Paras 1 to 42

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[**Source**: Human Rights Council, Report of the high-level fact-finding mission to Beit Hanoun established under Council resolution S-3/1, A/HRC/9/26, 1 September 2008, footnotes omitted]

[…]

HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Report of the high-level fact-finding mission to Beit Hanoun established under Council resolution S-3/1

I. INTRODUCTION

1. At its third special session, held on 15 November 2006, the Human Rights Council adopted resolution S-3/1, in which the Council among other things, called for a high-level fact-finding mission to be established and for the mission to travel to the town of Beit Hanoun in the occupied Palestinian territory of Gaza, following Israeli military operations carried out there around 8 November 2006. […]
2. […] The present report is the final report of the mission, following its trip to Beit Hanoun in May 2008.

II. Background

[…]

D. Applicable law

1. In construing its mandate and the facts presented to it, the mission applied an international law framework, in particular international human rights law and international humanitarian law […].
2. Gaza is under the effective control of Israel and is thus occupied by it. This control, including in the

period since the disengagement of Israel in September 2005, has been described in a number of reports to the Council and to the General Assembly […]. The mission was able to witness this control first-hand, not least in its own protracted difficulties in gaining access to the territory without Israeli cooperation. The mission also witnessed the constant surveillance of Gaza by Israeli forces, most strikingly from unmanned aerial drones. It was also able to see how Israel effectively controls basic aspects of the daily life of Gazans, notably through the fuel blockade in force when the mission visited the territory. […]

3. As the occupying force, Israel has obligations towards the population in Gaza under both international human rights law and international humanitarian law, both of which are relevant to the shelling of Beit Hanoun. Israel is a party to six of the nine core international human rights instruments. The long-standing position of United Nations human rights treaty bodies is that, as a State party to international human rights instruments, Israel continues to bear responsibility for implementing its human rights conventional obligations in the occupied Palestinian territory, to the extent that it is in effective control. This position is supported by the jurisprudence of the International Court of Justice which, in its advisory opinions on the South West Africa case and the legal consequences of the Construction of a Wall in the Occupied Palestinian Territory case, held that an occupying power remains responsible for fulfilling its obligations under the relevant human rights conventions in occupied territory.
4. In terms of international humanitarian law, Israel, as the occupying power, has responsibilities under, *inter alia*, the Hague Regulations (accepted as customary international law) and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.
5. The mission's mandate also encompasses the humanitarian law obligations of other parties to the conflict, the most relevant being militants launching rockets from Gaza into Israel (Council resolution S-3/1, para. 6). Under accepted customary international humanitarian law obligations, armed groups are bound by the obligations of common article 3 of the Geneva Conventions. They must respect and ensure respect of the principles of distinction, proportionality and the obligation to take the necessary precautions to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. Aiming rockets at civilian targets is a violation of this obligation, as would be endangering Palestinian civilians by launching rockets from or near civilians (for example in residential areas).

III. The shelling of Beit Hanoun on 8 november 2006 and its context

A. Context

1. Beit Hanoun is situated near the north-eastern border of the Gaza Strip, with more than 35,000 inhabitants, of which 70 per cent are registered refugees. As in the case of other Gazan towns and cities, the population density in the town is very high, with houses and apartment buildings of three to five stories predominating and a high number of inhabitants in each building. […] The mission witnessed the widespread destruction of houses and property and the devastation of agricultural land in the border area as a result of Israeli incursions.

[…]

1. […] [I]ncreased military activity added a climate of fear for an already fragile population. According to the Office for the Coordination of Humanitarian Affairs, from the disengagement until 9 November 2006, the Israeli military fired approximately 15,000 artillery shells and conducted more than 550 air strikes into the Gaza Strip. Israeli military attacks killed approximately 525 Gazans and injured 1,527. According to

Israel, the majority of its military operations in Gaza are aimed at stopping rocket-launching activity. Over the same period, at least 1,700 Kassam rockets were fired into Israel by Palestinian militants, injuring 41 Israelis.

2. Conflict reached a peak in the summer and autumn of 2006 with Israeli military incursions into Gaza, code-named “Summer Rains” and “Autumn Clouds” respectively, the latter focusing on Beit Hanoun in the week immediately prior to 8 November. […] During the incursion, the Israeli military fired 239 artillery shells and launched 66 air-to-ground missiles into Gaza. Israel enforced a curfew confining residents to their homes that was lifted only every second day for three to four hours. Hundreds of male residents aged between 16 and 40 were ordered from their homes and taken to an Israeli holding centre to the north of the town for questioning. […]
3. […] The hospital in Beit Hanoun was inaugurated barely five weeks before the incursion. According to the World Health Organization, it was not fully operational at the time of the incursion and was designed as a centre for primary care and triage. The mission heard testimony from the hospital Director, a surgeon, a nurse and an ambulance driver. They told of the 24-hour work of the hospital during the incursion in conditions without water, telephone and grid electricity. The already grave situation was compounded as up to 1,500 people sought refuge in the hospital on 3 November, putting excessive demands on hospital staff to provide food and sleeping facilities. Access to and from the hospital was restricted by the Israeli military, hampering ambulances from fetching and transferring the injured. Two paramedics were killed during the military operation.

[…]

1. Accounts by United Nations relief agencies, international and Palestinian human rights groups put the number of Palestinians killed during the incursion (together with the victims of the 8 November attack) at between 77 and 82, including at least 39 civilians. Around 250 others were reportedly wounded, including at least 67 children and 58 women. One Israeli soldier died during the operation.

[…]

B. The events of 8 November 2006 and immediate aftermath

1. […] [T]he physical evidence of the attack appeared largely intact, as a consequence of both the enormous impact of a 155 mm shell in an urban area and the lack of significant repairs to damaged property. […]
2. The shelling took place early on the morning of Wednesday, 8 November 2006, some 24 hours after the Israeli military withdrew from the town and concluded operation Autumn Clouds. Residents of Beit Hanoun, including the Al-Athamna family, were returning to normal life after the trauma of the incursion. Those interviewed by the mission spoke of the night of 7 November as being the first time they and their children could again “get a proper night’s sleep”. Another survivor noted that it was the first night she could bake bread. Another noted that it was the first time he could rise and pray at the mosque rather than at home.
3. At approximately 5.35 a.m., the first 155 mm shell from Israeli artillery hit a house in the heavily populated neighbourhood of al-Madakkha in northern Beit Hanoun. Over the following 30 minutes or so,

a total of 12 shells struck an area of approximately 1.5 hectares along the western side of Hamad Street, which lies around 800 metres from the armistice line. The shells struck six houses as well as surrounding areas in Hamad Street and lanes between houses. Six shells fell on an area of 50 metres in diameter. The mission saw the extensive damage caused by the shells, including holes blasted through reinforced concrete walls and floors, and blast damage to surrounding buildings. Amateur video footage obtained by the mission shows the last three shells landing with intervals of around one minute and 15 seconds.

4. The victims of the shelling were either asleep in their homes or, as was the case with a number of the men, returning from morning prayer. Following the first shell, which hit a house killing and injuring people inside, most residents fled to the street. Once in the street, people congregated to assist those who had been injured. More shells then landed in the street and surrounding lanes, killing and injuring dozens more. A number of survivors ran into surrounding fields. Others indicated running towards the nearby Erez crossing, believing that the Israeli installation there would offer safety.
5. […] Woken by the first shell, families fled their homes and assembled in the street outside, where dead and injured persons already lay. One mother described being faced with one of her children with an open skull wound while trying to help another son as he scooped his intestines back into his abdomen. Another spoke of helping his injured father to the door of the house, only for him to be killed by a direct shell at the door. As people gathered and attempted to provide assistance to the injured, more shells landed in the street. […]
6. Some time after the first shell landed, the injured started to arrive by private vehicle at the Beit Hanoun hospital, most having lost limbs or requiring amputation. Within a short amount of time, 30 to 40 injured people arrived at the hospital. The director of the hospital declared an emergency and called for ambulances from across Gaza to assist. The first ambulance to reach the scene of the shelling itself came under fire, the driver and assistant being forced to abandon the vehicle. […]
7. The shelling resulted in the immediate death or mortal wounding of 19 civilians, including seven children and six women. All but one of the victims were from a single family group, the Al-Athamna. Over 50 others were wounded during the attack.
8. A number of the more seriously injured required treatment that could not be provided in Gaza. Families of the injured ran directly to the Erez crossing to plead for Israeli approval to transport injured people to Israeli hospitals. According to survivors, approval to move some injured to Israeli hospitals was received only some 12 hours after the shelling. […]

[…]

C. The Israeli response and explanations for the shelling

1. Following the shelling, the Prime Minister and Minister for Defense of Israel “expressed their regret over the deaths of Palestinian civilians in Beit Hanoun” and offered “urgent humanitarian assistance and immediate medical care for the wounded”. The Israeli military similarly expressed regret but stressed that “the responsibility for this rests with the terror organizations, which use the Palestinian civilian population as a ‘human shield’, carrying out terror attacks and firing Kassam rockets at Israeli population centres from the shelter of populated areas”. The Minister for Foreign Affairs said that “unfortunately, in the course of battle, regrettable incidents such as that which occurred this morning do happen”.
2. On 8 November 2006, Israel announced an inquiry into the shelling of Beit Hanoun earlier that day,

intimating that the shells were not fired on civilian areas of Beit Hanoun intentionally but rather as a result of some technical error. Use of artillery in Gaza was halted pending the outcome of an investigation. It has been reported to the Mission that artillery has not been used in Gaza since 8 November 2006.

3. The Israeli military appointed an internal investigation committee of military staff headed by a senior officer. Some 15 months after the shelling, the committee presented its findings to the Military Advocate General, who then decided that “no legal action is to be taken against any military official regarding this incident”. According to a press communiqué issued by the Israeli Ministry of Foreign Affairs, the reasons for this decision were that:
    a. The shelling of civilians was not intentional;
    b. The error was “directly due to a rare and severe failure in the artillery fire-control system operated at the time of the incident” causing “incorrect range findings that lead, unknowingly, to fire at a different target then planned initially”;
    c. The malfunction was so rare that “it is not possible to point to a legal circumstantial connection, between the behaviours of the people involved in the incident and the result of the incident”.
4. Neither the report of the committee nor that of the Advocate General has been made public. […]
5. The Israeli military appears to be of the view that, if an error is caused by malfunctioning technology, there can be no causal link (and thus no responsibility) on the part of individuals, be they designing, building or operating the technology. The Mission also notes that press reports of the investigation quote military sources as suggesting that “it would be worthwhile to look into whether the artillery battery team could have nonetheless avoided the incident through more proper performance, and careful monitoring of the equipment”. […]
6. According to a number of sources, the Israeli military version of events on 8 November 2006 is as follows. On or at some time prior to 8 November, the military received information that rocket launching would take place from a field near Beit Hanoun. “In an effort to disrupt and thwart the launching of rockets at Israeli population centers”, Israeli artillery directed twenty-four 155 mm shells at two targets near Beit Hanoun. In the military’s view, artillery shelling of a site of potential rocket launching is an effective deterrent. The first 12 shells landed in the correct location, however 6 of the second round landed 450 metres away from their intended target and resulted in the civilian casualties.
7. This view is in conflict with the information received by the mission. […]
8. […] Many expressed doubts as to claims that they had been shelled in error. More than one remarked that they “could believe one shell fired in error but not 12”. Others indicated that the level of Israeli monitoring of Beit Hanoun (including by unmanned aerial drones as witnessed by the mission) is such that an error of this magnitude is highly unlikely. […]
9. The mission strongly endorses the position put forward by others, particularly human rights organizations, that the use of artillery in urban areas, especially in densely populated urban settings such as Gaza, is wholly inappropriate and likely contrary to international humanitarian and human rights law. The risks of this practice were compounded by the reported reduction by the Israeli military of the “safety zone” for artillery shelling from 300 to 100 metres earlier in 2006. The 155 mm artillery shells fired on Beit Hanoun have an expected lethal radius of 50 to 150 metres and a casualty radius of up to 300 metres. Firing such a shell within 100 metres of civilians appears to the mission almost certain to cause casualties at one time or another. In litigation by human rights groups against the safety-zone reduction, it was reported that Israeli military officers “admitted that the new regulations put Palestinian

lives at risk but insisted it would help strike back at Palestinian militants launching rockets at Israeli civilians".

Paras 44 to 80

IV. Victims and survivors

[…]

1. […] The extremely difficult conditions of life facing all Gazans in many instances constitute gross violations of human rights and international humanitarian law. The mission agrees with the Secretary-General (SG/SM/11429), the previous Special Rapporteur (A/HRC/7/17) and the High Commissioner for Human Rights (A/HRC/7/76) that the blockade amounts to collective punishment contrary to international humanitarian law.

A. The protection of civilians in conflict and the right to life

1. […] As noted by the Israeli Foreign Minister above, "regrettable incidents" do occur in battle; however, such incidents must be assessed in accordance with both the rules regulating recourse to force and international humanitarian law, the applicable *lex specialis*.

[…]

1. The primary rule of international humanitarian law is the protection of civilians. Article 43 of the Hague Regulations require the occupier to "take all the measures in his power to restore, and ensure, as far as possible, public order and safety" in the occupied territory. According to Judge Higgins, President of the International Court of Justice, "the protection of civilians remains an intransgressible obligation of humanitarian law, not only for the occupiers but equally for those seeking to liberate themselves from occupation". Nevertheless, the use of force with an impact on civilians is permissible if it is directed at a legitimate military target and is proportionate to the overall threat faced. The mission received no evidence that the shelled area of Beit Hanoun was a legitimate military target and notes that it had been occupied by Israeli military earlier in the week.
2. Israel has not claimed that the houses around Hamad Street were a military target but that the shelling was caused by technical error. The International Law Commission articles on the responsibility of states for internationally wrongful acts are silent on whether such a mistake relieves a State of its international responsibility for the commission of an internationally wrongful act and the requirement of fault in international law is controversial. […]
3. The firing of artillery towards Beit Hanoun on the morning of 8 November 2006 was a deliberate act in the context of the long-term occupation of Gaza and of the deaths of civilians and destruction of property in Autumn Clouds. Taken together with further facts (such as the reduction of the safety zone for artillery use referred to above) and the nature of the "intransgressible obligation" to protect civilian life, the mission considers that there is evidence of a disproportionate and reckless disregard for Palestinian civilian life, contrary to the requirements of international humanitarian law and raising legitimate concerns about the possibility of a war crime having been committed.
4. Human rights law is also applicable in armed conflict and occupation. The mission considers that this

reckless disregard for civilian life also constitutes a violation of the right to life as set out in article 6 of the International Covenant on Civil and Political Rights to which Israel is a party. The right to life includes the negative obligation to respect life and the positive obligation to protect life. The Human Rights Committee has stated that States parties should take measures not only to prevent and punish deprivation by criminal acts, but also to prevent arbitrary killing by their own security forces. No exception is made for acts during war.

5. The right to life also includes a procedural component that requires adequate investigation of any alleged violation "promptly, thoroughly and effectively through independent and impartial bodies" for "failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant". The investigation of the Israeli military referred to above was not independent (it was carried out by a committee comprised of Israeli military personnel) and the lack of transparency makes it impossible to determine whether or not it was rigorous or effective. […]

B. The situation of victims and the needs of survivors

1. The needs of victims and survivors of the shelling include compliance by Israel with other human rights obligations, especially where failure to do so has an adverse impact on their recovery from the events of 8 November 2006. […]

1. The right to physical and mental health

1. Testimony demonstrated a number of violations of the obligation to respect and protect the right to the enjoyment of the highest attainable standard of physical and mental health. The Special Rapporteur has described the many ways in which the primary obligation to protect the right to physical and mental health has been severely undermined by the economic situation and the blockade of Gaza […].
2. The situation in Beit Hanoun before and after the shelling has had a significant detrimental impact on the access of victims and survivors to adequate health care. […]

[…]

1. […] The obligation under the Covenant to respect the right to physical and mental health requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. Survivors told of the various ways in which Israeli authorities had failed to comply with this obligation, for example by refusing permission to return to hospitals in Israel and Egypt for follow-up treatment that had been prescribed by doctors. Testimonies included the following: "Once a month, I have to go to Israel to follow treatment. I spend a month getting my permit. Since the siege I can't go for follow-up." Another survivor could not return to Egypt to have shrapnel removed from wounds, nor could a woman whose foot had been blown off during the shelling return to Egypt to receive a prosthetic foot. […]

[…]

3. Freedom of movement

1. Freedom of movement is provided for in article 12 of the International Covenant on Civil and Political

Rights, including individuals' freedom to leave any country, including their own. Together with other persons living in Gaza, survivors of the Beit Hanoun shelling have had their movements severely restricted by the occupation and the blockade. More directly, during the Autumn Clouds operation, a curfew was imposed on Beit Hanoun, which was thus isolated. The impact of these restrictions on access to health-care services has been discussed above. Being unable to move freely also contributes to feelings of isolation and can undermine mental health.

4. The situation of women

1. The particular position of women and gender-specific harm may be invisible where a whole society is facing gross violations of human rights and of international humanitarian law, as there is a sense of unity that prevents identification of and focus on women's situations. […]
2. The mission heard testimony from both women survivors of the shelling and women's groups active in Gaza. Many spoke of the intrusions of the Autumn Clouds incursions on women's sense of privacy within the home. Where women have a more vulnerable social position and only limited freedom of movement in public, the private space of the home is especially important as a "women's space". Intrusion into the home by Israeli military personnel, sometimes for several hours, caused humiliation, loss of dignity, denied privacy and undermined women's sense of belonging and ownership. […]
3. Autumn Clouds and the shelling on 8 November led to the destruction of a number of houses. Female victims told the mission that they destroyed "the only thing in the world" and that "life itself was destroyed" with the house. […]
4. One woman told the mission that the sufferings of women "could not be divided" but noted that the particular effects and vulnerable social position of women had been worsened by the blockade and effects of the incursion and shelling; women are "the poorest of the poor" and unemployment is especially high among women, including women graduates. The burden of childcare falls on women, which is made more difficult when children are traumatized. Lack of specialized medical services and limited facilities for counselling mean that women receive little expert assistance. […]

5. Access to justice and right to an effective remedy

1. One of the major needs of survivors is to secure access to justice and redress. […] In the Basic Principles and Guidelines on the Right to a Remedy, the General Assembly recognized that it is through honouring the victims' right to benefit from remedies and reparation that the international community keeps faith with the plight of victims and survivors. The survivors of the Beit Hanoun shelling have not been able to have access to justice. Victims have made recourse to the assistance of an Israeli lawyer for compensation from Israel, at this stage through court proceedings; however, they face many obstacles, including restrictions on their travel to Israel and legal costs. A number of people also spoke of their concerns about measures introduced recently into Israeli law that had the effect of limiting the ability of Palestinians harmed by Israeli military action to seek redress in Israeli courts.
2. The Israeli military internal investigation referred to above concluded that there would be no prosecutions of individuals or other disciplinary action arising from the shelling; therefore, no one has been held to account for the injuries suffered. […]
3. Article 2 (3) of the International Covenant on Civil and Political Rights guarantees the right to an effective remedy for violations of the Covenant. The Basic Principles state that reparation for harm

suffered should be “adequate, effective and prompt”, and that victims seeking access to justice should receive proper assistance. These standards were not observed. The mission was told of how the lack of financial resources prevented survivors from seeking further health care and from finding adequate housing where homes had been made uninhabitable. Some family members are living in rented accommodation and others have taken out loans, creating further financial strains. This also means that family members have been separated when they need mutual support.

4. There has been limited monetary assistance offered to some survivors of the Beit Hanoun shelling and immediate humanitarian assistance from UNRWA. The United Arab Emirates and the United Nations have assisted in the rebuilding of houses. To the best of the mission’s knowledge, Israel has not paid compensation for the damage and harm caused by its internationally wrongful act. The requirements for reparations for victims of human rights abuses have not been satisfied. Other forms of monetary compensation (for example, for moral damage or lost opportunities) have not been offered.

[…]

V. Conclusions and recommendations

[…]

1. The violence in Gaza and southern Israel has led to countless violations of international human rights and international humanitarian law. […] The people of Gaza must be afforded protection in compliance with international law and, above all, the Fourth Geneva Convention. […] In the absence of a well-founded explanation from the Israeli military (who is in sole possession of the relevant facts), the mission must conclude that there is a possibility that the shelling of Beit Hanoun constituted a war crime as defined in the Rome Statute of the International Criminal Court. Similarly, as the mission made clear to Hamas at the highest level, the firing of rockets on the civilian population in Israel must stop. Those in positions of authority in Gaza have not only an international humanitarian law obligation to respect international humanitarian law norms relating to the protection of civilians, but also a responsibility to ensure that these norms are respected by others.
2. […] There has been no accountability for an act that killed 19 people and injured many more. […] The mission repeats its position that, regardless of whether the casualties at Beit Hanoun were caused by a mistake, recklessness, criminal negligence or wilful conduct, those responsible must be held accountable. It is not too late for an independent, impartial and transparent investigation of the shelling to be held; indeed, the mission notes other instances in which the courts have ordered the Israeli military to open investigations into the killings of civilians by the military. […]
3. As the mission has repeatedly stressed (including to representatives of Hamas), those firing rockets on Israeli civilians are no less accountable than the Israeli military for their actions […].
4. Accountability involves providing a remedy and redress for victims. To date, neither has been forthcoming from Israel, despite its admission of responsibility for the attack. […] While the mission calls on Israel to remove these obstacles, it is of the view that victims should not be forced to fight for compensation through Israeli courts when all accept that damage was inflicted on individuals by the State. The mission recommends that the State of Israel pay victims adequate compensation without delay. In the light of the magnitude of the attack on a small community, and in addition to compensation to individuals, the mission also recommends that Israel make reparation to the community of Beit

Hanoun in the form of a memorial to the victims that constitutes a response to the needs of survivors. […]

5. […] Israel, Hamas and the Palestinian Authority have human rights obligations towards the victims. […] A major barrier to the enjoyment of human rights is the ongoing blockade that limits individuals' ability to provide an adequate standard of living for themselves and their families and the capacity of local authorities to provide essential services for the population. A central need of victims is access to health services. Israel must desist from obstructing victims' access to health-care services, be it through restricting the flow of medical goods and personnel into Gaza, or through restricting victims' ability to leave Gaza to seek health care elsewhere.
6. […] [O]ne of the most effective and immediate means of protecting Palestinian civilians against any further Israeli assaults is to insist on respect for the rule of law and accountability. We have seen that even the flawed Israeli investigation into the Beit Hanoun shelling resulted in a decision to discontinue use of artillery in Gaza, one of the main causes of civilian death and injury in the territory. The knowledge that their actions will be scrutinized by an independent authority would be a powerful deterrent to members of the Israeli military against taking risks with civilian lives.

[…]

Discussion

I. Qualification of the conflict and applicable law

1.
    a. How would you qualify the situation prevailing in Gaza in November 2006? How does the fact-finding mission qualify it (*para. 11*)? Do you agree? (GC I-IV, Art. 2; HR, Art. 42)
    b. What are the arguments in favour of the existence of a de facto occupation of Gaza by Israel?
    c. Are the same rules applicable to the killing of civilians during the Israeli incursion into Beit Hanoun and one day after the Israeli withdrawal from Beit Hanoun? According to the mission? In your opinion?
2. (*Paras 13-14*)
    a. What is the law applicable to the shelling? According to the mission? According to you? Does it make a difference whether the territory is occupied or not?
    b. The mission's report makes no mention of Protocol I; does this mean that the rules on the conduct of hostilities contained in that Protocol do not apply to the situation under consideration here? Which provisions contained in Protocol I can be said to be customary?
    c. Why are Palestinian militants bound by common Art. 3? Why does common Art. 3 prescribe respect for the principles of distinction and proportionality and for the obligation to take the necessary precautions to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects? Why does it prohibit launching rockets from or near civilians?
    d. Is it conceivable that the Israeli shelling of Gaza is governed by the IHL of international armed conflicts, but the shelling of Israeli towns and villages from Gaza by the IHL of non-international armed conflicts?

II. Conduct of hostilities

1. Does the mission consider that the shelling violated IHL? On what basis?
2.
    a. (*Para. 47*) Does the mission consider that the town of Beit Hanoun was a legitimate military target? What is your opinion? How do you define a legitimate military target? (P I, Art. 51(2))
    b. Does the fact that Palestinian attacks were allegedly launched from the town render it a legitimate military target? What if a member of the armed group had been present in the town that night? (P I, Arts 48 and 51(2))
    c. (*Para. 34*) Would the use of the town of Beit Hanoun as a shield for the launching of rockets entitle the Israeli armed forces to deliberately target it? Would it have been different if the residents were voluntarily protecting the Palestinian militants launching rockets? (P I, Arts 51(7) and (8) and 58)
3.
    a. Did the shelling comply with the proportionality principle? According to the mission? In your opinion? What if the town actually was shelled in error? Must the proportionality assessment be based on the actual or the expected result of the attack? (P I, Arts 51(5)(b) and 57(2)(a)(iii))
    b. Taking into account the likelihood that civilians would be affected by the shelling, even if the shells were in fact aimed at the field, do you think that the number of casualties could be argued not to be excessive compared with the direct military advantage? Would it have made a difference to the proportionality assessment if the Israeli armed forces had also killed Palestinian militants launching rockets during the shelling?
4.
    a. (*Para. 38 onwards*) Which precautionary measures must a party take before launching an attack? Were they taken here? Do you think enough precautions were taken? How could the error have been avoided? Do you agree with the mission that the shelling should be investigated in order to check whether it could have been avoided “through more […] careful monitoring of the equipment” (*para. 38*)? (P I, Art. 57)
    b. b. Are artillery attacks on densely populated urban areas prohibited by IHL? At least in occupied territories? How should Israel react when it is shelled from a place near a populated urban area?
    c. c. What should the reaction of the armed forces have been when they realized that they were hitting the town and not the field (*para. 26*)? (P I, Art. 57(2)(b))

III. Occupation

1. Does Art. 43 of the Hague Regulations protect civilians against attacks?
2. If Beit Hanoun was occupied when the shelling took place, should not Israel have tried to arrest the persons launching the rockets rather than to shell them?
3.
    a. What are the obligations of an occupying power regarding public health in the occupied territories? Was Israel in conformity with its obligations under IHL when it restricted access to and from the Beit Hanoun hospital during the incursions which took place before the shelling (para. 20)? (GC IV, Arts 55-57)
    b. Has Israel violated its obligations in refusing injured civilians access to its own hospitals, in view of the fact that the local health facilities could not meet the demand (*para. 31*)? If Beit Hanoun is in occupied territory? If it is not?

1. Do inhabitants of an occupied territory have a right to leave that territory? Under IHL? Under international human rights law?

IV. IHL and Human Rights Law

1.
    a. *(Para. 50 onwards*) Is international human rights law applicable in armed conflicts? In occupied territories? To the shelling on foreign territory of a town that is not occupied?
    b. Is the Human Rights Council applying IHL in the present case? Would it be entitled to do so? What could the consequences be if the Council was pointing at precise violations of IHL?
2.
    a. Which specific human rights are mentioned in the mission's report? Are they also protected by IHL? What are the obligations of an occupying power regarding those rights? Would it make a difference if the territory was not occupied? From an IHL point of view? From a human rights law point of view?
    b. Do human rights, if applicable, add anything to IHL in terms of the rules applicable to the shelling of Beit Hanoun?

V. Responsibility for Violations

1. *(Para. 36*) Do you agree with the Israeli authorities that no one can be held accountable for the shelling of civilians, as it was not intentional but was the result of a malfunction? (P I, Art. 57)
2. Must a belligerent conduct an enquiry every time its armed forces have killed civilians? Under IHL? Under international human rights law? Which of the two branches of law prevails in such a case, and why? May such an enquiry be conducted by members of the belligerent's own armed forces? Must the result be made public? What legitimate reasons could there be for not making the result public?
3.
    a. Does IHL require reparation/compensation for violations committed by the parties in the course of an armed conflict? What are the provisions applicable in the present case? To whom must this compensation be paid? (Hague Convention IV, Art. 3; P I, Art. 91)
    b. Must a belligerent pay compensation for the deaths of civilians killed by mistake? For civilians killed as incidental casualties in an attack complying with the proportionality principle? Even if all precautionary measures prescribed by IHL were taken?
    c. May a State responsible for IHL violations leave the determination of reparations to its own courts? Even if the victims are on enemy territory?

1. *(Para. 68*) According to IHL, is Israel under the obligation to search for and prosecute the members of its armed forces who allegedly committed violations of IHL?
2. *(Paras 49 and 75*) Do you agree with the mission's conclusion that the shelling may have amounted to a war crime as defined in Art. 8 of the ICC Statute?