



HUMAN RIGHTS COUNCIL
Twelfth session
Agenda item

Distr.
GENERAL

A/HRC/12/G/4
28 September 2009

Original: ENGLISH

HUMAN RIGHTS IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Letter dated 25 September 2009 from the Permanent Representative of Israel to the United Nations Office at Geneva addressed to the President of the Human Rights Council

The Permanent Mission of Israel to the United Nations Office at Geneva and other international organizations in Geneva presents its compliments to the Office of the President of the twelfth session of the Human Rights Council and has the honour to submit herewith a document* to be circulated as an official document of the twelfth session of the Human Rights Council.

The Permanent Mission of Israel avails itself of this opportunity to renew to the Office of the President of the twelfth session of the Human Rights Council the assurances of its highest consideration.

*Reproduced in the annex, as received and in the language of submission only. As the original document was submitted in colour, the quality of certain photographs and graphics may have been compromised through the reproduction in black and white. The original of the attachment can be consulted on the OHCHR website.

THE OPERATION IN GAZA

27 DECEMBER 2008, 18 JANUARY 2009

FACTUAL AND LEGAL ASPECTS

JULY 2009



THE OPERATION IN GAZA: FACTUAL AND LEGAL ASPECTS

I. EXECUTIVE SUMMARY

1. This detailed Paper discusses a range of factual and international legal issues relating to the military operation undertaken by the Israel Defence Forces ("IDF") in Gaza in December 2008–January 2009 (the "Gaza Operation").
2. The Paper has been prepared at this time in order to place the Gaza Operation in its proper factual and legal context. On a number of issues the Paper offers only a provisional analysis as the IDF is still conducting comprehensive field and criminal investigations into allegations regarding the conduct of its

forces during the Operation. Such investigations will be reviewed by the Military Advocate General and are subject to further review by the Attorney General. In addition, petitions may be filed for judicial review by the Supreme Court of Israel (sitting as the High Court of Justice).

3. The Paper addresses the context of the Gaza Operation and notes that Israel had both a right and an obligation to take military action against Hamas in Gaza to stop Hamas' almost incessant rocket and mortar attacks upon thousands of Israeli civilians and its other acts of terrorism. Israel was bombarded by some 12,000 rockets and mortar shells between 2000 and 2008, including nearly 3,000 rockets and mortar shells in 2008 alone. Hamas specifically timed many of its attacks to terrorise schoolchildren in the mornings and the afternoons. These deliberate attacks caused deaths, injuries, and extensive property damage; forced businesses to close; and terrorised tens of thousands of residents into abandoning their homes.

4. The Paper notes that Hamas constantly worked to increase the range of its weapons and that, by late 2008, its rocket fire was capable of reaching some of Israel's largest cities and strategic infrastructure, threatening one million Israeli civilians, including nearly 250,000 schoolchildren. Hamas also orchestrated numerous suicide bombings against Israeli civilians and amassed an extensive armed force of more than 20,000 armed operatives in Gaza.

5. The Paper also describes the numerous non-military approaches Israel pursued to try to stop the attacks before commencing the Gaza Operation, including urgent appeals to the U.N. Secretary General and successive Presidents of the Security Council to take determined action, and diplomatic overtures, directly and through intermediaries, to stop the violence. Hamas nonetheless continued, and in fact escalated, its cross-border attacks. These attacks included a raid into Israeli territory from Gaza in June 2006 and the abduction of an IDF soldier, Corporal Gilad Shalit, who, more than three years later, remains in captivity, having been held incommunicado without access to the International Committee of the Red Cross ("ICRC") or any other international body.

6. In a detailed legal analysis, including a survey of the relevant legal principles and State practice, the Paper notes that Israel's resort to force in the Gaza Operation was both a necessary and a proportionate response to Hamas' attacks. While the IDF continues to investigate specific incidents during the Operation, the Paper demonstrates that Israeli commanders and soldiers were guided by International Humanitarian Law, including the principles of distinction and proportionality. These principles, enshrined in IDF training, Code of Ethics and rules of engagement, required IDF forces to direct their attacks solely against military objectives and to try to ensure that civilians and civilian objects would not be harmed. Where incidental damage to civilians or civilian property could not be avoided, the IDF made extraordinary efforts to ensure that it would not be excessive in relation to the anticipated military advantage in each instance and as a whole. Both before and during the Gaza Operation, the IDF went to great lengths, as documented in the Paper, to ensure that humanitarian aid reached the Palestinian population, including by facilitating the delivery of 1,511 trucks carrying 37,162 tons.

7. By contrast, both before and during the Gaza Operation, Hamas committed clear grave violations of international law. The Paper documents Hamas' deliberate rocket and mortar attacks against Israel's civilian population, which violated the international law prohibition on deliberate attacks against civilians and civilian objects. It also documents deliberate Hamas tactics that put Gaza's civilian population in grave danger. These included the launching of rocket attacks from within densely populated areas near schools and protected U.N. facilities, the commandeering of hospitals as bases of operations and ambulances for transport, the storage of weapons in mosques, and the booby-trapping of entire civilian neighbourhoods so that an attack on one structure would devastate many others. These actions, which are clearly shown in photographic and video evidence throughout the Paper, violated international law. Many of the civilian deaths and injuries, and a significant amount of the damage to property during the Gaza Operation, was attributable to Hamas' tactic of blending in with the civilian population and its use of, or operations near, protected facilities and civilian property. The Paper also notes the direct injury and damage caused to Palestinians by the explosion of Hamas' weapons factories and the falling of rockets short of their targets on Palestinians in Gaza.

8. The Paper addresses the acute dilemmas faced by Israel in confronting an adversary using its own civilian population as a shield. It details the extensive precautions taken by the IDF to avoid or limit harm to civilians in Gaza, while still having to achieve the necessary objective of stopping Hamas' constant rocket and mortar fire on Israeli civilians and property. The IDF not only checked and cross-checked targets and used the least destructive munitions possible to achieve legitimate military objectives; it also implemented an elaborate system of warnings, including general warnings to civilians (through media broadcasts and leaflets) to avoid or minimise the presence of civilians in areas and facilities used by Hamas, regional warnings to alert civilians to leave specific areas before IDF operations commenced, and specific warnings (through telephone calls and warning shots to rooftops) to warn civilians to evacuate specific buildings targeted for attack. The IDF dropped more than 2.5 million leaflets and made more than 165,000 phone calls warning civilians to distance themselves from military targets.

9. In this Paper, Israel acknowledges that, despite the precautions taken, the Gaza Operation resulted in many civilian deaths and injuries and significant damage to public and private property in Gaza. Israel makes no attempt to minimise the human costs incurred. As former Prime Minister Olmert stated at the close of the conflict: "On behalf of the Government of Israel, I wish to convey my regret for the harming of uninvolved civilians, for the pain we caused them, for the suffering they and their families suffered as result of the intolerable situation created by Hamas."

10. In analysing the legal aspects of the conflict, the Paper notes that civilian deaths and damage to property, even when considerable, do not necessarily mean that violations of international law as such have occurred. In particular, the principles of distinction and proportionality are only violated when there is an intention to target civilians or to target military objectives with the knowledge that it would cause harm to civilians that is excessive in relation to the anticipated military advantage. Hamas' deliberate attacks against Israel's civilian population violated such standards and thus constituted a violation of international law. The IDF's attacks directed against Hamas military targets, despite their unfortunate effects on Gaza's civilian population, did not.

11. The Paper also gives a detailed account of Israel's efforts to coordinate and facilitate humanitarian relief and assistance to the Palestinians in Gaza. It also documents repeated Hamas abuses of these arrangements, including Hamas' launching of attacks during humanitarian pauses and directed at crossing points, and Hamas' hijacking and theft of humanitarian supplies intended for those in need.

12. The Paper also gives previously unpublished details of the multiple IDF investigations into allegations made by various groups that violations of the law were committed. IDF investigative teams are currently examining approximately 100 complaints, including 13 criminal investigations opened so far, and will examine more complaints if and when filed. The Paper sets forth the preliminary findings of some of the IDF field investigations, including investigations relating to allegations concerning 1) incidents where U.N. and international facilities were fired upon or damaged; 2) incidents involving shooting at medical facilities, buildings, vehicles, and crews; 3) certain incidents in which many civilians were harmed; 4) the use of munitions containing white phosphorous; and 5) destruction of private property and infrastructure by ground forces. It provides as much information as can be released with regard to the investigations currently underway without comprising the integrity and independence of these investigations.

13. The field investigations constitute only the preliminary stage of an extensive legal process. They are subject to independent review by the Military Advocate General, who may order the opening of a criminal investigation. The decisions of the Military Advocate General are subject to review by the Attorney General and may also be reviewed by the Israeli Supreme Court (sitting as the High Court of Justice). Israel's system for investigating alleged violations, including its judicial review process, is internationally recognised as thorough and independent; its procedures and institutions are similar to those in other Western countries.

14. Israel deeply regrets the civilian losses that occurred during the Gaza Operation. But Israel has both the responsibility and the right under international law, as does every State, to defend its civilians from intentional rocket attacks. It believes that it discharged that responsibility in a manner consistent with the rules of international law. Israel is committed to a thorough investigation of all allegations to the contrary and to making the results of these investigations and subsequent reviews public when they are completed.