

## Israel/Palestine, Operation Protective Edge (Gaza, 13 June - 26 August 2014)

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**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.

### A. UN, Report of the Independent Commission of Inquiry into the Gaza Conflict of 2014

[Source: UN, *Report of the detailed findings of the Independent Commission of Inquiry established pursuant to Human Rights Council Resolution S-21/1*, A/HRC/29/CRP.4, 24 June 2015, available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIGaza/A\\_HRC\\_CRP\\_4.docx](http://www.ohchr.org/Documents/HRBodies/HRCouncil/CoIGaza/A_HRC_CRP_4.docx), footnotes omitted]

[...]

#### I. Introduction

1. On 23 July 2014, the Human Rights Council, in its resolution S-21/1, decided to “urgently dispatch an independent, international commission of inquiry to investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military operations conducted since 13 June 2014, whether before, during or after, to establish the facts and circumstances of such violations and of the crimes perpetrated and to identify those responsible, to make recommendations, in particular on accountability measures, all with a view to avoiding and ending impunity and ensuring that those responsible

are held accountable, and on ways and means to protect civilians against any further assaults,.” [...]

[...]

### III. Legal Framework

[...]

#### A. International humanitarian law

23. In situations of armed conflict, all parties to the conflict are bound by the applicable rules of international humanitarian law, whether customary or treaty based.

24. With regard to treaty law, Israel is a party to the four Geneva Conventions of 12 August 1949 and its Additional Protocol III, relating to the adoption of a distinctive emblem, but has not ratified Additional Protocols I and II on the protection of victims of international armed conflicts and non-international armed conflicts. [...] While Israel has not ratified the Additional Protocols I and II to the 1949 Geneva Conventions, it accepts that some of their provisions accurately reflect customary international law. While Israel is not a party to the Fourth Hague Convention on the War on Land and its annexed Regulations of 1907, the Government of Israel has recognized that the Regulations reflect customary international law.

25. The 1907 Hague Regulations, along with the Fourth Geneva Convention of 1949 and customary international humanitarian law contain the rules applicable to Israel's occupation of the West Bank, including East Jerusalem and the Gaza strip. Israel has stated that while it *de facto* applies the humanitarian provisions of the Fourth Geneva Convention of 1949, it does not recognize its *de jure* application to the occupied Palestinian territory. This position was rejected by the International Court of Justice, which confirmed the *de jure* applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory.

26. The Occupied Palestinian Territory is comprised of the West Bank, including East-Jerusalem and the Gaza strip. The Government of Israel adopts the position that since it withdrew its troops and settlers from Gaza in 2005 during the “disengagement”, it no longer has effective control over what happens in Gaza and thus can no longer be considered as an occupying power under international law. The commission agrees that the exercise of ‘effective control’ test is the correct standard to use in determining whether a State is the occupying power over a given territory, but notes that the continuous presence of soldiers on the ground is only one criterion to be used in determining effective control.

27. International law does not require the continuous presence of troops of the occupying forces in all areas of a territory, in order for it to be considered as being occupied. In the *Nalotelic* case, the ICTY held that the law of occupation also applies in areas where a state possesses the “capacity to send troops within a reasonable time to make its power felt.” The size of Gaza and the fact that it is almost completely surrounded

by Israel facilitates the ability for Israel to make its presence felt. [...]

[...]

29. In addition to its capacity to send troops to make its presence felt, Israel continues to exercise effective control of the Gaza Strip through other means. According to the Interim agreement on the West Bank and the Gaza Strip, Israel maintains the control of Gaza's airspace and maritime areas, and any activity in these areas is subject to the approval of Israel. [...] Israel regulates the local monetary market, which is based on the Israeli currency and has controls on the custom duties. [...] Israel also controls the Palestinian population registry, which is common to both the West Bank and Gaza, and Palestinian ID-cards can only be issued or modified with Israeli approval. Israel also regulates all crossings allowing access to and from Gaza. [...]

30. The commission concludes that Israel has maintained effective control of the Gaza Strip within the meaning of Article 42 of the 1907 Hague Regulations. [...]

[...]

32. The commission takes note that the State of Palestine, on 2 April 2014, acceded to the four Geneva Conventions of 12 August 1949 and the Additional Protocols I and II on the protection of victims of international armed conflicts and non-international armed conflicts and the Fourth Hague Convention on the War on Land and its annexed Regulations of 1907. [...]

[...]

34. [...] In relation to the 2014 hostilities in Gaza between Palestinian armed groups and the IDF, Israel has noted that the classification of the armed conflict as international or non-international is a matter of debate. Israel further states that "under these circumstances Israel conducted its military operations during the 2014 Gaza conflict in accordance with the rules of the Law of Armed Conflict governing both international and non-international armed conflicts."

35. With regard to the treatment of civilians and persons *hors de combat*, in addition to other applicable rules found in the above-mentioned treaties and in customary law, the Palestinian armed groups that took part in the hostilities and Israel are bound alike by the rules found in common article 3 of the Geneva Conventions. The International Court of Justice has held that, although common article 3 relates to "conflicts which are not of an international character," the rules contained in this article reflect elementary considerations of humanity, and apply equally to international and non-international armed conflict.

[...]

## B. International human rights law

[...]

39. Israel has maintained its position that it does not have human rights obligations in the Occupied Palestinian Territory based on two main arguments: (1) that the treaties are bound to the territory of the State party and do not apply to the extra-territorial actions of a State, and (2) that the applicability of international human rights law and international humanitarian law are mutually exclusive. The commission notes, however, that Israel has accepted to exercise its powers and responsibilities in the occupied territory “with due regard to internationally-accepted norms and principles of human rights and the rule of law.”

40. The commission adopts the widely accepted interpretation that a situation of armed conflict or occupation does not release a State from its human rights obligations. The International Court of Justice, in *Nuclear Weapons* Advisory Opinion, held that the protection of the International Covenant for Civil and Political Rights does not cease in situations of armed conflict, except if derogated from in conformity with article 4 of the Covenant. This position was confirmed by the ICJ in the Advisory Opinion on the Wall, in which the Court considered that “the protection offered by human rights conventions does not cease in case of armed conflict.”

41. With regard to the human rights obligations of Israel in the Occupied Palestinian Territory, Israel is bound by those human rights treaties which it ratified. The ICJ concluded that the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child are applicable. The ICJ also noted that Israel's obligations under ICESCR include “an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities”. The position of United Nations human rights treaty bodies corresponds to that of the ICJ, namely that as a State party to international human rights instruments, Israel continues to bear responsibility for implementing its human rights treaty obligations in the Occupied Palestinian Territory, to the extent that it continues to exercise jurisdiction in those territories. The commission notes that Israel has, upon ratification of the International Covenant on Civil and Political Rights, according to article 4, derogated from its obligations under article 9 based on the State of Emergency proclaimed in 1948, which remains in force.

[...]

43. On 2 April 2014, the State of Palestine acceded to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child [...] On 7 April 2014, the State of Palestine acceded to the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict. Owing to the on-going Israeli occupation of the West Bank, including East Jerusalem and the Gaza strip, the extent of the obligations of the State of

Palestine under the preceding instruments needs to be clarified by the human rights bodies established to monitor compliance with these specific treaties. [...] In the past, treaty bodies have recognized the obstacles faced by a State Party in implementing its obligations, when it does not have effective control over parts of its territory.

44. In the past, the Palestinian Authority, which exercises its powers in the Occupied Palestinian Territory pursuant to the various Israeli-Palestinian agreements, has declared its commitment to respect international human rights law in a number of public undertakings. [...]

45. With respect to the authorities in Gaza, it is worth recalling that non-State actors that exercise government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control. Moreover, Hamas has indicated that it “is determined (...) to promote the rule of law, the respect for the judiciary, the separation of powers, the respect for human rights, the equality among citizens; to fight all forms of discrimination; to protect public liberties, including the freedom of the press and opinion ...”. Hamas has also confirmed its commitment to “respect (...) public liberties; to strengthen the establishment of democracy; to protect human rights (...); and its respect for international law and international humanitarian law insofar as they conform with our character, customs and original traditions”.

[...]

#### IV. Context

53. The hostilities of 2014 erupted in the context of the protracted occupation of the West Bank, including East Jerusalem, and the Gaza Strip, and of the increasing number of rocket attacks on Israel. [...]

56. The events of summer 2014 were preceded by an agreement, reached on 23 April 2014 between the Palestinian Liberation Organization and Hamas, which sought to end Palestinian divisions. On 2 June 2014, President Abbas declared the formation of a Government of national consensus. The Government had yet to assume its full responsibilities in Gaza when active hostilities broke out in the Strip in July 2014, thereby leaving Hamas exercising government-like functions, as had been the case since June 2007.

57. On 12 June 2014, three Israeli teenagers were kidnapped and brutally murdered in the West Bank. In response, Israel launched an extensive search and arrest operation, which lasted until the bodies of the teenagers were found on 30 June. On 2 July, a 16-year-old Palestinian teenager from East Jerusalem was viciously murdered by being burned alive and his body discovered in West Jerusalem in what appeared to be an act of revenge for the murdered Israeli teenagers. Tensions in the West Bank, including East Jerusalem, ran high, and were further fuelled by a rise in extreme anti-Palestinian rhetoric. Widespread protests and violent clashes ensued between Palestinians and the Israel Defense Forces.

58. On 7 July 2014, the Israel Defense Forces commenced operation 'Protective Edge' in the Gaza Strip, with the stated objective of stopping the rocket attacks by Hamas and destroying its capabilities to conduct operations against Israel. The operation began during Ramadan, the Muslim month of fasting. After an initial phase focused on airstrikes, on 17 July 2014, Israel launched a ground operation, which it declared sought to degrade "terror organisations' military infrastructure, and [... neutralize] their network of cross-border assault tunnels". A third phase began on 5 August and was characterized by alternating ceasefires and on-going air strikes. The operation concluded on 26 August when both Israel and Palestinian armed groups adhered to an unconditional ceasefire.

## V. Principal findings and conclusions

### A. The Gaza Strip and Israel

#### 1. Rocket, mortar and tunnel attacks against locations in Israel

[...]

#### **Factual assessment**

84. According to the Government of Israel, approximately 4,000 of the 4,500 rockets and mortars fired by Palestinian armed groups were directed at Israeli cities, towns and residential communities; 250 landed accidentally in Gaza; and the rest were directed at IDF troops in Gaza.

85. The authorities in Gaza assured the commission that Palestinian armed groups did not target civilians and complied with international humanitarian law, and that any such action was not deliberate. They maintained that Palestinian rockets are 'primitive' and not very technologically advanced but nevertheless the factions attempted to direct their rockets at military targets in Israel.

[...]

88. The commission notes that a number of military objectives are located in various parts of Israel, in some cases in the immediate vicinity of built up areas such as the Hatzor airbase, or in the case of the IDF Headquarters, in the midst of a densely populated area. [...] [...]

90. However, in the vast majority of individual rocket and mortar attacks, the commission does not have information on the intended targets, but notes that Palestinian armed groups announced that they intended to attack population centres in Israel and declared responsibility for launches directed at different places in Israel. [...] On 8 August, Al Qassam Brigades tweeted, "All Zionist cities will be targeted daily until all of our demands are met." [...]

[...]

## Legal analysis

[...]

97. The majority of projectiles fired by Palestinian armed groups consisted of rockets that at best were equipped with only rudimentary guidance systems and in the vast majority of cases had none at all. The ICRC Commentary on Additional Protocol I describes “long-range missiles which cannot be aimed exactly at the objective” as the primary example of means of combat which cannot be directed at a specific military objective. The rockets available to armed groups in Gaza are unguided and inaccurate. Estimates, confirmed by the commission, indicate that the Fajr-5 and similar J-80 and M-75 rockets can land as far as 3 km from any intended target. The longer range rockets, such as the R-160, can land as far as 6 km away from the target because their accuracy decreases with range. Such rockets cannot be directed at a specific military objective and therefore strikes employing these weapons constitute indiscriminate attacks in violation of the customary rule reflected in article 51(4) of Additional Protocol I. The limitations of the military arsenals of Palestinian armed groups was advanced as a reason for their failure to attack precisely military targets. The military capacity of the parties to a conflict is irrelevant to their obligation to respect the prohibition against indiscriminate attacks.

[...]

### 2. Air strikes on residential buildings in Gaza

[...]

#### **c. Attacks on residential buildings and civilian objects that did not result in the killing of civilians.**

[...]

208. [...]:

- On 12 July 2014, the house of Essam Al Da’alis in Al Nussairat refugee camp was attacked, without causing any casualties. Mr Al Da’alis was described as the head of the financial and economic council of Hamas. On the basis of the information available to it, the commission is unable to assess whether Mr. Al Da’alis had any combat function.

[...]

209. On 8 July, the IDF spokesperson stated that the IDF had attacked about 50 “terror targets” in the Gaza strip. “Among the targets, there were four houses of senior members of the Hamas terror organization involved in terror activities and in the guidance of missile fire on Israeli territory”. This was the first time that the IDF provided a rationale for its attacks on residential buildings. Although Israel’s Minister of Defence, on 14 July, reportedly used similar language to refer to the attacks on houses and other civilian objects, starting from 10 July, the IDF consistently argued that it was targeting terrorists, command centres, weapons caches, tunnels and munition depots located inside these houses. In this context, Israel alleges that houses belonging to certain Hamas political leaders in Gaza were used for military purposes and gave examples of supposed command and control centres.

[...]

### **Incidents Resulting in Deaths**

219. [...]The commission wishes to emphasize that, in case of doubt, “whether an object which is normally dedicated to civilian purposes [...] is being used to make an effective contribution to military action, it shall be presumed not to be so used”. (“AP I Art 52(3) which reflects customary law”)

220. Indications of possible military objectives emerged in 9 of the 15 cases examined by the commission. In the Kaware case, the MAG indicated that “the aerial strike was carried out against the building due to its use for military purposes by Hamas”. [...] In these nine cases, while the commission is not in a position to ascertain why a residential building was attacked, the potential targets of the attack seem to have been mostly individuals who were or who could have been present in the building that was struck, indicating that one or several individuals were the likely target and not the building itself. In that context the commission underlines that the mere fact of being a member of the political wing of Hamas or any other organization in Gaza, or working for the authorities (Al Farra case), is not sufficient in and of itself to render a person a legitimate military target. While the IDF indicated that it did not target Hamas lawmakers, politicians or law-enforcement officials because of their affiliation with Hamas, but only individuals who directly participate in hostilities or are members of organized armed groups, under international humanitarian law, a member of an armed group has to have a continuous combat function to constitute a legitimate military target.

[...]

### **Precautions**

231. The IDF has repeatedly stated that it takes precautionary measures that are more stringent than those



required by international humanitarian law, in order to protect civilians in Gaza. [...]

[...]

### **Warnings and their effectiveness**

[...]

234. The commission notes that attacks on more than 200 residential buildings by air strikes resulted in no civilian casualties. This indicates that specific warnings by the IDF to inhabitants of these buildings were effective in many cases. [...]

#### **“Roof-Knock” warnings**

235. According to official Israeli sources, “IDF assessments show that the employment of “roof knocking” was highly effective, preventing many civilian injuries and deaths during the 2014 Gaza Conflict.” The commission observes, however, that some of the incidents examined in this section raise serious concerns regarding the effectiveness of “roof-knocking”.

236. In some cases, it appears that concerned persons did not understand that their house had been the subject of a “roof-knock”, such as the in case of the Dheir home, where the family in the house did not understand that the strike was a warning until they were told by a neighbour that they had to flee. [...] On the basis of their research into large numbers of attacks of houses, many NGOs have expressed doubts about the effectiveness of the warnings issued during Operation Protective Edge. For instance, B’Tselem indicated that “[t]his was especially so when the “knock on the roof” method was used while there were other attacks in progress in the vicinity and residents could not tell apart the smaller missile hitting the roof of their house. In other cases, residents who had been warned did leave the house, but people living nearby – who had not received a warning – were hurt when their homes also sustained damage in the attack.” The confusion caused by “roof-knocks” is understandable in such a densely populated area. [...]

237. The short time lapse between the “roof-knock” strikes and the actual strike that resulted in the destruction of the building is also cause for concern. In cases documented by the commission and by NGOs only a few minutes (between 3 and 5) elapsed between the two strikes. If the “roof-knock” is the first warning, a few minutes are clearly not sufficient to allow a multi-storey building inhabited by families with children and elderly and sometimes disabled persons to be evacuated, taking into account the time required to realize that the strike was meant as a warning. [...]. In addition, by giving a warning, the IDF accepted that the attack did not require the element of surprise; accordingly, there appears to be no reason why more time was not granted to the residents of the house to evacuate. [...].

238. Furthermore, according to a former Head of the International Law Department of the MAG Corps, the

“roof-knock” technique was conceived as a final precautionary measure to make it clear that the IDF was serious about previous warnings and precautions and to give persons that may be affected by the impending attack an additional and possibly last opportunity to escape. The use of “roof-knocking” as a complement to other warning methods was examined in one case by the commission, and in a number of cases documented by non-governmental organizations. However, the commission is unable to verify whether “roof-knocking” was systematically combined with other warnings and whether there were cases in which “roof-knocking” was the only form of specific – and ambiguous – warning civilians received.

239. Based on its findings, the commission concludes that the “roof-knocking” technique is not effective, in particular if not combined with other specific warnings.

240. The commission also underlines that the extent of its efforts deployed to provide warnings to the civilian population, and of their effectiveness, does not relieve an attacking party of its obligation to respect all the other principles on the conduct of hostilities, in particular distinction and proportionality. Nor does the fact that an effective warning has been given alter the civilian status of those who have not heeded the warning.

[...]

### 3. Ground Operations

[...]

#### **a. Shuja'iya, 19 and 20 July 2014**

[...]

296. The intense shelling, combined with the use of a large number of one-ton bombs, raise serious concerns about the respect for the principle of proportionality. While shelling had started in the late evening of 19 July, it changed in nature and significantly intensified around 1.30 a.m., just after seven IDF soldiers had been killed when the APC [armoured personnel carrier] they were riding in was destroyed. The objective of the shelling and heavy bombardment appears mainly to have been force protection. The commission observes that the issue of force protection of the attacking force as an element in assessing proportionality is still unresolved. While it is certainly true that the protection of soldiers who are coming under attack represents a concrete and direct military advantage, it is an “undisputed fact that force protection is not an overriding concern that could set aside all other considerations when assessing the proportionality of an attack”. [...]

## **b. Khuza'a**

[...]

### **Arrest and ill-treatment while in detention**

[...]

324. According to information reviewed by the commission, the IDF conducted arrests of dozens of Palestinian men and children throughout the duration of the operation in Khuza'a. Some were interrogated in locations in Gaza, while others were questioned in Israel. According to witnesses held by the IDF, detainees were interrogated about the names of Palestinian fighters, and the location of tunnels and weapons depots.

325. A resident of Khuza'a told the commission that on 23 July, at about 9.30 p.m., he heard a number of loud explosions as he was attending evening prayers at Al Farouq Mosque. The witness rushed to his home which is located near Al Bassateen Street and gathered his family in the middle of the house where everyone lay down on the floor. Attacks were intense and the witness had the impression that his neighbourhood was being shelled both from the air and from the ground. This went on until 5 a.m. on 24 July. At that time they heard shooting outside the door of his house. Ten Israeli soldiers reportedly forced themselves into the house. The witness spoke to them in Hebrew to try and calm them down, but the soldiers reportedly told him to "shut up." According to the witness, the soldiers handcuffed his son who has a mental disability. [...] The soldiers subsequently put a casserole on the boy's head and four of them started kicking and punching him. Then one of the soldiers began shooting between the legs of the boy. After a while, they took him away. When the witness asked the soldier to leave his son alone, the soldier apparently responded by saying, "shut up or we will take you." The witness said that the soldiers then forced the family to remain behind. The witness who speaks Hebrew and understood the insults that were being addressed to his family, stated "It is horrible what they said...but the children could not hear it." On 24 July at about 3 p.m., the men were all forced to undress and were taken outside. Two of his sons were then detained by the IDF. One was released six days later; the other was sentenced by an Israeli court to 45 months in prison. He is presently held in a prison in Israel. [...]

326. According to a submission, a detainee reported that he and other detainees were woken up in the middle of the night and forced to stand while being beaten. One detainee reported that IDF soldiers splashed water on him and on other detainees' faces and verbally abused them in Arabic. Two detainees asserted that at the time of their arrest they were threatened if they refused to cooperate. One man was reportedly told that he would be killed and another one that his parents' house would be targeted. The report also documented another case in which a detainee who was held at a location within Israel was told that his house would be destroyed if he failed to cooperate.

[...]

## Legal analysis

[...]

342. Information received by the commission suggests that in several cases Palestinians who had been *detained*, mostly in their homes in Khuza'a, had been insulted, beaten, threatened to be killed and otherwise ill-treated by IDF soldiers. In some cases the treatment described by some of the witnesses could amount to torture. Article 27 of Geneva Convention IV provides that "protected persons are entitled in all circumstances, to respect for their persons [and] their honour" and "shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults" and article 29 provides that irrespective of the individual responsibility of the soldiers, the party in whose hands the protected person finds himself, in this case Israel, is responsible for the treatment afforded. In addition, the behaviour of IDF soldiers, as described by witnesses, if verified, amounts to a violation of article 10 of the International Covenant on Civil and Political Rights. In a number of these cases the treatment afforded to those detained may qualify as inhuman or degrading treatment in violation of article 7 of the International Covenant on Civil and Political Rights, and article 16 of the Convention against Torture and may even amount to acts of torture as defined in article 1 of the same Convention. Such acts are described as war crimes and listed as a grave breach of the Geneva Conventions. (Article 147 GC IV)

[...]

346. Based on the information available to the commission, the manner in which the Israeli soldiers forced Palestinian civilians to stand in windows, enter houses/underground areas and/or perform dangerous tasks of a military nature, constitutes a violation of the prohibition against the use of human shields contained in article 28 of Geneva Convention IV, and may amount to a war crime. These incidents also raise concerns that in two of the cases, the IDF may have violated the obligation to hold persons deprived of their liberty in premises that are removed from the combat zone, when detaining them for several days. The tasks the victims were ordered to perform by the soldiers jeopardized their lives and health. That conduct, together with the physical and/or psychological violence to which the victims were subjected by the soldiers, constitutes ill-treatment and may amount to torture. In addition, should allegations that victims were coerced to provide information concerning armed groups and the whereabouts of relatives and tunnels be confirmed, this would amount to a violation of article 31 of the Geneva Convention IV, which states that "no physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties."

**c.Rafah, 1 August 2014**

[...]

352. During the operation, the IDF closed off areas of Rafah to block movement in and out, presumably to prevent the captors from leaving the area with the captive soldier. [...] As a result of the operation, virtually every person or building in Rafah became a potential military target. [...]

[...]

### **Summary Legal analysis**

[...]

367. In relation to the “Hannibal Directive”, the IDF has stressed that: “allegations that IDF directives, and particularly, the IDF General Staff Directive for Contending with Kidnapping Attempts (also known as the “Hannibal Directive”), permit IDF forces to exercise force in a manner that does not accord with the principle of proportionality, are incorrect. [...] The Directive does not grant permission to violate the Law of Armed Conflict, including the rules relating to distinction and proportionality. To the contrary, and as with all IDF directives concerning combat situations, IDF forces are required to adhere to the Law of Armed Conflict at all times when implementing the directives’ provisions. The use of unrestrained force is never permitted, even in the direst of circumstances.”

[...]

369. [...] Preventing the capture or freeing a soldier from captivity may be conceived as a concrete and direct military advantage, albeit of a limited nature, since the loss of one soldier in a large army such as the IDF does not reduce its military capability. When doing so in a manner that is highly likely to result in the soldier’s death, it further reduces the concrete and direct military advantage. On the other hand, some have argued that in such a case the proportionality test must take into account the strategic consideration of denying the armed groups the leverage they could obtain over Israel in negotiations for the release of the captured soldier.

370. The commission considers this an erroneous interpretation of international humanitarian law. The leverage that armed groups may obtain in negotiations does not depend solely on the capture of a soldier, but on how the Government of Israel decides to react to the capture in the aftermath. The strategic military or political advantage sought is therefore not a concrete and direct military advantage as required by international humanitarian law. An assessment of the strategic and political advantage depends on a large number of *post facto* elements which are merely speculative for the commander on the ground at the moment he decides to launch the attack. Indeed, the proposed interpretation of the anticipated military advantage, which would allow for abstract political and long-term strategic considerations in carrying out the

proportionality analysis, would have the consequence of emptying the proportionality principle of any protective element. The commission finds therefore that the IDF attack of 1 August 2014 in Rafah could have been expected to cause incidental loss of civilian life and damage to civilian objects which would be grossly excessive in relation to the anticipated concrete and direct military advantage, and may therefore amount to a war crime.

[...]

#### **e. Patterns and legal analysis**

[...]

#### **Protection of civilians, force protection and the Hannibal directive**

[...]

393. While international humanitarian law does not spell out whether the safety of the attacking force is an element to be considered in the evaluation of military advantage when assessing proportionality, and the weight to be given it when determining the precautions to be taken in attack, the ICRC notes that under international humanitarian law members of the armed forces “have the right to directly participate in hostilities, the corollary of which is that they may also be lawfully attacked by the adversary.” Therefore it is inherent in any armed conflict that members of armed forces are put in danger. [...]

394. The Humanitarian Policy and Conflict Research Project (HPCR) Manual on International Law Applicable to Air and Missile Warfare states that “the factoring in of such military considerations [the survival of military aircraft and their crews] may not result in a neglect of humanitarian obligations under the law of international armed conflict. This means that, whereas a particular course of action may be considered non-feasible due to military considerations (such as excessive risks to aircraft and their crews), some risks have to be accepted in light of humanitarian considerations.” The commission therefore affirms that military considerations, such as the safety of forces, including from capture, should not be an overriding factor for a reasonable commander weighing the proportionality of an attack. The protection of civilians must continually be taken into account and armed forces of parties to a conflict must accept some level of risk to their own fighters for that purpose.

[...]

408. The commission notes official Israeli statements indicating that artillery was used in urban areas only on an exceptional basis when neighbourhoods were known to be largely evacuated and followed stringent protocols. Even with these strict conditions, the use of artillery with wide-area effects in densely populated areas resulted in a large number of civilian casualties and widespread destruction of civilian objects. The

commission is therefore of the view that the use of such artillery is not appropriate in densely populated areas regardless of the legality of resorting to such weapons.

#### 4. Incidents relating to shelters, the power plant and ambulances

##### **a. Shelters**

[...]

##### **UNRWA Beit Hanoun Elementary Co-educational A and D School**

[...]

425. On 24 July 2014, between 2.48 and 2.55 p.m., several Israeli artillery shells hit UNRWA's Beit Hanoun school, killing between 12 and 14 people, including children and women. [...] Witnesses said that while they were waiting for the buses in the courtyard there was a strike on the school itself. [...]

426. UNRWA was in regular contact with Israeli authorities, namely the Israeli Coordination and Liaison Administration (CLA) [...]

427. [...] The UN Board of Inquiry refers to a witness who indicated that that same morning, the CLA had called upon UNRWA to vacate the school because an attack was imminent. Owing to the security situation, UNRWA had asked the IDF for a time slot during the day during which to conduct a safe evacuation. The fact that the attack occurred before implementation of an evacuation agreement indicates that the advance warning communicated to UNWRA by the IDF was not effective.

428. On 24 July, UNRWA received a call from an IDF commander who inquired whether anyone was present in the cluster of four other schools in Beit Hanoun, located about 800 m from the Beit Hanoun Elementary Co-educational A and D School. He indicated that a Hamas arsenal hidden under this cluster of schools was going to be targeted. UNRWA responded that they would check to see if any residents or staff were at the other schools. As they coordinated this inspection, Beit Hanoun A and D School was suddenly attacked, although UNRWA had reconfirmed at least twice with the IDF that the announcement about an imminent attack on schools in Beit Hanoun did not refer to the UNRWA Beit Hanoun Elementary Co-educational A and D School, which served as a shelter.

[...]

430. The media reported that Israel initially alleged that the attacks had been caused by Hamas rockets

misfiring. However, all witnesses interviewed by the commission said that there were at least four successive strikes. Subsequently, an IDF spokesperson said that soldiers returned fire at locations from which Palestinian missiles had been fired at them. [...]

431. According to the UN Board of Inquiry, the Government of Israel has affirmed that the UNWRA school was not the object of the attack. [...]

432. Human Rights Watch reported that the Beit Hanoun secondary school for boys was used during the hostilities by the IDF for military purposes.

[...]

### **Summary legal analysis**

445. Imprecise weapons with a wide impact area were used in two incidents examined by the commission: 120 mm high explosive (HE) mortar projectiles in the case of the Beit Hanoun school. [...]

446. The commission is thus of the view that, when choosing a weapon with a wide-area effects like artillery to strike a target located in a densely populated area – and adjacent to UNWRA schools being used as shelters – the IDF must have been aware that there was a strong likelihood that military objectives and civilian objects alike would be struck, raising serious concerns that the choice of means for the attack did not take into account the requirement to avoid, or at the very least minimize, incidental loss of civilian life. [...] The decision by the IDF to use mortars in this incident, rather than availing themselves of more precise weapons, indicates that the IDF did not take all feasible precautions to choose means with a view to avoiding or minimizing civilian casualties. The use of such weapons in the immediate vicinity of an UNRWA school sheltering civilians is highly likely to constitute an indiscriminate attack which, depending on the circumstances, may qualify as a direct attack against civilians, and may therefore amount to a war crime.

447. International humanitarian law contains an obligation to take all precautions that are feasible in order to limit the effects that an attack ultimately has on the civilian population. While considerations related to force protection might limit the extent of feasible precautions, such measures are still required. [...] Even though the attack against the UNRWA schools may not have been deliberate, the IDF is bound by the obligation of precautionary measures and verification of targets “to avoid attacks directed by negligence at civilians or civilian objects”.

448. In terms of warnings, [...] while there seem to have been attempts to notify UNRWA about possible attacks in the case of Beit Hanoun, the incident suggests that communication between UNRWA and the IDF was not effective. [...]



[...]

## **b.The Power Plant**

450. The Gaza Strip has only one power plant that normally supplies about 30 per cent of the electricity in the strip, with the rest provided from Israel and Egypt. Under normal circumstances, the three sources cater to half of Gaza's overall electricity needs. [...]

452. As the result of shelling on 29 July 2014, one of the plant's fuel tanks exploded. [...]

453. In May 2015, official Israeli sources indicated that on 29 July, *"IDF tank shells unfortunately missed their intended target and hit fuel tanks serving Gaza's power plant (but not the power plant itself). In this incident, IDF tank forces had legitimately directed an attack against several individuals who were believed to be carrying anti-tank rockets intended for immediate use."* While the commission is unable to verify this account, it notes that the plant had been hit three times in the days prior to 29 July. On 9 July 2014, then Deputy Defence Minister Danny Danon called on his Government immediately to cut off fuel and electricity supplies to the Gaza Strip. He added that Israel needed to use all of the levers of pressure that it had at its disposal in order to coerce Hamas to accept a ceasefire. [...]

454. Owing to the limited evidence available to the commission, it is unable to determine whether the power plant suffered incidental damage from an attack directed elsewhere, or whether it was the object of a deliberate attack. The commission notes that the electricity infrastructure servicing the civilian population constitutes a civilian object, which is protected from attack unless it makes an effective contribution to military action, and its destruction offers a definite military advantage. These objects are also protected by the customary law rule prohibiting parties to a conflict from attacking, destroying or rendering useless objects indispensable to the survival of the civilian population. Deliberate targeting of such objects would be in violation of this prohibition. [...]

455. If the strike against the power plant was accidental, as Israel claims, there remain nonetheless questions as to whether all appropriate precautions were taken by the IDF to avoid damage to a civilian object. The IDF's latest version of events concerning the 29 July incident says that it targeted several individuals alleged to be transporting weapons in the vicinity of the plant. If that is the case, the choice of means needs to be examined, namely whether tank shells were the most appropriate ammunition, and whether other types of ordnance, presenting fewer risks of incidental damage, could have been used instead. In addition, the fact that the power plant had been struck several times in the preceding days should have led the IDF to issue stringent orders to units operating near the power plant to exercise restraint, given the importance of the plant for the civilian population in Gaza. The IDF therefore appears not to have complied with its obligation to take all feasible precautions to avoid or at least to minimize incidental damage to civilian objects in the attack of 29 July that struck the power plant.

[...]

## 5. Impact on the population in Gaza of the conduct of Palestinian armed groups

[...]

### **Conducting military operations from within or near densely populated areas**

470. The commission examined various sources of information related to the conduct of Palestinian armed groups in populated areas of Gaza, including the stockpiling of weapons and the firing of rockets, mortars and other weapons from very densely built up areas of Gaza city.

[...]

472. Palestinian armed groups are alleged to have frequently placed command and control centres and firing positions in residential buildings, and to have stockpiled weapons, placed booby-traps and located tunnel entrances in prima facie civilian buildings. In particular, the commission notes the IDF asserts it found an Al-Qassam Brigades manual on urban warfare, which is said to explain the advantage of conducting military operations in populated areas and allegedly provides instructions on how to hide weapons in buildings. [...]

473. International humanitarian law prescribes that parties to the conflict should take all feasible precautions to protect the civilian population and civilian objects under their control from the effects of attacks and to the maximum extent feasible avoid locating military objectives within or near densely populated areas. The commission notes that this obligation is not absolute and that even if there are areas that are not residential, Gaza's small size and its population density makes it particularly difficult for armed groups always to comply with these requirements. The ICRC Commentary on Additional Protocol I notes that several delegations of the Diplomatic Conference commented that for densely populated countries, the requirement to avoid locating military objectives within densely populated areas would be difficult to apply.

[...]

479. Regarding the specific incidents, while the commission cannot determine the factual circumstances of each alleged incident, if it is confirmed that in using the aforementioned locations to conduct military operations, armed groups did so with the intent to use the presence of civilians or persons *hors de combat* in locations such as shelters or hospitals to prevent their military assets from being attacked, this would constitute a violation of the customary law prohibition to use human shields, reflected in article 51(7) of Additional Protocol I. Should this intent be proven, this conduct would amount to a war crime.

[...]

## 6. Executions of suspected “collaborators”

[...]

492. Executions of individuals suspected of “collaborating” with Israel’s intelligence services are not uncommon in Gaza. Since 2007, executions, sometimes without trial, have been used to punish alleged “collaborators”. [...]

[...]

494. Based on its research, the commission documented summary executions of at least 21 persons, including one woman, committed between 5 and 22 August 2014 in Gaza City, allegedly for being collaborators for Israel. [...]

495. On 7 August, Al Qassam Brigades, the armed branch of Hamas, claimed responsibility for the 5 August executions, declaring that the persons executed were “found guilty of giving information on the whereabouts of fighters and civilian houses”. [...]

[...]

497. Several of the commission’s interlocutors mentioned that some of the above alleged “collaborators” were ill-treated and tortured while in detention or under custody, including by beatings. Others have documented abduction and torture perpetrated by Hamas during the 2014 hostilities. Although the commission was unable to verify these allegations, it recalls that torture and ill-treatment are prohibited under international law and require prompt and impartial investigations. It also appears that some of the executions and cases of ill-treatment were directed against persons who had links with Fatah and the Palestinian authorities’ security forces and may have been acts of revenge.

498. Representatives of the local authorities in Gaza told the commission that the executions were carried out by self-organized Palestinian factions operating in secrecy, without instructions from the authorities. [...]

[...]

501. The commission is of the view that inmates were transferred out of the prison and summarily executed with the apparent knowledge of the local authorities in Gaza, in violation of their obligation to protect the right to life and security of those in their custody. These extrajudicial executions, many of which were carried out in public, constitute a violation of both international humanitarian law and international human rights law. [...]

502. Because of their link to the armed conflict, the extrajudicial executions constitute a violation of article 3 common to the 1949 Geneva Conventions, which, in relation to “persons taking no active part in the

hostilities [...] and those placed “hors de combat” by [...] detention, prohibits (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture [...]; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples” and amount to a war crime. Whoever is responsible for the killings, whether the Al Qassam Brigades, other Palestinian armed groups, or the local authorities, must be brought to justice.

[...]

## VII. Accountability

601. This chapter examines the issue of accountability for victims of serious violations of international humanitarian law and gross violations of international human rights law alleged to have occurred during the period under examination by the commission.

### International legal framework

[...]

#### B. Palestine

[...]

657. As for the authorities in Gaza, they provided no information to the commission on specific cases or incidents in relation to which they may have opened an investigation. They told the commission that they had created a body to investigate allegations of extrajudicial killings. However, no information was forthcoming of the details of this body or of any investigation it may have initiated, nor of any other investigations it may have conducted, such as into allegations of indiscriminate rocket and mortar fire. [...]

### International mechanisms

658. On 1 January 2015, the Government of the State of Palestine lodged a declaration under article 12(3) of the Rome Statute accepting the jurisdiction of the International Criminal Court (ICC) over alleged crimes committed “in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014”. On 2 January 2015, the Government of the State of Palestine acceded to the Rome Statute by depositing its instrument of accession with the UN Secretary-General. On 16 January 2015, as a matter of policy and practice, the Prosecutor of the ICC opened a preliminary examination into the situation in Palestine in order to establish whether the Rome Statute criteria for opening an investigation are met.

659. During this examination, currently underway, the ICC seeks to reach a fully informed determination as to whether there is a reasonable basis to proceed with an investigation pursuant to the criteria established by the Rome Statute. The Court specifies that there are “no timelines provided in the Rome Statute for a decision on a preliminary examination”, and that “[d]epending on the facts and circumstances of each situation, the Office will decide whether to continue to collect information to establish a sufficient factual and legal basis to render a determination; initiate an investigation, subject to judicial review as appropriate; or decline to initiate an investigation.” The Court acts in an independent and impartial manner, examining alleged violations regardless of the identity of the perpetrator. A central consideration for the Court, in all such preliminary examinations, is to assess whether there are credible national investigations and prosecutions underway; only in the absence of genuine national processes will the Court consider taking further action.

660. On 2 April 2014, the State of Palestine acceded to seven of the nine core human rights treaties and one of the substantive protocols without reservation. The treaties entered into force on 2 May, 7 May and 2 July 2014 respectively, thereby formally obligating the State of Palestine to uphold their provisions. Also on 2 April 2014, it acceded to Additional Protocol I of the Geneva Conventions of 1949. [...]

661. Israel is not a State party to the Rome Statute. With regard to the ICC, a statement on the website of the State Comptroller, announcing the launch of his aforementioned inquiry (see above), states that “[a]ccording to principles of international law when a State exercises its authority to objectively investigate accusations regarding violations of the laws of armed conflict, this will preclude examination of said accusations by external international tribunals (such as the International Criminal Court in The Hague).” As elaborated in the legal framework above, Israel is bound by its obligations under international humanitarian law and international human rights law.

[...]

## **B. IDF, Report on the 2014 Gaza Conflict**

[Source: IDF Report, *The 2014 Gaza Conflict: Factual and Legal Aspects* (7 July – 26 August), May 2015, available at: <http://mfa.gov.il/ProtectiveEdge/Documents/2014GazaConflictFullReport.pdf>, footnotes omitted,]

[...]

### **Executive Summary**

[...]

## **I. Introduction**

1. The following Report [...] presents detailed factual and legal information regarding the intensive hostilities that took place from July 7 to August 26, 2014 between the State of Israel and Hamas and other terrorist organisations operating in the Gaza Strip (“the 2014 Gaza Conflict”, also known as Operation “Protective Edge”).

2. The 2014 Gaza Conflict occurred as part of a wider armed conflict being waged against Israel for well over a decade by terrorist organisations in the Gaza Strip. This ongoing conflict is being led by Hamas, an internationally recognised terrorist organisation in control of the Gaza Strip since 2007, together with other terrorist organisations such as the Palestinian Islamic Jihad. [...].

[...]

## **II. The background to the 2014 Gaza Conflict**

[...]

### **B: The Ongoing Armed Conflict with Hamas and Other Terrorist Organisations**

45. Despite ongoing attacks and a fervent debate within Israeli society, in August 2005 Israel unilaterally withdrew from the Gaza Strip, completely removing all settlements and military presence there. Since August 2005, Israel has not exercised effective control of the Gaza Strip, and for the past eight years Hamas has acted in the Gaza Strip as an embedded, de-facto authority, controlling most aspects of life in the Gaza Strip. This includes control of the local economy, social services, education, police and other security forces, as well as the Gaza Strip side of land crossings with Israel and Egypt.

[...]

## **IV. Violations of the Law of Armed Conflict, War Crimes, and Crimes Against Humanity Committed by Hamas and Other Terrorist Organisations during the 2014 Gaza Conflict**

107. Throughout the 2014 Gaza Conflict, Hamas and other Palestinian terrorist organisations in the Gaza Strip intentionally and systematically employed military strategies designed to maximize harm to civilian life and property, both in Israel and in the Gaza Strip. [...]

[...]

### **A: Hamas and other Terrorist Organisations in the Gaza Strip Committed War Crimes and Crimes Against Humanity by Deliberately Attacking Israeli Civilians**

## 112. Rocket and Mortar Attacks.

[...]

114. Rocket and mortar attacks by Hamas and other terrorist organisations were intended not just to kill and injure Israeli civilians, but to spread terror among the six million Israelis within their range.

[...]

116. In targeting and terrorising Israeli civilians with rockets and mortars, Hamas and other terrorist organisations in the Gaza Strip violated fundamental customary norms of the Law of Armed Conflict that prohibit a party to hostilities from deliberately making civilians the object of attack, and that prohibit acts or threats of violence primarily intended to spread terror among the civilian population. Violations of these prohibitions constitute war crimes under customary international law.

[...]

155. **Summary.** Hamas and other terrorist organisations in the Gaza Strip systematically and deliberately used civilian buildings and facilities for military purposes throughout the 2014 Gaza Conflict, including hospitals and health clinics, U.N. facilities, schools, mosques, and civilian homes and residential buildings. In doing so, these organisations defied the customary international law obligation requiring a party to the conflict to take feasible measures to mitigate the harm to its civilian population resulting from the dangers of military operations. By exploiting civilian structures for military operations, these organisations knowingly turned these structures into legitimate objects of attack, and greatly increased the risk of incidental damage to nearby civilians and civilian structures. Despite the extensive precautions taken by the IDF to avoid or minimize damage to civilian life and property, the strategy of conducting hostilities from densely-populated civilian areas significantly exacerbated damage.

## [...] **C. Hamas and other Terrorist Organisations in the Gaza Strip Directed the Movement of Civilians in Order to Shield Military Assets and Operations**

157. Customary international law forbids parties to hostilities not only from exploiting the presence of civilians in order to shield military targets from attack, but also from taking active steps to ensure civilian presence for this end. Specifically, parties are forbidden from directing the movement of the civilian population and of individual civilians for the purpose of shielding military objects and military operations from attack. When such direction results in the use of civilians for shielding, such conduct constitutes a war crime.

158. During the 2014 Gaza Conflict, Hamas and other terrorist organisations in the Gaza Strip took positive

actions to ensure civilian presence in the densely-populated areas [...]. These organisations directed civilian movement for the purpose of shielding both by verbal means — by waging an official campaign pressuring civilians to disregard Israel's evacuation warnings prior to impending IDF military activity — and by explicit intimidation and physical coercion.

[...]

165. **Summary.** These tactics — whether pressuring civilians to situate themselves in areas of imminent hostilities, or employing direct physical coercion — violated the prohibition under customary international law against directing the movement of civilians to shield military targets from attack. This prohibition applies with respect to directing the movement of the civilian population as a whole, as well as the movement of individual civilians. When the direction of civilians resulted in the actual use of civilians to shield military targets, such conduct amounted to war crimes under customary international law.

[...]

## **V. The Threat to Israel's Civilian Population and Israel's Civil Defence Measures**

[...]

### **B. Israel's Civil Defence Measures against Rocket and Mortar Attacks**

#### **1. Passive Defence Measures**

182. The main pillars of Israel's "passive" defence methods are (1) early warning systems; (2) campaigns to instruct the public how to respond to a warning siren; and (3) construction and planning regulations aimed at building protective infrastructure [...]

[...]

## **VI. IDF Conduct of Operations during the 2014 Gaza Conflict**

### **[...] A. Applicable International Legal Framework**

233. **Existence of an Ongoing Armed Conflict.** In recent years, an armed conflict has existed between Israel and Palestinian terrorist organisations operating in the Gaza Strip. The classification of this conflict under international law has been a matter of debate. On the one hand, in 2006 Israel's Supreme Court (sitting as the High Court of Justice) had determined that the armed conflict was an international armed



conflict, referring to its trans-boundary nature. On the other hand, this classification is not without difficulty (as the Court itself acknowledged in a later case), and various courts, states and legal experts have in fact characterised armed conflicts of the kind existing between Israel and the Palestinian terror organisations in the Gaza Strip as non-international armed conflicts. Under these circumstances, Israel conducted its military operations during the 2014 Gaza Conflict in accordance with the rules of the Law of Armed Conflict governing both international and non-international armed conflicts, including the rules relating to distinction, precautions and proportionality.

234. **Law of Armed Conflict.** Under international law, the Law of Armed Conflict (also known as International Humanitarian Law) regulates the conduct of hostilities. Israel is party to many international conventions that form part of the Law of Armed Conflict and abides by all rules of customary international law, including rules embodied in conventions to which it is not party. Israel has incorporated these rules into all aspects of military operations, from legal training to operational procedures to target selection to tactical decision-making. Accordingly, throughout the 2014 Gaza Conflict Israel applied and enforced the rules of the Law of Armed Conflict, including the rules relating to distinction, precautions and proportionality.

[...]

### **C. The Nature of Urban Warfare in the Gaza Strip**

253. The vast majority of the combat during the 2014 Gaza Conflict took place in an urban environment. The IDF conducted both aerial and ground operations against military targets located within and underneath the urban terrain of the Gaza Strip. Carrying out operations in urban terrain is particularly challenging for two main reasons: (1) the existence of dense physical infrastructure and (2) the dynamic presence of the civilian population. [...]

[...]

### **D. IDF Conduct during the 2014 Gaza Conflict**

[...]

#### **1. Distinction**

263. In accordance with the Law of Armed Conflict, the IDF scrupulously observed the principle of distinction, only targeting persons where there was reasonable certainty that they were members of organised armed groups or civilians directly participating in hostilities, and only targeting structures where was reasonable certainty that they qualified as military objectives. The IDF did not deliberately target civilian objects or civilians not directly participating in hostilities.

## a. Targeting of Persons

264. **Members of Organised Armed Groups.** Organised armed groups are organised entities that operate on behalf of a party to a conflict and that are charged with conducting hostilities against the adversary. Under the Law of Armed Conflict, members of organised armed groups may be attacked at any time by the sole virtue of their membership, unless they become *hors de combat* or serve a function (such as medical personnel) which entitles them to special protection.

265. Within the Gaza Strip, Hamas and other terrorist organisations operate several organized armed groups. For example, Hamas's primary military wing (the Izz al-Din al-Qassam Brigades) is an organised armed group, and its members are therefore lawful targets of attack at all times and in all places (except for when such persons are *hors de combat* or entitled to special protection due to their particular function). Another such group is Hamas's so-called "Naval Police," which is responsible not only for maritime policing activities but also for continuous and pre-planned attacks against the Israeli Navy, in close cooperation with the Izz al-Din al-Qassam Brigades. As organized armed groups, their members are legitimate targets under customary international law, even when they are not in the act of preparing or conducting military activities.

[...]

268. **Civilians Taking a Direct Part in Hostilities.** In addition to members of organised armed groups, civilians who have forfeited their protected civilian status are legitimate targets. Under the Law of Armed Conflict, civilians who take a direct part in hostilities become legitimate targets for attack during and for such time as they so participate in hostilities. "Direct participation in hostilities" is a legal term for the circumstances in which a civilian forfeits protection from attack because the individual is sufficiently involved in military action, so as to render him a lawful target. The Law of Armed Conflict does not contain an exhaustive list of activities that amount to direct participation in hostilities but rather mandates a careful evaluation of the circumstances of each case. To this end, the IDF has provided its personnel with a list of activities amounting to direct participation in hostilities, which accords with the relevant guidelines given by Israel's Supreme Court.

269. In accordance with the Law of Armed Conflict, during the 2014 Gaza Conflict IDF forces attacked individuals who, among other things, were launching rockets, assembling mortars for immediate use, or giving orders regarding military activity. The IDF did not target Hamas lawmakers, politicians or law-enforcement officials because of their affiliation with Hamas. The IDF recognises that civilians affiliated with Hamas are not lawful targets as such. In cases where the IDF targeted persons holding positions in Hamas, it did so based on reliable intelligence that the individuals had become lawful targets under the Law of Armed Conflict by directly participating in hostilities (e.g., planning and/or commanding attacks against Israeli civilians or soldiers) or by serving as members of organised armed groups.

[...] **b. Targeting of Structures and Other Objects**

[...]

**275. Civilian Infrastructure Constituting Military Objectives Due to Military Use or Purpose.**

[...]

280. *Schools.* Hamas and other terrorist organisations operating in the Gaza Strip exploited schools by transforming them into military objectives. Throughout the 2014 Gaza Conflict, these terrorist organisations systematically used schools in Beit Lahiya, Jabalia, Sheikh Radwan, Shuja'iyyeh, Al-Tuffah, and Al-Zaitoun, among other places, for military purposes including weapons storage, command and control of operations, and rocket launches. Terrorist organisations also deliberately stored weapons in schools belonging to the United Nations Relief and Works Agency ("UNRWA"), [...]

281. The use of educational facilities for military purposes rendered these facilities military objectives under the Law of Armed Conflict. The IDF nevertheless made every effort to avoid attacking them. However, in a very few cases, military necessity compelled Israel to attack educational facilities that were used for military purposes. (In none of these cases, though, was the object of attack an UNRWA school.) [...]

[...]

**2. Precautions in Attack**

[...]

**b. Provision of Effective Advance Warnings**

[...]

293. **Definition and Aim of Effective Advance Warnings.** Under customary international law, warnings must be given prior to attacks that are expected to cause civilian casualties or injuries, unless the circumstances do not permit. A warning qualifies as "effective" and "in advance" so long as civilians can understand it and have sufficient time to protect themselves by evacuating, seeking shelter, or taking other appropriate action. Once an effective warning is given, international law does not require additional warnings.

[...]

295. **Content of Warnings.** Warnings disseminated during the 2014 Gaza Conflict clearly specified, in Arabic, the dangers arising from the hostilities, the areas in which such dangers were likely to arise, and the

actions civilians should take to protect themselves. Where feasible, the warnings identified evacuation routes. [...] For example, in the morning on August 1, after the resumption of hostilities following a ceasefire violation by Hamas and the attempted kidnapping of an IDF officer, the IDF warned the residents of Rafah through telephone calls and text messages that “due to the IDF’s increased operational activity against militants, you are asked to remain in your homes, and not go out into the streets. Whoever leaves his home, risks injury and endangers his life.” Later that afternoon, as the intensive hostilities continued, the IDF disseminated additional telephone and text messages warning residents not to travel on the roads leading from Rafah to Khan Yunis because of concentrated IDF activity in that area.

#### 296. **Warning Types and Dissemination Methods**

[...]

297. The IDF often communicated warnings through multiple channels simultaneously — leaflets dropped from the air, phone calls, text messages, and radio and TV broadcasts — even when using only some of these methods would have been sufficient under international law. As a result, many civilians received the same warning through several different media.

[...]

306. **Response to Non-Evacuation Despite Warnings.** After providing a warning, the IDF did not assume that a relevant site or area had been evacuated. As stressed by orders issued throughout the 2014 Gaza Conflict, any estimation of the collateral damage expected as a result of an attack always required a timely assessment regarding the presence of civilians, and the provision of a warning never, on its own, affected a proportionality assessment.

307. Although Hamas authorities actively encouraged civilians to ignore the IDF’s warnings and refrain from evacuating, the IDF did not regard civilians who heeded such advice as voluntary human shields and thus legitimate targets for attack. Nor did the IDF discount such civilians for purposes of its proportionality analyses.

[...]

308. **Reasons Warnings Were Not Always Provided.** The Law of Armed Conflict acknowledges that circumstances may not always permit advance warnings. For example, under customary international law, a warning is not required where the element of surprise is necessary for the success of a military operation (e.g., where a target is a militant who would escape if warned) or where a warning would compromise the safety of attacking forces. This was the case with the IDF’s strike on August 3 against Danian Mansour, a senior commander (with a rank equivalent to that of a brigade commander) in the Palestinian Islamic Jihad

terror organization, who at the time was located in a residential home in the Gaza Strip together with other senior militants. The IDF reasonably expected that providing a specific warning prior to the attack would frustrate the strike's objective.

[...]

### **c. Means and Methods of Attack**

[...]

313. **“Roof knocking.”** In certain instances where warnings were unheeded or unfeasible, the IDF, as a progressive precaution that went beyond the requirements of international law, fired a low explosive projectile at the target's roof. The purpose of this procedure — known as “roof knocking” — was to signal the impending danger and give civilians in or near the target a last opportunity to seek safety before an attack. This procedure was especially important in light of the efforts by Hamas and other terrorist organisations to encourage or coerce civilians to remain at the site of an impending attack. “Roof knockings” conducted by the IDF sought to provide civilians with sufficient time to take protective action. While “roof knockings,” like other kinetic means, may be imperfect, IDF assessments show that the employment of “roof knocking” was highly effective, preventing many civilian injuries and deaths during the 2014 Gaza Conflict.

[...]

### **3. Proportionality**

[...]

#### **a. Military Advantage Assessment**

[...]

326. The estimation of potential collateral damage can be very challenging. No military has perfect information regarding the presence of civilians in all the areas where attacks take place. This is all the more so when operating in a complex urban environment, with dense physical infrastructure and a mobile civilian population [...]

327. Moreover, there are often situations where it is necessary to launch an attack without being able to acquire or receive all information regarding the likely collateral damage. For example, during ground operations, fire from a building near an infantry platoon may demand an immediate response, and the platoon may not have access to real-time data regarding the presence of civilians or the nature of surrounding structures. In such exigent circumstances, the platoon will have to rely on whatever partial

information it does have, in addition to its prior training on the Law of Armed Conflict. The legality of the platoon's conduct must be assessed in light of what a reasonable commander would or would not have done under the same or similar circumstances.

328. Furthermore, placing military objectives in urban areas — which Hamas and other terrorist organisations deliberately did throughout the 2014 Gaza Conflict — significantly complicates the IDF's ability to assess the collateral damage expected from an attack. [...]

329. In many instances during the 2014 Gaza Conflict, commanders refrained from carrying out attacks in light of the potential for civilian harm, even where such harm may have been considered proportionate. In some instances, commanders refrained from attacking even when their forces were exposed to a direct threat. For example, on July 27, IDF forces dismantling tunnel infrastructure in Dir el-Balah were fired upon with what appeared to be a long-range anti-tank missile. The forces refrained from returning fire, however, because they could not determine whether the four-story apartment building from which the enemy fire originated was populated and because they were aware that it was prayer time at a nearby mosque.

[...]

#### **d. The General Staff Directive for Contending with Kidnapping Attempts (“The Hannibal Directive”)**

334. The requirement that attacks be carried out in accordance with the principle of proportionality is applicable to all instances of the application of force by IDF forces. The IDF does not maintain any rules, orders or directives that allow, explicitly or implicitly, for exceptions to this requirement. Thus, allegations that IDF directives, and particularly, the IDF General Staff Directive for Contending with Kidnapping Attempts (also known as the “Hannibal Directive”), permit IDF forces to exercise force in a manner that does not accord with the principle of proportionality, are incorrect.

335. The IDF General Staff Directive for Contending with Kidnapping Attempts provides methods and procedures for preventing and frustrating attempted kidnappings of Israeli nationals (both civilians and IDF soldiers). This Directive has been in force for decades and has been amended several times. It sets forth, *inter alia*, general guidelines for the hot pursuit of kidnappers and the command-and-control structure for such situations. [...]

336. The Directive does *not* grant permission to violate the Law of Armed Conflict, including the rules relating to distinction and proportionality. To the contrary, and as with all IDF directives concerning combat situations, IDF forces are required to adhere to the Law of Armed Conflict at all times when implementing the Directive's provisions. The use of unrestrained force is never permitted, even in the direst of circumstances. Moreover, the Directive explicitly prohibits actions intended to kill the kidnapped person (though any military action designed to thwart kidnapping entails some risk to life).

[...]

## 5. Detention

361. During the 2014 Gaza Conflict, the IDF captured certain individuals on the battlefield. The vast majority of these individuals were released shortly after capture, while 22 of them are currently being detained in Israel pursuant to Israeli law and in accordance with the Law of Armed Conflict. All are held in conditions that meet, and often exceed, the requirements of the Law of Armed Conflict.

362. **Capture on the battlefield.** In accordance with the Law of Armed Conflict, the IDF captured individuals in the Gaza Strip only when there was a military necessity for doing so. For example, the IDF captured individuals in order to collect tactical intelligence regarding the location of combat tunnels or booby-trapped buildings in the area of IDF activity, or to screen persons suspected of being involved in terror activity — a dire need when militants disguise themselves as civilians in an urban area. IDF directives require that every captured person be treated humanely and held in appropriate conditions. [...]

363. **Detention in Israel.** In approximately 150 cases, IDF commanders in the field determined that a captured individual needed to be brought to Israeli territory for further questioning. These individuals were transferred to detention facilities in Israel as soon as feasible, taking into account considerations for their safety, the safety of IDF forces, and certain other operational constraints. Once in Israel, each person was questioned and assessed on an individual basis. Most of these individuals were safely returned back to the Gaza Strip shortly thereafter, typically within 48 hours from the time they were brought to a detention facility in Israel and typically through the Erez Crossing and in coordination with the Palestinian Authority. In the rest of the cases, where adequate information indicated the person's involvement in terror activity, he was detained pursuant to either Israeli criminal law or Israel's Incarceration of Unlawful Combatants Law.

364. **Israeli Criminal Law track.** Twenty-one persons captured in the Gaza Strip during the 2014 Gaza Conflict have been the subject of detention orders under Israeli criminal law and are currently incarcerated in Israel. Each detainee has been offered a civilian public defence attorney and the option to hire a private defence attorney, and has been brought before an Israeli civilian court for judicial hearings. Indictments filed against these detainees include accusations relating to their varied military activity, military training, and membership in terrorist organisations in the Gaza Strip. To date, several proceedings have resulted in convictions, while others are ongoing.

365. **Incarceration of Unlawful Combatants Law track.** Only one individual who was captured in the course of the 2014 Gaza Conflict, Samir Najar, remains detained in Israel under the Incarceration of Unlawful Combatants Law. This law, enacted in 2002, provides legal tools for preventive detention in the specific context of hostilities, consistent with the requirements of the Law of Armed Conflict. As such, it allows for the detention of foreign individuals who take part in hostilities against Israel or who are members of a belligerent



force carrying out such hostilities, in order to remove them from the cycle of hostilities (those entitled to prisoner of war status, however, are subject to a separate legal regime regulated by the Law of Armed Conflict). The Incarceration of Unlawful Combatants Law may be invoked only once the person in question is present in Israeli territory. During the 2014 Gaza Conflict, where a justification for continued detention existed under both this law and Israeli criminal law with respect to a specific detainee, Israel generally chose to use criminal proceedings as a matter of policy.

366. In accordance with the Incarceration of Unlawful Combatants Law, an IDF Major General specifically authorised Najar's detention order based on an assessment that he poses an ongoing security threat to Israel, given his vast knowledge of, and practical experience with, explosives; his senior role in Hamas's police, and his close connections with members of Hamas's military wing. A civilian District Court judge, as well as Israel's Supreme Court, have upheld Najar's detention, following court hearings in which Najar was present and represented by his legal counsel. Under the Incarceration of Unlawful Combatants Law, Najar is entitled to a periodic judicial review every six months, until his release.

367. **Notifications of Detention.** Under the Fourth Geneva Convention, where a party to an international armed conflict places a protected person in custody for more than two weeks or in "internment" (*i.e.*, preventive, non-criminal detention), that party must notify the person's State and provide certain information about his status, [...]

368. Although these provisions do not necessarily apply to the 2014 Gaza Conflict, during the Conflict Israeli authorities notified the ICRC of each detainee who was brought to the incarceration facilities of the Israel Prison Service (regardless of whether the individual was detained under Israeli criminal law or under the Incarceration of Unlawful Combatants Law). In addition, as a matter of policy, Israel, where practicable, contacted the detainee's relatives by telephone to inform them about the detainee's status.

369. Furthermore, as a matter of policy, Israel offered humanitarian organisations acting on behalf of families from the Gaza Strip who had lost contact with their relatives during the Conflict the opportunity to ask the Control Centre for Imprisonment of the Military Police of the IDF whether and where their relatives were being detained in Israel. After receiving various such inquiries, the Control Centre provided replies.

370. **Visits and Conditions of Detention in Israeli Incarceration facilities.** Under the Fourth Geneva Convention, which is applicable to international armed conflicts, the ICRC generally may visit places where persons protected under the Convention are detained and interview them. The Convention also stipulates that "internees" generally may receive visits from close relatives and certain others.

371. Although these provisions do not necessarily apply to the 2014 Gaza Conflict, Israel has facilitated visits from the ICRC, as well as detainees' meetings with legal counsel (regardless of whether an individual is detained under the criminal law or the Incarceration of Unlawful Combatants Law). Moreover, in October 2014, Israel reinstituted a policy that granted Gaza-based family members of Palestinian detainees



permission to enter Israeli territory for visits (which had been temporarily suspended prior to the Conflict), even though Israel is not obligated by law to do so. All 22 detainees captured during the 2014 Gaza Conflict have been allowed to receive visits from their family members who reside in the Gaza Strip, and almost all of them have in fact received such visits in the last few months at the facilities of the Israel Prison Service where they are being held.

[...]

## **E. Humanitarian Efforts**

[...]

374. Since 2005, Israel has not had effective control over the Gaza Strip, and thus its obligation under the Law of Armed Conflict is limited generally to allowing (or at most facilitating) humanitarian aid to persons in need where hostilities were taking place.<sup>482</sup> In light of the temporary and transient nature of the IDF presence in the outskirts of the Gaza Strip, and the intensive and ongoing nature of the combat, Israel did not have the additional legal obligations that would arise in the context of a belligerent occupation. Nevertheless, Israel made significant humanitarian efforts that in many respects went beyond its obligations under international law.

[...]

### **392. Essential infrastructure. [...]**

\* *Electricity*: In accordance with previous agreements between Israel and the Palestinian Authority, Israel supplies electricity to the Gaza Strip on an annual basis. [...] Although Israel knows that this electricity is used to facilitate the military operations of Hamas and other terrorist organisations, Israel, as a matter of policy, continued the regular supply to the Gaza Strip during the 2014 Gaza Conflict. Unfortunately, some of the fighting (including Hamas's fire, as well as the IDF's) caused a number of disruptions to the flow of electricity. [...]

\* *Water and sewage systems*: Based on previous agreements between Israel and the Palestinian Authority, Israel supplies approximately 5 million cubic metres annually out of a total of about 170 million cubic metres annual water consumption in the Gaza Strip. The supply remained stable throughout the 2014 Gaza Conflict. However, one of the two water lines leading from Israel to the Gaza Strip was damaged, causing a reduction in supply for several days. Altogether, Israel made 22 repairs to water infrastructure and three repairs to the sewage system during the 2014 Gaza Conflict. Mortar fire, tunnel attacks and safety concerns arising from the hostilities sometimes delayed efforts to repair water and sewage infrastructure.

[...]

## **VII. Israel's Investigation of Alleged Violations of the Law of Armed Conflict**

[...]

### **C. Hamas declaration on the Report of the UN Commission of Inquiry**

[**Source:** The Islamic Resistance Movement- Hamas, Press Statement: Hamas's Reflection on the Report of the UN Human Rights Commission of Inquiry on the Israeli 2014 Aggression on Gaza, 29 June 2015, available at: <http://mfa.gov.il/ProtectiveEdge/Pages/default.aspx>]

[1] The Islamic Resistance Movement of Hamas welcomes the Commission's condemnation of the crimes Israel has committed against the Palestinian people. Yet, Hamas has notes on the UN report:

[...]

[13] The report states that IDF warned residents of the houses to be bombed using warning missiles, considering this as a sufficient and appropriate warning and not in violation of the international law and the laws of war. How come a missile becomes a tool of warning? Isn't it a sort of disregard and disrespect for human life and human rights?

[14] The report pays no attention to the Israeli bombing of sites protected under the international law, including hospitals, schools, shelters, media institutions, crews of the civil defense and journalists. IDF targeted dozens of such facilities and institutions in a gross violation of the international laws and conventions.

[15] The report attempts to clear the Israeli occupation of the direct bombing of protected sites, such as hospitals and shelters. The report volunteers to claim that IDF targeted the surroundings of these facilities, despite the fact that the occupation refused to cooperate with the investigations, and despite the numerous documented such incidents, such as the targeting of Alwafa'a Rehab Hospital, Al-Aqsa hospital and Beit Hanoun UNRWA school which was used as a shelter by hundreds of evacuees under coordination between UNRWA and IDF.

[...]

[17] Hamas has handed over the government to the national consensus government on June 2, 2014 a month before the Israeli aggression on Gaza on July 7, 2014. Therefore, Hamas rejects the report's

characterization of the Movement as a de facto authority in Gaza.

[...]

[19] The report ignores the fact that the Israeli occupation is the party that initiated the aggression on Gaza, forcing the Palestinian resistance to defend the Palestinian people and resist the aggression in consistence with international law.

[...]

[23] Conclusion:

[24] The report of the UN Human Rights Commission of Inquiry does not reflect the massive destruction caused by the Israeli aggression on Gaza Strip, and it is drafted in a biased approach that favors the Israeli occupation. It equates the Israeli executioner with the Palestinian victim, and justifies the war crimes Israel committed in Gaza.

[25] Therefore, Hamas demands the UN Human Rights Council to:

[...]

[c] Re-draft the report to include the right characterization of the Palestinian resistance as a legitimate resistance against the Israeli occupation in accordance with the international laws and conventions. The report must highlight the right of the resistance to defend the Palestinian people against the Israeli aggression on Gaza.

[...]

The Islamic Resistance Movement- Hamas - June 29, 2015

## Discussion

### I. Classification of the situation, of the territory and applicable law

1. (*Doc A, paras 24-34, 53-58; Doc B, Paras 2, 45, and 233*) How would you classify the conflict in Gaza between June 13 and August 26? Who are the parties to it? Was there a conflict ongoing before this period? After? What are the reasons for your answer? (GC IV, Art 2; Hague Regulations Art. 42)

2.

a. (*Doc A, Paras 26-30; Doc B, Para 45, Paras 116-263, Para 374; Doc C, Para. [19]*) Is Gaza an occupied territory? According to Israel? What does the Inquiry Commission conclude? On what criterion is its

conclusion based? What is the applicable law in this territory according to the Commission? According to Israel? (Hague Regulations, Art. 42)

b. Is the fact that hostilities were conducted from the Gaza Strip against Israel and Israel was unable to stop them evidence that it had no effective control over the Gaza Strip?

3. (*Doc A, Paras 24-25, 32-35 and 39-45; Para 234*) Who was bound by which rules of IHL and International Human Rights Law during the operation Protective Edge?

## **II. Conduct of hostilities**

### *4. Targeting of individuals*

a. (*Doc. A, Para. 209*) What is the status under IHL of the so-called “terror targets? Are they combatants? Civilians? May any member of Hamas be targeted at all times? Any member of the military wing of Hamas?

b. (*Doc A, Paras 208-209, Para 220; Doc B, Paras 263-269*) What counts as having a continuous combat function within a group? Does the head of the financial and economic council of Hamas (as was Essam Al Da'alis) qualify as targetable? What is the IDF position in this regard? When, according to the IDF report, can a civilian be targeted? In your opinion, does this align with IHL? (P I, Arts. 50 and 51)

### *5. Targeting of objects:*

a. (*Doc. A, Paras 209 and 220*) May a house be targeted merely because it is inhabited by a person who may be targeted, or must the house be used by that person? Is the fact that the house provides shelter enough to be considered as use? Does the fact that a military commander makes phone calls to his units from a house turn the latter into a command and control center?

b. (*Doc A, Para 425-432, 445-448; Doc B, Paras. 155, Paras 280-281; Doc C, Paras [14]-[15]*) Can a protected object such as the UNRWA School of Beit Hanoun lose its protection? How do you evaluate this attack with respect to the IHL rules on conduct of hostilities? (P I, Arts. 48, 51 and 52)

c. (*Doc A, 450-455; Doc B, Para 392*) How does IHL protect objects such as power plants? Can such an object be attacked? Under which circumstances? Does it change anything under IHL whether it was struck by Israeli forces or by Palestinian armed groups? May power plants be incidentally affected by attacks against legitimate targets in their vicinity? Could IHL have been violated even if the power plant was not targeted? (PI, Arts. 51, 52, 54, 56, and 57)

### *6. Proportionality*

a) (*Doc A, Para 88, Paras 470-479; Doc B, 253*) What does the Commission have to say regarding urban warfare? Is the obligation to avoid locating military objectives near densely populated area an absolute one? What is the position taken in the IDF report in this regard? Did Israel violate its IHL obligations of passive precautions regarding the location of the Hatzor airbase and the IDF Headquarters? Did Hamas respect its passive precaution obligations? How do you differentiate between a violation of the prohibition to use human shields and the lack of passive precautions? (PI Arts. 51(7) and 58)

b) (*Doc A, Paras. 408, 470-479; Doc B, Paras 326-329*) May urban warfare justify the “launch [of] an attack without being able to acquire [...] all information regarding the likely collateral damage?” According to the IDF Report? According to the Commission? According to you? (P I, Art. 57)

c) (*Doc A, Paras 296 393, 394, and 447; Doc B, Para 318, Paras 330-332*) What is relevant for the proportionality test according to the IDF Report? How does the Commission apprehend the “force protection” element in the proportionality test? How does the IDF report assess its military advantage? Does the protection of attacking forces figure in the proportionality evaluation or in the evaluation of whether the precautionary measures they could take are feasible? (PI, Art. 51 and 57)

d) (*Doc A, Paras 352-370, Paras 393-394; Doc B, Paras 334-336*) How is the abduction of an Israeli soldier

dealt with by the IDF? How is the Hanibal Directive implemented? Is the Hanibal Directive in compliance with IHL rules on conduct of hostilities? According to the Commission? To the IDF Report? Does the liberation of a soldier captured by the enemy constitute a military advantage? May the advantage of not having to release hundreds of Palestinians in exchange for the soldier count in the proportionality evaluation? (PI, Art. 51) e) (*Doc A, Paras 84-85, 97; Doc B 114-117*) Could the Palestinian rockets be prohibited *per se* by IHL because they are not “very technologically advanced”? What is the argument advanced in this regard by the IDF report? May Hamas rather argue that IHL cannot prohibit a party from using the only weapon it has capable of reaching Israel? (P I, Art. 35 and 51(4))

#### 7. *Precaution:*

a) (*Doc A, Paras 233-239, Para 264; Doc B, Paras 182, 185, 293-304, Para 313; Doc C, Para [13]*) When can a warning be considered effective? How does the Commission assess the effectiveness of roof-knock warnings exercised by Israel? What are the most effective types of warnings used by the IDF in your opinion? (P I, Art. 57 (2) c))

b) (*Doc A, Para 95; Doc B, Para 308*) What is the nature of the obligation regarding warnings? When can it be permitted not to give any? Do you think the targeting of Danian Mansour fits such circumstances? (P I, Art. 57 (2) c))

c) (*Doc. B, Para. 307*) If an effective warning has been given and the addressees do not heed it, do the addressees turn into legitimate targets? Do they no longer count in the proportionality evaluation? Do they still benefit from other precautionary obligations of the attacker?

#### 8. *Human shields:*

(*Doc A, Paras 346, Doc B, Paras 157-165, Paras 306-307*) What are the relevant IHL provisions regarding human shields? How are the civilians used to shield a target taken into account in the proportionality test by Israel? What about those who refused or failed to leave the area? Can they be considered voluntary human shields? Would it entail their targetability? (PI, Art. 51 (7))

### III. **Treatment of persons**

9. (*Doc A, Paras 492-502; Doc B, Para 114-117*) What are the relevant IHL provisions regarding the execution and the general treatment given to the suspected collaborators? Are those executions in compliance with IHL? With HRL? Are those persons covered by IHL although they are Palestinians in the hands of Hamas? Are they protected by GC IV? Why does the Commission of Inquiry refer to common Article 3? Does a non-international armed conflict exist between Hamas and the collaborators? (Common Art.3; GC IV, Arts. 4, 68, 75; CIHL, Rules 89, 91, 100)

10. (*Doc A, Paras 324-326, Para 342; Doc B, 361-371*)

a) What is the legal basis for the arrest and detention of “dozens of Palestinian men and children” mentioned at Para 324, Doc A? IHL? Domestic law? Can detainees captured in Gaza be transferred in Israel? How would you assess the legality of Samir Najar’s detention under IHL (*Doc. B., Paras 365-366*)? Under Human Rights Law? Is it lawful under IHL to arrest civilians for the mere purpose of interrogating them about “the names of Palestinian fighters, and the location of tunnels and weapons depots.”( GC IV Arts 31, 49 64, 78)

b) What is the general protection afforded by IHL to detainees? Why could the provisions concerning notifications of detention possibly not be applicable to the Gaza Conflict according to the IDF Report? Why could the provisions concerning the ICRC visits possibly not be applicable to the Gaza Conflict according to the IDF Report? With respect to family visits, does IHL contain such a right? (GC IV Arts 2, 4, 76, 136-140, 143)

#### **IV. Accountability**

11. (*Doc A, 658-661*) Can the ICC prosecute the crimes committed in Gaza during the summer 2014? Why? Why not? Is the fact that Israel is not a Party to the Rome Statute relevant for your answer?

12. (*Doc C, Para [19] and Para [24], [25 c]*) Is it within the mandate of the UN Report to also assess *jus ad bellum* violations? According to the Hamas declaration? According to you? If Hamas' right to resist occupation had been recognized by the Commission, would any of its findings have changed? Does IHL treat Israel and Hamas equally?

13. Are the Inquiry Commission and Israel diverging in the assessment of IHL violations in the conflict? Do those divergences mainly concern the law or the facts?