the time.

Palestinian witnesses and dozens of soldiers and commanders were questioned as part of the comprehensive investigation which found inconsistencies between the testimonies given by the accused, other soldiers and Palestinian civilians. The soldiers testified that it was a man that was shot and killed in the same location described by Palestinian witnesses, and not two women.

When interrogated by the Criminal Investigations Division of the Military Police, Staff Sergeant "S" said he fired in the direction of one Palestinian woman and saw her fall after the shot. The soldier said that he had shot at the legs of the women to protect other troops.

After reviewing the evidence, Mendelblit ordered that the Staff Sergeant be charged with manslaughter by a military court. This decision is based on evidence that the soldier deliberately targeted an individual walking with a group of people waving a white flag without being ordered or authorised to do so.

While the accused faces a charge of manslaughter under Israeli military law, the criminal act could also be classified as a breach of the laws of armed conflict in that it constituted the direct targeting of civilians. "The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited," states Additional Protocol I of 1977. Israel has not ratified Protocol I, but this provision is generally recognized as customary law and therefore universally applicable. Under the Geneva Conventions, combatants are obliged to distinguish between soldiers and civilians and also have a legal obligation to protect civilians.

Israeli soldiers shot dead a total of 11 unarmed Palestinian civilians carrying white flags during the Gaza offensive, according to a report by Human Rights Watch, *White Flag Deaths: Killings of Palestinian Civilians during Operation Cast Lead*. In each case, the victims were standing, walking, or in a slowly moving vehicle with other unarmed civilians who were trying to convey their non-combatant status by waving a white flag.

The incident involving Majda Abu Hajaj and her mother Rieyh are mentioned in this HRW Report, but no mention is made of it in the Goldstone Report. Rieyh's son Majid Abu Hajaj, a teacher at a UN school, said that he had returned to the family home on January 20 to find the bodies of his mother and sister, who had been shot while walking with a white flag, in the street. "The bodies were still lying there. Majda had been run over by a tank," he told the *New York Times*. "The next day our neighbours came and brought us her [severed] foot. My mother's body was in the yard too, partially buried under some sand." Their bodies remained where they fell, he said, because ambulances had been prevented from accessing the area.

3. Zeitoun Massacre

On 5 January 2009, 100 members of the extended al-Samouni family had taken shelter in their home in the Zeitoun neighbourhood of Gaza as gunfire and shelling erupted around them. After hours of fighting, the house was hit with rockets, bringing the building crashing down on the family inside. Up to 30 members of the family were killed.

After examining the findings of the investigation, Mendelblit ordered a Military Police criminal investigation into the circumstances of the incident. The investigation will examine the decision-making on all levels that led to the concentration of 100 family members in one home as well as the aerial attacks on nearby buildings and the house itself. This investigation could potentially result in the gravest charges yet to result from Operation Cast Lead, and may touch upon soldiers and officers of different ranks from both the ground forces and the Air Force.

The Goldstone Report alleged that the house was deliberately targeted, thereby constituting a direct attack on civilians in violation of IHL, while the IDF has maintained that the rockets were the result of attacks on nearby buildings.

This incident provoked outrage around the world, as Palestinian paramedics only discovered the corpses after being prevented by the IDF from visiting Zeitoun for four days.

Israel had an obligation to facilitate the medical care of the wounded. This stems from Common Article 3 of the Geneva Conventions, reflecting customary law, which provides that “the wounded and sick shall be collected and cared for”. This entails an obligation on the warring parties to ensure the unhindered movement of medical personnel and ambulances to carry out their duties and of wounded persons to access medical care.

4. Mosque in Jabalya Refugee Camp

In the case of the Air Force attack on the Ibrahim al-Maqadma mosque in the Jabalya refugee camp, in which over a dozen Palestinians were killed, including children, the IDF found that a captain in a command outpost made a professional mistake in authorising the strike.

The IDF was not aware at the time that the building was a mosque with people inside, and the captain received permission from the combat director, a colonel, to order an air strike. Minutes later, he was informed that the building was a mosque, but did not change the order or update his superiors.

The captain was removed from his post and reprimanded for not seeing fit to inform the combat director that the building was a mosque. However, the investigation found no evidence of the Goldstone Report's claim that this was a deliberate attack on civilians in violation of IHL. The Report had said that an Israeli projectile struck near the doorway of the building during evening prayers, killing at least 15 civilians who were inside.

Apparently the targets of the airstrike were two nearby militants, but at the time of the incidents, the BBC reported that IDF spokesman Captain Rutland had said the army had no record of a target in that specific area at that time. In any case, the attack on a building with dozens of civilians inside in order to achieve the objective of killing two militants appears to violate the principle of proportionality. In addition, the targeting of a mosque – provided that it is not being used for military purposes – is along with other places of religious worship and other protected property a violation of the Fourth Geneva Convention.

Chief Military Advocate-General Mandelblit

General Mandelblit is independent of the IDF command structure but wears a uniform, offered legal advice on targets before the operation and, according to the New York Times, is widely seen as an insider.

In December 2007, he declared that the IDF's use of cluster bombs during the Second Lebanon War complied with international humanitarian law, while the UN drew the opposite conclusion. Two investigations by the UN found that the use of cluster munitions during that war represented a violation of IHL. A group of four UN Special Rapporteurs travelled to Israel and Lebanon and submitted a report in October 2006 to the UN Human

Rights Council, which criticised Israel's use of cluster bombs as "inconsistent with principles of distinction and proportionality." The Special Rapporteurs reported that although Israel said it acted in accordance with IHL, "actual practice fell short" in various respects, including the "reckless, perhaps even deliberately reckless, use of cluster munitions".

He joined a chorus of criticisms of the Goldstone Report upon its release stating: "We ourselves set up investigations into 140 complaints. It is when you read these other reports and complaints that you realise how truly vicious the Goldstone Report is. He made it look like we set out to go after the economic infrastructure and civilians, that it was intentional. It's a vicious lie".

Mendelblit has closed the case against the commander of a tank company who fired at rocket-launching militants and accidentally killed civilians in a nearby mourning tent and rejected all of the Goldstone Report's claims that the IDF targeted civilian infrastructure, including food factories, wells and a flour mill. In all these cases, Mendelblit said, the evidence showed that the forces had targeted Hamas fighters.

Israeli human rights organisation B'Tselem has cautiously welcomed the developments. It said that even if the investigations lead to the filing of indictments against soldiers, only low-ranking soldiers will be prosecuted, while the officials responsible for formulating the policy will not be held accountable for their acts. B'Tselem also expressed doubts about the impartiality and independence of the investigations, since they are carried out by an entity that is an integral part of the IDF.

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