



August 25, 2015

To:
Mr. Yehuda Weinstein
Attorney General of Israel
Via fax: 02-6467001

Re: Policy of offensive strikes in Gaza during Operation Protective Edge

References: our letter dated July 21, 2014; your response dated August 5, 2014; our letter dated October 6, 2014.

1. I am contacting you one year after Operation Protective Edge in order to clarify the outcome of our last letter regarding the policy of offensive strikes on Gaza during Operation Protective Edge last summer, to which we did not receive any response; and to again demand an independent investigation into this policy and its compliance with international and Israeli law.
2. We first contacted you on behalf of a group of organizations on July 21, 2014, some two weeks after combat in Gaza began, to request an examination of the policy of offensive strikes, which had already raised concerns of violations of laws of war. On August 5, 2014, you responded and clarified that the IDF operates in accordance with principles of international law and that both the command and diplomatic echelons receive ongoing legal guidance in order to ensure that these requirements are met.
3. This general response was not satisfactory, and in fact our concerns only increased as the fighting continued. Therefore, after collecting additional information, we contacted you again on October 6, 2014 to request a detailed response, specifically regarding the three central issues which raised concerns at the policy level:
 - a. The definition of “military target” and policy for “incriminating” supposedly civilian objects and defining them as legitimate military targets.
 - b. Instructions on use of statistical weapons¹, specifically artillery, in populated areas.
 - c. The use of precautions, and specifically in regard to the policy of opening fire, in places where warnings were issued beforehand.
4. Our questions have still not been answered. Meanwhile, published testimonies and reports about the fighting in the Gaza Strip have reinforced the concerns that we raised in the past, and require, in our opinion, that you seriously and thoroughly address these concerns.

The definition of “military target” and policy for “incriminating” civilian objects and defining them as legitimate military targets.

5. In our prior letters, we requested clarification of the criteria which guide the IDF in “incriminating” targets, meaning defining supposedly civilian sites as legitimate military targets, and how these

¹ "Statistical weapons" is a term used to describe explosives that have a wide-area effect.



criteria were implemented during Operation Protective Edge. The need to clarify these criteria was raised primarily against the backdrop of repeated attacks on residential buildings, in which hundreds of noncombatant civilians were killed. For some of these strikes, the IDF did not detail the justifications for the attack, neither in advance nor afterwards; reinforcing concerns that the building became a target because of the fact that it belonged to a combatant.

6. The UN Investigative Committee on this topic, headed by Judge Mary McGowan Davis, which published its findings on June 22, 2015 (<http://bit.ly/1Lp3Goh>) examined some 15 instances of strikes on residential buildings. The Committee determined that in at least six of these instances, there was no information available on why these homes, which appeared to be protected civilian sites, became legitimate military targets (see paragraph 8 of the summary report: <http://bit.ly/1JdMFgj>).
7. The Ministry of Foreign Affairs' report on the conflict in Gaza, which was published in May 2015 (only in English: <http://bit.ly/1MLFrOb>), cites examples of civilian sites which were used for military purposes. The report explains the military use of several concrete objects and why they were targeted. The explanations were mostly general in nature and did not provide answers with respect to all of the reported incidents. With regards to providing evidence of the military use of these sites, the Ministry of Foreign Affairs report claims that we cannot expect to locate such forensic evidence after the target has been destroyed in a strike (see paragraph 286 of the Ministry of Foreign Affairs report).
8. However, according to the UN Committee, the proliferation of supposedly civilian sites that were attacked places the burden of proof upon Israel to present justifications for classifying these homes **in advance** as legitimate military targets. The Committee understands that limitations imposed by Intelligence makes it difficult to completely explain the strikes, but insists that Israel must clarify, with minimal disclosure of information, what turned the residential buildings into targets for strikes (see paragraphs 215-218 of the report).
9. In the absence of explanations to alleviate these concerns, the Committee determined that there are serious concerns that both the principle of distinction and the principle of proportionality were violated during these strikes. The fact that the IDF continued to strike residential buildings throughout the operation, even after the great extent of harm to civilians became clear, raises concern that these strikes reflected the widespread policy approved by the highest political echelons and that the interpretation of "military target" according to this policy is outside the boundaries of the definition according to international humanitarian law (see paragraphs 44-45 of the summary report).
10. As we noted in our previous letter, the legitimacy of the criteria guiding the IDF in this context must be examined through public discourse. This is not possible today because of a lack of transparency regarding Israel's attack policy in Gaza and its implementation in the context of strikes on residential buildings. Therefore, we again demand that the definition of "military target" and the criteria for the "incrimination" of civilian sites be released for public scrutiny. In addition, we believe that the IDF must publish its explanation for the strikes on residential buildings in every one of the incidents that has not yet been explained and for which serious concerns have been raised as to violation of the laws of war. Of course, this must be done while taking into consideration intelligence sensitivities.

Use of statistical weapons, specifically artillery, in populated areas



11. In our previous letter, we raised concern that widespread use of artillery in densely populated urban areas does not allow for sufficient distinction between legitimate military targets and protected civilian objects. This harmed hundreds of civilians and destroyed entire neighborhoods.
12. According to the Ministry of Foreign Affairs report, artillery is only used in urban areas on an exceptional basis, and in a supervised manner, after the majority of the civilian population has been evacuated and when artillery is the only available and effective means to produce the required tactical effect (see paragraph 357 of the Ministry of Foreign Affairs report). However, according to information published in reports of human rights organizations in Israel and Gaza, as well as information reported in the media, artillery and other heavy weapons were used extensively in residential neighborhoods, and led, as indicated above, to fatal results and to destruction of massive proportions. The UN Committee found likewise, and determined that frequent use by the IDF of explosive weapons during Operation Protective Edge seems not to have upheld the principle of distinction (see paragraph 50 of the UN summary report).
13. A similar impression is received from testimony of combat soldiers collected by the organization Breaking the Silence and recently published in the report “This is How We Fought in Gaza – 2014” (<http://www.breakingthesilence.org.il/pdf/ProtectiveEdge.pdf>). The published testimonies confirmed many of the concerns which we raised in our previous letters and indicate different patterns of action from those described in the Ministry of Foreign Affairs report.
14. The accumulation of reports indicate that during the ground operation, routine use was made of mortar fire in populated areas, where the forces did not encounter armed resistance and without defined targets. For example, two testimonies described indiscriminate fire towards the neighborhood al-Bureij:

The way the offensive took place was, when it started getting dark my tank led the way, we were in a sort of convoy, and there was this little house. And then suddenly we saw an entire neighborhood opening up before us, lots of houses, it was all crowded and the moment we got to that little house, the order came to attack. Each [tank] aimed at whichever direction it chose, and then we fired a whole lot at the little house with machine guns and also one shell to make sure there was no threat inside. And suddenly I saw the whole neighborhood in front of me, and then there was stress and confusion over the radio, and the commander was really improvising, and suddenly he told me: “You see that house? Fire there.” Boom, I shot. “Go, driver, go forward,” and the driver went a bit forward and we got to a sort of alley. “You see the house on the left? Fire at it.” Boom, we fired, and we were just, like, purposelessly firing. There was no intelligence on this or that house – it was just my platoon commander and myself deciding to fire at it because you have to fire, you have to ‘provoke.’

It could well be that people were killed inside, but there really wasn’t any intelligence on those specific buildings. And that’s how it went on. “You see that house in front of you? Shoot.”

He also asked me, “What can you fire at? Whatever you can physically see, fire at it.” Like, “Feel free.” And that’s how it was, really – every tank just firing wherever it wanted to. And during the offensive, no one shot at us – not before it, not during it, and not after it. I remember that when we started withdrawing with the tanks, I looked toward the neighborhood and I could simply see



an entire neighborhood up in flames, like in the movies. Columns of smoke everywhere, the neighborhood in pieces, houses on the ground, and like, people were living there, but nobody had fired at us yet. We were firing purposelessly.

(Testimony No. 46)

There was no threat and it was quiet, and then suddenly there was this command on the two-way radio: “Guys, everyone form a row facing the neighborhood of al-Bureij” – which was this neighborhood that could see us from far off – it had a view of Juhar al-Dik, and that was higher than us. That is, they could see everything and we couldn’t see everything from where they were. They were higher than us, and they could dominate us in terms of both fire and vision. And [the commander] gave an order: “Guys, all the tanks in a row, firing positions, all together facing the neighborhood of al-Bureij, we’re commencing engagement.” ‘Engagement’ means everyone firing at once, a countdown, “3, 2, 1, fire.”

I remember it, all the tanks were standing in a row, and I personally asked my commander: “Where are we firing at?” He told me: “Pick, wherever you feel like it.” And later, during talks with the other guys – each one basically chose his own target, and the commander called it on the two-way radio, ‘Good morning al-Bureij.’ “We are carrying out, a ‘Good morning al-Bureij,’ guys” that was the quote. Basically to wake up the neighborhood, to show those guys that ‘the IDF is here,’ and to carry out deterrence.

(Testimony No. 29)

Additional examples can be found in testimonies 9, 12, 14, 15, 18, 21, 25, 31, 36, 37, 42 and 62.

15. Additional testimonies from the Breaking the Silence report indicate that use of imprecise statistical weapons was not reduced during the course of the fighting, but rather the opposite: the longer the fighting continued, the more approval was given for actions in which collateral damage was widespread, although the destructive results of using this weapon in urban environments were already widely understood. The relaxation of the attack policy as the fighting continued was attributed by the soldiers to various considerations, including the decline in the “target bank” and the desire to achieve a “display of victory” (see, for example, testimonies 39, 64 and 109).
16. In light of all this, we again request clarification as to the IDF’s rules of engagement in populated areas; specifically on the instructions regarding the use of artillery fire in densely populated urban areas and how these were implemented in practice during Operation Protective Edge.

Use of precautions

17. During the fighting in Gaza, the IDF made widespread use of various types of warnings, including pamphlets, phone calls and text messages, which called on the residents of various areas to evacuate their homes. It was understood that these warnings were intended to decrease the harm to civilians and that they indeed achieved this goal in some instances. However, as we noted in our earlier letters, in practice many residents did not leave their homes despite the warnings because they were physically unable to or because they did not see a genuine possibility of fleeing the combat area. Many organizations, including ACRI, contacted you during the fighting in order to warn against



massive strikes on the evacuated areas, out of concern that many people remained in their homes. In our letters we emphasized that the warnings cannot serve as an alternative to other precautions and that they do not exempt the fighting forces from their commitment to protect civilians.

18. Despite this, various testimonies raise the concern that the widespread view among the fighting forces was that the areas in which pamphlets were distributed or other warnings to evacuate were provided were thus considered “sterile areas,” meaning areas that can be treated as empty of civilians. It seems that this assumption made the finger on the trigger lighter when shelling neighborhoods after pamphlets had been distributed, and also relaxed the rules of engagement of the fighters who entered the areas after the shelling. As one infantry major testified:

There was one part [of the operation] that includes an ‘accompanying screen’ – the firing of artillery shells before the forces arrive. You notify the [Palestinian] residents, throw leaflets – whoever fled, fled – and then you fire. I’m talking about a pretty massive use of fire. The artillery, its purpose is to allow our forces to enter without being hurt. Any place that has been identified by intelligence or is an open area, gets hit with artillery. But if you check to see how many open areas exist in Gaza, there aren’t so many... I do know that the practical result was flattened areas where houses had once stood... Neighborhoods erased. You know what joke was being told in the army at the time? The joke says that Palestinians only sing the chorus because they have no verses [houses] left. (*In Hebrew, the word for verse is the same as the word for house*). (Breaking the Silence report, testimony No. 1)

19. Similar descriptions are found in testimonies of other soldiers:

The rules of engagement are pretty identical: Anything inside [the Gaza Strip] is a threat, the area has to be ‘sterilized,’ empty of people – and if we don’t see someone waving a white flag, screaming, “I give up” or something – then he’s a threat and there’s authorization to open fire. (Testimony No. 2)

They told us: “There aren’t supposed to be any civilians there. If you spot someone, shoot.” (Testimony No. 17)

The IDF distributed flyers informing the residents of the areas we were entering, and that anyone remaining in the area was in effect sentencing themselves to death. That’s what was said. (Testimony No. 75)

We only enter houses ‘wet,’ with grenades, and the more of them the better... If there is [any Palestinian] there – they shouldn’t be. (Testimony No. 8)

Also see testimonies 30, 32, 54, 68, 76, 88, 96 and 98.

20. These testimonies raise concern that the use of warnings led to a lowering of the threshold for caution relating to combat in areas that were ordered for evacuation, such as Shuja’iya and Khuza’a, in a manner that does not meet the obligation to exercise all precautions in order to avoid as far as possible any harm to civilians and civilian property.



21. This was also held to be true by the UN Committee, which established that the Ministry of Foreign Affairs report which stated that the IDF did not consider the civilians who remained behind in evacuated areas as combatants, is inconsistent with the Committee's findings and the soldiers' testimonies that reflect the actual occurrences in the incidents under examination (paragraphs 396-404 of the UN report).
22. With regard to the use of the "roof knocking" protocol as a pre-strike warning, it proved itself to be ineffective and even lethal in the early days of combat (for more on this matter see our first letter dated July 21, 2014). Therefore, we are extremely doubtful as to whether "roof knocking" should be considered a "warning" at all. Conversely, it also cannot be defined as an assault measure with lower capacity for damage, because from the outset it was not designed to effectively damage military targets. This raises concerns that the use of "roof knocking," especially in incidents in which no other precautions were implemented (testimonies 82 and 97 from the Breaking the Silence report), led to a violation of the principle of proportionality (paragraphs 236-237 of the UN report).
23. In light of the above, we hereby request that you detail the policy for implementing warnings and other precautions during Operation Protective Edge and to relate to the combatants' testimonies with regard to the concept of "sterile areas." Furthermore, we ask that you describe the "roof knocking" protocol and the rationale for its use.
24. In sum, we again request that you respond to the following questions:
 - a. How is a "military target" defined? What makes a site that is civilian in nature, which is presumably not used for military activity, a "legitimate military target"? What are the criteria necessary to label a civilian site as a target, according to the guidelines? How are these criteria applied in each of the incidents yet to be explained by the IDF?
 - b. Are there limitations, and if so what are they, placed on IDF activities in populated areas? How is the use of military force different in such areas compared to other areas? In particular, what are the orders as to the use of artillery fire in urban areas densely populated by civilians? How were these orders applied during Operation Protective Edge?
 - c. What is the policy for the use of general warnings (leaflets, radio announcements, instructions via megaphone etc.) in populated areas? What are the orders for the use of force in areas in which these general warnings were issued? What does the "roof knocking" protocol establish? Is it considered a warning? What are the guidelines for the use of force in incidents in which this protocol was implemented?
 - d. What are the actions, if any, taken in order to examine the IDF's policy of offensive strikes during Operation Protective Edge, in particular with regard to the three issues raised above? We will emphasize that an independent investigation into the policy taken during the fighting in Gaza is crucial both for the provision of a public and legal accounting for the events of the



past and also in order to prevent the repetition of violations of international law in the future.
Both of these obligations are upon you.

25. In consideration of the great length of time that has passed since the submission of our previous letter to you on this matter, we request a response to this letter as soon as possible.

Sincerely,

Tamar Feldman, Atty.
Department Director
Human Rights in the Occupied Territories

Cc:

Minister of Defense
State Comptroller
State Attorney
Military Advocate General
Deputy Attorney General for criminal matters
Deputy Attorney General for consultation
Deputy Attorney General for international matters