



Decisions of the IDF Military Advocate General Regarding Exceptional Incidents that Allegedly Occurred During Operation 'Protective Edge' –

Update No. 6

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In accordance with the IDF Military Advocate General's (the 'MAG') policy to ensure transparency with regard to the examination and investigation of exceptional incidents that allegedly occurred during Operation 'Protective Edge' (7 July – 26 August 2014; the 'Operation'), and pursuant to previous updates, additional information has been cleared for publication concerning decisions the MAG has reached with regard to several individual incidents.

The MAG Corps is in the advanced stages of the examination and investigation process concerning allegations of exceptional incidents. Many of these allegations arose from complaints that were transmitted to the MAG Corps on behalf of Palestinian residents of the Gaza Strip as well as by non-governmental organizations ('NGOs') – Israeli, Palestinian, and others. Other allegations arose in media reports, or in the reports of international organizations and NGOs, as well as in internal IDF operational reports.

The MAG Corps received around 500 complaints and reports, relating to around 360 exceptional incidents alleged to have occurred over the course of the Operation (some of which consist of a number of smaller incidents). The number of complaints and reports that were received is higher than that of the corresponding incidents, since with respect to some of the incidents the MAG Corps received several complaints and reports.

Each complaint received by the MAG Corps, which suggests misconduct by IDF forces, undergoes an initial examination. If the allegation is deemed credible, *prima facie*, and is sufficiently concrete, it is referred to the MAG for a decision as to whether an immediate criminal investigation is warranted without further examination, or whether the incident should be referred to the General Staff Mechanism for Fact-Finding Assessments (the 'FFA Mechanism'), for a prior factual examination before making a decision on whether to open a criminal investigation.

With regard to allegations that indicated *prima facie* grounds for a reasonable suspicion of criminal misconduct, the MAG ordered the opening of criminal investigations without the need for prior factual examination with regard to 24 exceptional incidents. All of these investigations have been concluded and their findings provided to the MAG for his review. As published previously, following one of the investigations the MAG issued indictments against three IDF soldiers for looting and for aiding and abetting looting. The soldiers were convicted in a Military Court for theft and aiding and abetting theft, and sentenced accordingly. As regards the remaining criminal investigations, the MAG closed the cases without undertaking any criminal or disciplinary proceedings, as detailed herein and in previous updates.

With regard to some of these incidents, the MAG recommended command measures against those involved, as well as undertaking an operational lessons-learned process in order to assist with mitigating the risk of similar such incidents in the future.

Other allegations, which did not indicate *prima facie* grounds for a reasonable suspicion of criminal misconduct, were referred to the FFA Mechanism for examination. This mechanism, which was initiated while the Operation was still underway, collates information and relevant materials and undertakes enquiries, in order to assess the facts of exceptional incidents. These efforts are intended to provide the MAG with comprehensive and substantiated factual information, to the extent possible, in order to assist with making decisions regarding whether or not to open a criminal investigation, as well as for the purpose of a lessons-learned process and the issuance of operational recommendations that will assist in mitigating the risk of exceptional incidents occurring in the future. All in all, to date, complaints and reports relating to around 220 exceptional incidents alleged to have occurred over the course of the Operation (some of which, as noted, consist of a number of smaller incidents), were transmitted to the FFA Mechanism for examination after undergoing an initial examination by the MAG Corps.

To date, after reviewing the factual findings and the material collated by the FFA Mechanism, the MAG referred seven incidents for criminal investigation. The MAG has issued decisions regarding five of these incidents, and the processes regarding the investigations concerning the remaining two incidents have not been completed. With regard to some of the incidents, the MAG ordered a preliminary investigation by the IDF Military Police Criminal Investigative Division into certain aspects of the incidents. With regard to approximately 160 other incidents that were examined by the FFA Mechanism, the MAG decided to close the case without opening a criminal investigation, where the actions of the IDF forces involved did not give rise to reasonable grounds for suspicion of criminal behavior. In relation to some of these incidents, the MAG recommended that operational authorities undertake an operational lessons-learned process. In certain cases that were closed, the MAG found that no involvement of IDF forces could be identified in regard to the incident. The examination of the remaining exceptional incidents that were referred to the FFA Mechanism is still ongoing; some incidents have been referred back to the FFA Mechanism for additional examinations, and the findings of other incidents are currently being reviewed by the MAG Corps.

All criminal and preliminary investigations are carried out in a thorough and prompt fashion, initially by a special investigation team assembled by the Military Police Criminal Investigation Division, and as of January 2017, by the newly formed Military Police Criminal Investigative Unit for Operational Affairs ('CIUO'). Within these criminal and preliminary investigations, testimonies from many IDF soldiers and commanders were taken, as well as testimonies from many Palestinian residents of the Gaza Strip as well as from other persons who were witnesses to some of the incidents.

Where a complaint had been submitted in written form, and a decision has been made in regard thereto, a response is forwarded to the complainant, who is entitled to challenge the MAG's decision before Israel's Attorney General. Additionally, a request may be made to the MAG for reconsideration of a decision, should there be additional information that was not available at the time of the MAG's original decision.

Pursuant to previous updates, information regarding a selection of decisions reached by the MAG since the previous update, and which has been cleared for publication, is detailed below. This update includes the MAG's decision concerning alleged exceptional incidents that occurred during the fighting on 1 August 2014 in Rafah. For previous updates, see <https://www.idf.il/en/minisites/wars-and-operations/operation-protective-edge-legal-updates/> and for further information regarding the examination and investigation process of claims regarding exceptional incidents alleged to have occurred over the course of the Operation, please refer to the Government of Israel's Report in regard to Operation 'Protective Edge' ('The 2014 Gaza Conflict: Legal and Factual Aspects', Chapter VII), available online at: www.protectiveedge.gov.il.

Cases Closed by the MAG Following Examination by the FFA Mechanism

1. Allegations Concerning the Deaths of a Number of Civilians and Extensive Property Damage During the Fighting in Rafah on 1 August 2014

The fighting in Rafah refers to the hostilities that occurred in south-east Rafah on 1 August 2014, beginning at around 09:00 and ending at around 19:00, as part of Operation 'Protective Edge'. The hostilities followed Hamas' violation of the humanitarian ceasefire then in place, and the killing of Major Benaya Sarel (of blessed memory) and Staff Sergeant Liel Gidoni (of blessed memory), as well as the kidnapping of an IDF officer, Lieutenant Hadar Goldin (of blessed memory).

Over the course of 1 August 2014, a small number of forces from the Givati Brigade Task Force were engaged in a limited ground maneuver in the area of south-east Rafah. The area was sparsely populated, and IDF forces had operated intensively in the weeks prior to the incident in the area. The purpose of the maneuver was to locate and destroy cross-border assault tunnels found in the area, which constituted a clear danger to the Israel's civilian population. At 08:00 that morning, a humanitarian ceasefire –which had been coordinated through international channels, and which was scheduled to last for 72 hours – went into effect, and therefore from that time the continued search for cross-border assault tunnels was conducted under the strict instructions prohibiting the use of weapons, except in the case of clear and immediate mortal danger.

At around 09:00, approximately one hour after the ceasefire went into effect, the Forward Command Post of the Givati Brigade's Reconnaissance Company Commander came under fire from military operatives of one of the terror organizations operating in the area. Major Sarel, Staff Sergeant Gidoni, and Lieutenant Goldin were killed in the attack, and Lieutenant Goldin's body was kidnapped by the military operatives and taken into a tunnel. At that time, before it was understood that Lieutenant Goldin was killed, IDF forces assessed that he was still alive.

In light of the Palestinian terror organizations' violation of the cease fire, their killing of Major Sarel and Staff Sergeant Gidoni, and their kidnapping of Lieutenant Goldin, it was decided to renew the attacks against military operatives and military infrastructure in the Rafah area. At the same time, in light of the assessment that Lieutenant Goldin was kidnapped while still alive, a large number of IDF forces – including infantry, armored, and engineering forces – advanced in order to isolate the area, locate the shafts of the tunnel that was used for the kidnapping, and continue fighting enemy forces located in the area. Due to the ceasefire, most of the IDF forces were located in Israeli territory at the time of the kidnapping, and were therefore required to quickly advance into the hostile territory where the kidnapping took place while compromising the means of defense usually available to them. In concert with the ground operations, the IDF also employed mortar, artillery, and aerial strikes in order to protect and support the forces operating on the ground by attacking military operatives and military objectives in the area. The ground operations continued until around 19:00 of that day, at which time the ground forces were instructed to return to the locations they had convened in prior to

the attack and kidnapping. Hostilities continued in the Rafah area after the ground maneuver had concluded, but this did not involve ground operations and rather focused on conducting aerial attacks.

In media reports and other reports received by the MAG Corps, as well as in complaints and reports of NGOs and international organizations, it was alleged that the IDF operated in an indiscriminate and disproportionate manner during the fighting, and that significant harm was caused to life and property. It was also alleged that the purpose of the IDF's actions in Rafah was to avenge the kidnapping of Lieutenant Goldin and the killing of Major Sarel and Staff Sergeant Gidoni. Finally, it was alleged that the aerial strikes undertaken in the Rafah area in the days after the fighting (from the evening of 1 August and until 4 August 2014), were also conducted in an indiscriminate and disproportionate manner, and were driven by a desire for revenge.

Subsequently, it was decided to refer all the incidents that allegedly occurred during the fighting – that is, the combat operations in the Rafah area on 1 August 2014 between 09:36 and the conclusion of ground operations at 19:00 – to the FFA Mechanism for examination. Exceptional incidents that allegedly occurred after the fighting were dealt with in accordance with the MAG's general investigation policy regarding allegations of exceptional incidents that occurred during Operation 'Protective Edge'. The MAG's decisions with respect to some of these incidents have already been published.

Due to the nature of the allegations regarding the IDF's conduct during the fighting – which included both general allegations about IDF policy concerning the use of force, as well as allegations concerning specific incidents – the investigation was conducted along two tracks. In one track, findings were collected regarding the fighting in general, in order to review the orders given to the forces, as well as the manner in which firepower was employed during the fighting in general. In the second track, a factual assessment was conducted with regard to all the specific incidents (tens of incidents) in which it was alleged that civilians were harmed in the Rafah area during the fighting, wherever sufficient information was available to allow for identifying and examining the particular incident. All of the above was undertaken for the purpose of conducting as comprehensive an examination as possible regarding the allegations of civilian casualties in specific incidents, as well as regarding the orders themselves given during the fighting (even without direct relation to specific incidents in which it was alleged that civilians were harmed).

Given the complexity of this examination – which considered the use of force by IDF forces using various means (armored, artillery, mortar, engineering and aerial strikes) – and because of the number of incidents that were required to be examined, the examination was conducted in parallel by three assessment teams. The teams were headed by reservist officers holding the rank of Brigadier General, and each team was staffed by senior active duty and reservist officers with relevant professional military expertise. All of the members of the assessment teams were outside the chain of command in Operation 'Protective Edge'. The teams exhibited great expertise and professionalism in their information gathering efforts and their examination of the fighting. In the course of the teams' work, they questioned tens of officers

and soldiers, both active duty and reservists, who were involved in the fighting; collected hundreds of relevant documents and IDF materials (including videos, radio communications and intelligence materials), as well as documents from external sources; created aerial maps and other models` and took numerous other steps with the aim of achieving a full and thorough understanding of how the fighting unfolded and the circumstances of the events.

Despite the foregoing, it should be noted that as in any combat situation—and particularly in a prolonged and complex fighting located in enemy territory, as in this case – inherent difficulties exist in attempting to determine all of the facts regarding each and every incident that occurred. This is so, mainly, because a significant portion of the relevant information is not in the possession of the IDF – in particular, the scope of casualties resulting from the fighting and their identities. Accordingly, a central aspect of the assessment teams' activities was to identify the specific incidents in relation to which it was alleged, usually in a laconic manner and with insufficient detail, that civilians were harmed, and to cross reference them with the positions and actions of IDF forces operating in the area, in an attempt to achieve a full and complete factual understanding of the events, to the extent possible. In furtherance of their objective, numerous reports and publications by various NGOs and international organizations were comprehensively analyzed, and the details therein were assessed against the information in the IDF's possession. The factual picture that was presented to the MAG Corps by the FFA Mechanism, both with respect to the overall conduct of the fighting, as well as with respect to specific incidents that occurred in its course, was the product of a consolidation of all of the internal and external data collected with respect to these incidents.

The aforementioned activities of the FFA Mechanism produced a breadth of information which made it possible for the MAG Corps to gain a comprehensive factual understanding of how the fighting unfolded, the orders that were given, and the specific incidents where it was alleged that civilians were killed (to the extent that it was possible to identify such incidents and examine them), and to therefore perform a thorough legal analysis of the events.

A. General Background

The Area of South-East Rafah

The area of south-east Rafah, where the majority of the fighting took place (with the exception of the aerial strikes, which occurred throughout the city of Rafah, and a limited number of ground-based attacks that took place on the outskirts of the area), is a largely agricultural area, with a few small clusters of structures. The area is bordered by the fence that separates Israel from the Gaza Strip to the south; the Dahniya Airport to the west; the Salah a-Din corridor to the north; and agricultural fields to the east.

Enemy Forces Located in the Area

Soon before the fighting began, the intelligence assessment was that one of Hamas' battalions, numbering hundreds of military operatives, was operating in the area of south-east Rafah, alongside hundreds of additional military operatives from other terror organizations such as Palestinian Islamic Jihad. It was also assessed that the enemy forces in the area would make significant efforts to kidnap a soldier. This was in addition to the continued efforts – as occurred throughout Operation 'Protective Edge' – to harm IDF soldiers, using means including snipers, anti-tank missiles, small arms fire, tunnels, booby-trapped houses, explosive devices and ambushes.

Scope of Civilian Presence in the Area

Prior to Operation 'Protective Edge', it was assessed that the area of south-east Rafah, which constitutes a small portion of the city of Rafah and which is relatively sparsely populated. At the start of the Operation – on 10 July 2014 and 17 July 2014 – prior to the initiation of ground operations, the IDF engaged in widespread efforts to warn the civilian population in south-east Rafah in order to distance them from the area of the expected ground maneuver. These efforts involved the use of multiple forms of communication, including leaflets, recorded telephone messages, television and radio broadcasts, conversations with influential figures, and more.

On 18 July 2014, prior to the IDF's ground maneuver in the area, the intelligence assessment was that most of the civilian population had evacuated from the south-east Rafah area. Just before the date of the fighting, the intelligence and operational authorities assessed that nearly no civilians remained in the south-east Rafah area. It should be noted that from 18 July 2014 until the day of the fighting, the IDF repeatedly published messages, through television and radio broadcasts as well as through mass text messages, stating that those who had evacuated should not return to their homes until they receive explicit instructions from the IDF. These assessments regarding the sparse presence of civilians in the area matched reports received from the forces in real-time, as well as in retrospect, according to which nearly no civilian presence was observed in the area in the days prior to the fighting as well as during the fighting.

The Kidnapping Incident

As mentioned, on 1 August 2014, Givati Brigade forces were operating to locate and destroy cross-border assault tunnel infrastructure which, according to intelligence information, were located in the south-east Rafah area. At 08:00 that morning, the humanitarian ceasefire went into effect, and strict orders were given to all forces that continued operations, including the search for cross-border assault tunnels in the area, were to be conducted without the use of weapons, except in the case of clear and immediate mortal danger. At 09:06, reports came in of an explosion and fire in the area; at 09:10, it was understood that IDF forces had been attacked by enemy operatives; and at 09:12, it was understood that the force that had been attacked was the forward command squad of the Givati Brigade's reconnaissance company commander. At that stage, additional forces arrived at the location of the attack, and

identified the bodies of Major Sarel and Staff Sergeant Gidoni. Minutes later, a tunnel opening, booby-trapped with explosives, was identified inside a nearby two-story civilian structure. The reinforcements that arrived at the location understood that Lieutenant Goldin was missing, and assessed that he had been kidnapped by the enemy operatives while still alive, and had been taken into the tunnel opening located in the two-story structure. At 09:36, the General Staff Directive for Contending with Kidnapping Attempts (also known as the "Hannibal" Directive) was initiated, meaning a number of actions necessary to locate and rescue kidnapped soldiers were put into effect. At the same time, due to the Palestinian terror organizations' violation of the ceasefire, it was decided to renew combat operations in the area, and the IDF returned to attacking military operatives and military targets in the area.

The Outcome of the Fighting

As mentioned, the fighting began with the incident in which three IDF soldiers were killed, and after the kidnapping of Lieutenant Goldin, who at the time was understood to be alive (his death only became apparent later). Additionally, a number of soldiers were injured during the incident, including one who suffered a critical injury.

On the Palestinian side, the IDF cannot determine with certainty the number of casualties, whether military operatives of the different terror organizations or civilians, that resulted from the fighting. This is due in large part to the inherent difficulty in fully confirming information regarding casualties that occur in territory that the IDF does not control. This difficulty was even more pronounced here, given the complexity of the fighting that occurred, and given the known practice of Palestinian terror organizations to conceal the identities of military operatives killed as well as the circumstances of their deaths. Reports published by NGOs and international organizations regarding this incident contain inconsistent information regarding the number and identities of the casualties on the Palestinian side.

After a thorough examination of the information available to the IDF, from both intelligence sources and public sources, the FFA Mechanism concluded that at least 42 military operatives of Palestinian terror organizations were killed during the fighting. Additionally, the FFA Mechanism found that, at most, 72 additional individuals were killed as a result of the fighting. For the purposes of the examination, a conservative assumption was adopted that these persons were civilians not taking direct part in the hostilities. However, for the reasons detailed above, there is a possibility that the actual number of civilians killed is lower, as it was not possible to determine that all those who were allegedly killed were in fact killed during these specific incidents. In addition, it is possible that some of those killed were actually military operatives.

After analyzing the allegations concerning the deaths of civilians, it was found that the majority were apparently killed as the result of targeted aerial strikes aimed at military targets and military operatives throughout the city of Rafah, including areas beyond south-east Rafah where the ground maneuver took place, and without direct connection to the operations that were undertaken to locate the kidnapped officer. Nevertheless, with respect to ten civilians at

most, the possibility could not be ruled out that they were killed as the result of artillery fire directed by IDF forces towards the south-east area of Rafah. In addition, indications were found that five civilians at most were killed as a result of fire from ground forces (mostly tank fire) in south-east Rafah. Allegations that civilians were killed by small arms or mortar fire during the fighting were not confirmed. The FFA Mechanism located and examined the vast majority of incidents wherein it was alleged that civilians were killed, however, there were 16 alleged civilian deaths with respect to which the FFA Mechanism proved unable to unearth sufficient information to connect the deaths to any particular incident.

The General Staff Directive for Contending with Kidnapping Attempts

The General Staff Directive for Contending with Kidnapping Attempts (also known as the "Hannibal" Directive), which was in effect at the time of the fighting, was a Directive issued by the IDF General Staff and which intended to contend with incidents of kidnapping of soldiers or civilians in any arena (the Directive). This Directive listed, among other things, the series of initial actions that must be undertaken when a soldier or civilian is kidnapped, the rules of engagement with respect to the kidnappers in hold of the kidnapped soldier to the extent it is required in order to prevent the kidnapping, and the levels of authority for declaring a soldier kidnapped and in ordering the initiation of the various actions that stem from pursuing the kidnappers. The Directive does not address the rules of engagement (except with respect to the kidnappers in hold of the kidnapped soldier) or attacks on targets, both of which are addressed in other IDF Directives.

The examination of the findings collected by the FFA Mechanism found substantial gaps in the forces' comprehension of the Directive, particularly with respect to the actions that may be taken to prevent the kidnapping where such actions could endanger the safety of the kidnapped soldier. Additionally, it was found that there were substantial gaps between the General Staff Directive and the derivative directives of the Southern Command and the Gaza Division, whose purpose was to implement the General Staff Directive. Similar findings were made in the State Comptroller's report on "Operation 'Protective Edge' – IDF Activity from the Perspective of International Law, Particularly with Regard to Mechanisms of Examination and Oversight of Civilian and Military Echelons", of March 2018. These gaps, among others, led to the nullification of the Directive in 2017, and its replacement with a different directive.

As part of the allegations raised in the different reports and publications dealing with the fighting, it was alleged—using public comments by some IDF commanders regarding the essence of the Directive in an effort to support their allegations—that the Directive permitted disproportionate use of force against civilians, or that it "removed all limitations" with respect to the IDF's use of force. No factual basis was found for these allegations, neither in the language of the Directive (as well as the Southern Command or Gaza Division derivative directives), nor in the findings that were collected regarding the implementation of the Directive during the fighting. The Directive, as mentioned in the State Comptroller's report on the subject, did not explicitly refer to the principles of distinction and proportionality. However, as noted

above, the Directive did not concern use of firepower or the attacking of targets except for with regards to the kidnappers during the kidnapping attempt. As a result, the Directive did not constitute a relevant source for normative guidance on the subject. The IDF Directives that do concern use of firepower include detailed explanations regarding the principles of distinction and proportionality in a clear and explicit manner, and they are binding on IDF commanders with regards to every attack. Moreover, all the findings collected by the FFA Mechanism, including from real-time documentation of the forces' conduct, as well from subsequent questioning of commanders who took part in the fighting—including commanders to whom the aforementioned comments about the Directive were attributed—clearly showed that the understanding among the forces was that even though the Directive permitted the use of substantial force against the kidnappers in hold of the kidnapped soldier in order to rescue the kidnapped soldier, it certainly did not permit causing intentional harm to civilians or civilian property or employing firepower in a disproportionate manner.

B. The Ground Maneuver

The Ground Maneuver Aimed at Locating and Rescuing Lieutenant Goldin

With the assessment that Lieutenant Goldin was kidnapped while still alive, the operational and intelligence authorities assessed, on the basis of intelligence information and the estimated route of the tunnel, that the kidnappers would try to take Lieutenant Goldin into the city of Rafah or deeper into the Gaza Strip. Given this assessment, it was decided to conduct a fast ground maneuver with ground forces, that would be accompanied by tanks and combat engineering forces, in order to block the access routes leading from south-east Rafah to the center of Rafah city and to the center of the Gaza Strip. In addition, it was decided to renew the attacks against military operatives and military infrastructures maintained by enemy forces in the area. As previously mentioned, due to the ceasefire, most of these IDF forces were located in Israeli territory prior to the start of the fighting, and as a result were required to advance immediately and quickly into the hostile territory where the kidnapping took place, without sufficient preparation, and compromising the means of defense typically available to them. Due to these factors, the forces required significant supporting fire in order to protect themselves against the large number of enemy forces present in the area.

The military necessity that formed the basis of the ground maneuver was conveyed to the forces in a clear manner – cutting off the kidnapping squad and locating Lieutenant Goldin, as well as attacking military operatives and military targets. This was to be accomplished by, among other means, a ground maneuver towards the points where shafts linking to the tunnel through which Lieutenant Goldin was kidnapped were assessed to be located—all of which were in the area of south-east Rafah, and at a distance of only a few hundred meters from where some of the IDF forces were located prior to the start of the fighting. From all of the materials collected, no basis was found to indicate that the ground operation deviated from the aforementioned military necessity.

In the course of the limited maneuver, which at its maximum extended to 1.5 kilometers from the location of the kidnapping, the forces came under attack from military operatives on a number of occasions, and were fired upon with anti-tank missiles, mortars shells, sniper fire, and small arms fire. After analyzing the intelligence information, the FFA Mechanism concluded that the area of fighting contained a significant presence of enemy military operatives, but that the operatives were challenged in their ability to operate against the maneuvering forces due to the scope and manner of the maneuver and the IDF's operations.

Combat Engineering Operations

In the course of the fighting, various combat engineering forces were employed to facilitate and secure the maneuver, as well as to locate and destroy cross-border assault tunnel infrastructure and combat tunnel infrastructure in the area. No civilian casualties were found to have been caused by these activities. With respect to allegations that the IDF partially or completely destroyed thousands of structures during the fighting, the examination of the fighting found that less than 200 structures, most of them structures that were provisional or agricultural in nature (greenhouses, storage, etc.), were destroyed as the result of the infantry and engineering activities or by aerial attacks. Additionally, the findings made clear that the vast majority of structures destroyed were either in the vicinity of the tunnel through which Lieutenant Goldin was kidnapped, or on the routes through which the ground forces advanced. Accordingly, these structures either constituted military objectives or there was an imperative military necessity in their destruction in order to locate the tunnel infrastructure or in order to protect the maneuvering forces. Furthermore, it was found that some of the destroyed or damaged structures in the area were destroyed out of imperative military necessity during hostilities that occurred in the days that preceded the fighting, or in the days that followed it.

The examination of the materials collected provided that the engineering operations were conducted out of imperative military necessity – clearing booby-trapped routes, constructing cover to protect the forces, and locating cross-border assault tunnels. There was no indication that civilian structures were destroyed where there was no military necessity, or that under the circumstances the forces had other reasonable alternatives entailing a lesser potential for harm in order to achieve their purposes (as detailed above), nor was there any indication that property was damaged in a disproportionate manner.

In light of these findings, the MAG found that there was no sufficient evidentiary basis to the allegations that the aforementioned combat engineering operations were motivated by illicit purposes, nor any indication of intentional destruction of property where there was no imperative military necessity to do so.

C. Use of Firepower

During the ground maneuver, the IDF employed fire from ground forces, as well as artillery and mortar fire, and aerial strikes. The purpose of the fire was

to attack military infrastructure and operatives, and to support IDF forces operating in the area. Based on an examination of all the materials collected, including with respect to the individual incidents that were examined, no factual basis whatsoever was found that gave rise to a suspicion that the use of fire was done for the purpose of "revenge" or as a "price tag" on the residents of Rafah. It was found with respect to both the orders given during the fighting, and the individual incidents identified as occurring during the fighting, that the use of fire was done for clear military purposes. The following addresses the use of fire with respect to each type of fire that was employed during the fighting.

Tank Fire

During the course of the ground maneuver the IDF employed ground fire (particularly light arms fire and tank shells). As no allegations regarding exceptional incidents involving the use of light arms could be corroborated, the FFA Mechanism was not required to expand the examination with regards to the manner in which light arms fire was used by infantry forces.

An examination of all the materials collected provided that around 140 tank shells were fired during the fighting in total, and that the shells were aimed where military operatives were suspected of being located, or directly at military operatives. Target selection was based on intelligence information, and on the assessments of commanders in the field regarding the location of military operatives in the area. According to the professional assessments of the FFA Mechanism's experts on the use of tank fire, the amount of fire was not unreasonable in relation to the scope of the threats facing the forces during the fighting, and the manner in which the armored forces operated aligned with the military purposes that the forces were seeking to achieve, and accorded with established military doctrine.

The MAG found, based on all the findings collected, that under the circumstances, the use of tank fire accorded with Israeli domestic law and international law requirements. It was found that the tank fire was employed for a military purpose – namely, attacking military operatives – and adhered to the operational directives in force at the time. Additionally, no basis was found to raise suspicion that any individual attack was carried out indiscriminately, lacked a military purpose, or directly targeted civilians. In this regard, it should be noted that the number of civilian casualties alleged to have resulted from tank fire is very low (at most five persons), which further provides indications regarding the purpose of the fire and that the fire was proportionate.

Artillery and Mortar Fire

As mentioned, prior to the IDF forces' entry into the Rafah area, there were intelligence warnings regarding the enemy's intention to kidnap soldiers in the area. Due to these warnings, the IDF prepared for such a situation prior to entering the area, and planned "blocking points" on access routes (i.e., coordinates where it was determined, on the basis of operational analysis of the territory, that consistent and persistent fire would prevent reinforcements from entering the area and reduce the possibility for kidnappers to escape the

area). Accordingly, soon after the kidnapping incident was declared, the operational entities began firing artillery and mortars towards these "blocking points" that had been determined beforehand for contending with these types of incidents. The first round of fire was conducted at 09:47. Once the ground forces arrived near the Salah a-Din road, the artillery fire was reduced, until it completely ceased at around 13:30. Approximately 1,000 artillery shells were fired at 31 "blocking points" over the course of the fighting. Additionally, approximately 250 mortar shells were fired at ten other "blocking points".

Artillery and mortar fire was employed as at the time the forces understood that they are the most appropriate and effective means by which to both block access routes and prevent enemy forces from arriving in the area until ground forces could reach these routes, as well as to protect the ground forces, who, as mentioned, were required to deploy immediately and with great speed, without sufficient preparation and while compromising some of the means of defense that are normally at their disposal. That these were the purposes of the fire is evidenced by the fact that, as the forces advanced and arrived at Salah a-Din road, artillery and mortar fire was significantly reduced, until it was ultimately stopped at 13:30, as stated.

The coordinates at which the fire was directed were, as mentioned, located on central routes and intersections, and were selected for the purpose of "isolating the area" (i.e., preventing the arrival of enemy reinforcements into the area, hampering the ability of military operatives located inside the area to attack IDF forces, and preventing the kidnapers from retreating to other areas). They were also located in largely open areas where it was assessed that openings to the tunnel through which Lieutenant Goldin was kidnapped may be located. The findings collected further provided that, despite the military necessity for widespread use of artillery and mortar fire in order to achieve the stated aims, many actions were taken to ensure the accuracy of the fire, efforts were made to reduce possible damage to civilian structures and property, and particular effort was made to avoid firing in the vicinity of "sensitive sites" (i.e., those sites that, when operating in their vicinity, particular caution should be exercised, according to IDF directives).

According to the professional assessment of the FFA Mechanism's experts on the use of artillery and mortar fire, the amount of fire was not unreasonable in relation to the scope of the threats facing the forces during the fighting, and indeed was relatively limited when compared to the amount of fire used in similar situations in the past where an area of similar size had to be isolated. Moreover, the use of artillery and mortar fire itself to "isolate" an area and to protect ground forces, as well as the manner in which the fire was used in this instance, aligned with the military purposes that the forces were seeking to achieve, and accorded with established military doctrine. As mentioned above, an analysis of the casualties, relying both on the IDF's own examination as well as on various reports, provides that relatively few civilians—around ten, at most—were killed as the result of artillery fire in the area. This figure somewhat supports the notion that the forces' use of artillery fire was not indiscriminate nor was it disproportionate, and that it was mainly aimed at open, uninhabited areas, and that few civilians were present in the area in which the forces were operating.

It was further found that during the maneuver, at 11:10 and at 17:07, mass text messages were sent by the IDF to the residents of south-east Rafah, which were intended to reduce harm to civilians on these routes (remaining inside a structure vastly reduces the likelihood of being injured by artillery fire). Similar voice messages were transmitted at 11:18 and at 17:21. A similar message was also broadcast on the radio in the area, and was conveyed in individual phonecalls to central figures in the city of Rafah, as well to representatives of different international organizations.

In the course of examining specific incidents that occurred during the fighting, a number of incidents of artillery fire were identified wherein, in addition to hitting military operatives, a number of civilians not directly participating in the hostilities may have been killed. It is possible that among those civilians killed were Musa and Yusra Jazar, Salameh and Amneh a-Zamli, Nuah and Ibrahim Ghneim, and Ihmidan Abu Breik. Though allegations were raised that these civilians were killed by aerial strikes or by ground fire, the FFA Mechanism's examination did not find any aerial attacks or tank fire that could have resulted in harm to these individuals. All of these individuals were located in an area where the number of civilians present was assessed to be very low, and were located in proximity to "blocking points" on central routes, towards which artillery fire was directed. On this basis, the FFA Mechanism determined that the possibility that these civilians were killed as a result of artillery fire could not be ruled out.

Based on the materials collected, both with respect to the overall use of artillery and mortars during the fighting, as well as with respect to the individual incidents mentioned above, the MAG found that in the circumstances, the use of artillery and mortar fire accorded with Israeli domestic law and international law requirements. Artillery and mortar fire was employed for a military purpose—namely, isolating the area and protecting IDF forces operating there—and it adhered to the operational directives that were in force at the time. No basis was found to raise suspicion that any individual attack was carried out indiscriminately, lacked a military purpose, or directly targeted civilians. It was also found that in light of the information available to the commanders at the time that few civilians remained in the area, their assessment that the collateral damage expected from the artillery and mortar fire would not be excessive in relation to the military advantage to be achieved was not unreasonable. It was also found that they were the most appropriate and effective means available to the forces in order to achieve these aims in the circumstances of the fighting. Furthermore, it was found that different precautionary measures were taken during the course of fire in order to increase accuracy and to reduce the likelihood of civilian harm.

Aerial Strikes

Aerial strikes were employed during the fighting for different purposes—to support the ground forces, to attack military operatives, and to attack military objectives. In this context, tunnel shafts and command and control centers manned by military operatives were attacked, as well as military operatives and the structures in which they hid. The strikes took place throughout the Rafah area, throughout the course of the fighting, and were based on up-to-date intelligence information.

The MAG found, based on all the materials collected, that the use of aerial strikes accorded with Israeli domestic law and international law requirements. It was found that the aerial strikes targeted military objectives (active command and control centers, military infrastructure hidden in structures of a civilian appearance, and underground military infrastructure), and military operatives, and were conducted after approval by the authorized authorities and after proportionality assessment procedures were conducted in order to ensure that the expected collateral damage from each strike would not be excessive in relation to the military advantage anticipated from it. It was further found that precautionary measures were undertaken which aimed to minimize the risk of collateral damage from the aerial strikes. For instance, where the operational authorities assessed it was possible from an operational standpoint, strikes were conducted after taking precautionary measures. As alleged, it appears that, regrettably, some of the attacks also resulted in harm to civilians, however this does not affect their legality *ex post facto*.

D. Individual Incidents that Occurred During the Fighting

From among the dozens of individual incidents that occurred during the fighting, and which were examined by the FFA Mechanism, the following is information that has been cleared for publication concerning decisions the MAG has reached with regard to some of these incidents. Where a written complaint was received with respect to an incident on which the MAG has reached a decision, a response has been sent to the organization or individual that filed the complaint.

1) Allegations Concerning the Deaths of 16 Individuals as the Result of an IDF Attack on Belbisi Junction (1 August 2014)

In media reports, as well as in a complaint and in a report by NGOs that were received by the MAG Corps, it was alleged that on 1 August 2014, during the fighting, at about 13:50, 16 individuals were killed as the result of an aerial attack on the Abu Shuarab family home in the area of Belbisi junction. It was alleged that, at the time of the strike, the individuals were located in the street adjacent to the home, and that they were hit while trying to flee the area of hostilities.

The factual findings and the material collated by the FFA Mechanism and presented to the MAG provide that, during the fighting and soon after the kidnapping, up-to-date intelligence information was received, according to which two structures located east of the Salah-a-Din road (in the area of south-east Rafah, where it was assessed that a low number of civilians were present) – which were already known to the intelligence authorities as structures used for military activities – contained military operatives connected with kidnapping of Lieutenant Goldin. On the basis of additional up-to-date information, it was assessed that the kidnapping squad was on route to these structures. During the planning stages of the strike, it was assessed that the possible harm to civilians that may be present in the structure or its vicinity would not be excessive in relation to the significant military advantage that was anticipated to result from a strike on these structures and the military operatives inside them. This assessment was based, in part, on the information indicating the sparseness of the civilian presence in the area, as detailed above.

Due to the urgency in immediately attacking these targets so as to stop the kidnapping, the structures were attacked soon after receiving approval for the strike. It was found that there was no possibility for carrying out an advance warning of the attack, as such a warning was expected to frustrate the objective of the attack. During the strike, after the munitions had already been released, movement by a number of individuals was identified in the street adjacent to the structures. At that stage, the attack could not be stopped (the munitions that were released could not be diverted at that point) and the munitions hit the structures. It appears that the individuals observed in the street near the structures are those who it is alleged were harmed as a result of the attack.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that the targeting processes in question accorded with Israeli domestic law and international law requirements. The decision to strike was taken by the competent authorities and the attack was aimed at military targets—military operatives that were involved in the kidnapping, located in a structure used for military activities, and where it was suspected Lieutenant Goldin would be brought by his kidnappers. The attack complied with the principle of proportionality, as at the time the decision to attack was taken it was considered that the possible collateral damage expected to arise as a result of the attack would not be excessive in relation to the military advantage anticipated from it. This assessment was not unreasonable under the circumstances, despite the understanding in retrospect there was a discrepancy between the facts as they appeared after the strike and the information available to the military commander at the time when the decision to strike was made (as the military commander was not aware of the civilian movements near the structures in real-time, prior to releasing the munitions). It was further found that the provision of a warning to the occupants of the structure was not required by law, as such warning would have frustrated the objective of the attack. The fact that, in practice, civilians who were uninvolved in the hostilities were harmed, is a regrettable result, but does not affect the legality of the attack *ex post facto*.

In light of the above, the MAG did not find that the actions of IDF forces raised grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation, and without any further steps to be taken against those involved.

2) Allegations Concerning Damage Caused to Al-Najjar Hospital as the Result of an Attack by IDF Forces (1 August 2014)

In media reports, as well as in a complaint and in reports of an NGO and an international organization that were received by the MAG Corps, it was alleged that on 1 August 2014, during the fighting, the Al-Najjar Hospital in Rafah was damaged as the result of IDF actions. According to the allegations, amongst other things, shells fell at a distance of around 20 meters from the hospital, and that as a result of IDF actions, glass windows shattered, the roof was destroyed, and doors were damaged in the hospital.

The factual findings collated by the FFA Mechanism and presented to the MAG provide that the location of the hospital was known to IDF forces

operating in the area, and that it was designated in the IDF's relevant operational systems as a "sensitive site", which, according to IDF directives, required forces operating in the area to take added precautions. It was further found that terrorist organizations had placed substantial underground military infrastructure near the hospital, and that during the fighting, four such underground military structures were attacked, at distances of around 90 to 200 meters from the hospital. Moreover, it was found that all of the strikes were carried out after undergoing an orderly authorization process, and that the potential for damage to civilian buildings in the vicinity of the targets had been taken into consideration in the strike planning process, including, among other things, taking steps to avoid harming the hospital. It was also found that, in the context of the fighting detailed above, artillery fire was directed at a point around 450 meters from the hospital. An examination by the relevant professionals from the Artillery Corps showed that the probability that the hospital could have been damaged by this fire was miniscule.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that the targeting processes in question accorded with Israeli domestic law and international law requirements. The decision to strike was taken by the competent authorities and the attack was aimed at clear military targets—underground military infrastructure. The attacks complied with the principle of proportionality, as at the time the decisions to attack were taken it was assessed that no harm to civilians or adjacent civilian structures was expected to occur as a result of the strikes. The location of the hospital was known at the time of the planning of the strikes, however no damage was expected to result to the hospital given the distance between the hospital and the targets attacked. Though it is possible that, as alleged, some of the attacks caused disruptions to the hospital's activities, such incidents, if they occurred, were a regrettable but unavoidable result in light of the military necessity in attacking the military infrastructure that the terrorist organizations had located in the hospital's surroundings.

In light of the above, the MAG did not find that the actions of IDF forces raised grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation, and without any further steps to be taken against those involved.

3) Allegations Concerning the Death of Asil Abu Muhsin as the Result of an Attack by IDF Forces (1 August 2014)

In a report of an international organization and in a complaint and a report by NGOs received by the MAG Corps, it was alleged that on 1 August 2014, during the fighting, at around 11:00, Asil Abu Muhsin was killed as the result of IDF fire. According to the main allegation in the complaint and reports, Abu Muhsin and her family were fleeing their home, and at the moment they arrived at Rafah junction, she was hit by IDF fire. The different sources were not consistent as regards the details relating to the incident, or in regards to the type of munitions alleged to have struck Abu Muhsin.

The factual findings collated by the FFA Mechanism and presented to the MAG provide that, on 1 August 2014, at around 11:00, there was an exchange of fire between the IDF's armored forces and military operatives of the

terrorist organizations, near where Abu Muhsin was killed, and that the IDF attacked military targets and operatives that were identified in the area in real-time. In the course of this fighting, an anti-tank missile was fired at IDF forces. It was further found that during the fighting the forces did not identify the presence of any civilians in the area—an area which, as previously noted, contained only a very sparse civilian presence at that point—and certainly no fire was aimed directly at civilians. Against this factual background, the FFA Mechanism determined that it could not rule out the possibility that Abu Muhsin was killed as the result of this exchange of fire.

The FFA Mechanism also examined the possibility that Abu Muhsin was hit by artillery fire directed at the relevant area approximately one hour before the alleged time of the incident. The FFA Mechanism determined that, though it could not rule out the possibility that artillery fire had caused Abu Muhsin's death, this possibility, especially in light of the descriptions of the incident in the complaint and reports, is less likely.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that, to the extent Abu Muhsin was killed by IDF tank fire, it was an inadvertent result of fire aimed at military operatives and military targets. The fact that, in practice, a civilian who was uninvolved in the hostilities was harmed, is a regrettable result, but does not affect the legality of the use of fire *ex post facto*.

In light of the above, the MAG did not find that the actions of IDF forces raised grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation, and without any further steps to be taken against those involved.

4) Allegations Concerning the Deaths of Five Individuals as the Result of a Strike on the Madi Family Home (1 August 2014)

In a complaint from an NGO received by the MAG Corps, it was alleged that on 1 August 2014, during the fighting, at around 15:30, five individuals were killed, and others were injured, as the result of an IDF aerial attack on the Madi family home in Rafah (in other reports, it was alleged that an additional person later died of his wounds).

The factual findings collated by the FFA Mechanism and presented to the MAG provide that, on 1 August 2014, the IDF carried out an aerial strike on a structure that it was assessed was being used as an active command and control center by the Hamas terror organization. The attack aimed to target both the command and control center and the military operatives manning it. In the course of the strike planning process, it was assessed that the extent of the harm expected to result to civilians as a result of the attack would not be excessive in relation to the significant military advantage that was anticipated to result from a strike on the military command and control center and the military operatives manning it. The strike was planned for execution by means of a precise munition suited for the purpose, and in a manner which would allow for the strike's objective to be achieved whilst minimizing the potential for collateral damage to nearby civilians and adjacent structures. It was further found that it would not have been possible to provide a warning prior to the

strike on the structure, as such a warning was expected to frustrate the objective of the attack. As result of the strike, the structure was damaged but was not demolished.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that the targeting processes in question accorded with Israeli domestic law and international law requirements. The decision to strike was taken by the competent authorities, and the objects of the attack were military targets – an active command and control center of the Hamas terror organization, and the military operatives assessed to be manning it at the time. The attack complied with the principle of proportionality, as at the time the decision to attack was taken it was assessed that the collateral damage expected to arise as a result of the attack would not be excessive in relation to the military advantage anticipated to result from it. This assessment was not unreasonable under the circumstances.

Moreover, the attack was carried out employing different precautionary measures—including the selection of the munition used to carry out the strike, as well as the method by which the strike was carried out—which aimed to mitigate the risk to civilians in the vicinity of the structure and minimize damage to adjacent structures. It was also found that the provision of a warning to the residents of the building was not required by law, as such a warning would have frustrated the objective of the attack. The fact that, in practice, civilians who were uninvolved in the hostilities were harmed, is a regrettable result, but does not affect the legality of the attack *ex post facto*.

In light of the above, the MAG did not find that the actions of IDF forces raised grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation, and without any further steps to be taken against those involved.

5) Allegations Concerning the Deaths of Five Individuals as the Result of a Strike on a Motorbike (1 August 2014)

In media reports, as well as in a complaint from an NGO, it was alleged that on 1 August 2014, during the fighting, at around 10:00, four people were killed as the result of an IDF aerial strike towards a group of individuals in the Jenina neighborhood of Rafah (in some reports it was alleged that the incident occurred at around 10:40). In some of the reports it was alleged that the strike was directed at a motorcycle carrying two persons, and that as a result of the strike, three persons were killed as the motorcycle passed near them.

The factual findings collated by the FFA Mechanism and presented to the MAG provide that on 1 August 2014, at around 12:00, the IDF identified two people riding on a motorbike, who were identified, according to up-to-date intelligence information, as military operatives of Hamas' military wing. On this basis, it was decided to attack them. The attack on the military operatives was planned for execution by means of a precise munition, in a manner that would allow for the strike's objective to be achieved whilst minimizing the potential for harm to civilians or passing vehicles.

An examination of the incident revealed that about one second before the motorbike was struck, it passed near a number of individuals. However, the

FFA Mechanism's findings indicate that with the means that were at the forces' disposal, and under the visibility conditions prevailing at that time, the forces were not able to discern in real-time the group of persons. Even if the forces had identified such persons, it was found that it was no longer possible to divert the munition which had been fired at the motorbike.

As mentioned above, it is alleged that as a result of the strike, between four and five persons were killed. According to the findings of the FFA Mechanism, two of the deceased, the motorbike riders, were indeed military operatives.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that the targeting process in question accorded with Israeli domestic law and international law requirements. The decision to strike was taken by the competent authorities, and the object of the attack was lawful – military operatives. The attack complied with the principle of proportionality, as at the time the decision to attack was taken it was considered that the collateral damage expected to arise as a result of the attack would not be excessive in relation to the military advantage anticipated to result from it (in fact, the assessment in real-time was that the strike would only harm the military operatives targeted). This assessment was not unreasonable under the circumstances. Moreover, the attack was carried out employing precautionary measures, including the selection of the munition used to carry out the strike, which aimed to mitigate the risk to civilians and passing vehicles. The fact that, in practice, civilians who were uninvolved in the hostilities were harmed, is a regrettable result, but does not affect the legality of the attack *ex post facto*.

In light of the above, the MAG did not find that the actions of IDF forces raised grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation, and without any further steps to be taken against those involved.

E. Conclusion

The fighting in Rafah was prolonged and complicated, in which thousands of soldiers took part, and in which different and varied means of fire were employed. Despite the length and complexity of the fighting, the breadth and quality of the information that the FFA Mechanism collected, both with respect to the overall conduct of the fighting and with respect to the specific incidents that occurred in its course, allowed the MAG Corps to view the overall picture of the fighting, including the orders given, as well as the specific incidents during the fighting where it was alleged that civilians were killed, and to perform a thorough legal analysis of them.

Ultimately, after reviewing all the factual findings and the material collated by the FFA Mechanism regarding the fighting overall and the individual incidents that occurred in its course, the MAG did not find that the actions of the IDF forces that were examined raised grounds for a reasonable suspicion of criminal misconduct.

As explained above, the MAG found that the IDF's policy with respect to the use of firepower during the fighting – whether by tanks, by artillery and

mortars, or from the air – accorded with Israeli domestic law and international law requirements. The different attacks were conducted for clear and legitimate military purposes, after proportionality assessment processes were undertaken in order to ensure that the expected collateral damage from each attack would not be excessive in relation to the military advantage anticipated from each attack. It was further found that, during the course of fighting, precautionary measures were undertaken which aimed to minimize the risk of civilian harm from the various attacks. Additionally, with respect to the individual incidents that occurred during the fighting, no basis was found to raise suspicion that any attack was carried out indiscriminately, lacked a military purpose, or was directed towards civilians.

Against this background, the MAG ordered that the case be closed, without opening a criminal investigation, and without any further steps to be taken against those involved. Nevertheless, it was found that the operational conduct in some of the individual incidents examined in the course of the fighting and in the days following, required operational lessons-learned on both an institutional and operational level. This included lessons-learned regarding aspects of firepower and the operation of "Attack Cells", and expanding the documentation of operational activity. These recommendations for lessons-learned were provided to the command echelon throughout the examination process. As of this date, a substantial portion of these lessons-learned, as well as other related lessons raised in the State Comptroller's report, mentioned above, have already been implemented in the operational directives currently in effect.

F. Fire Policy in the Rafah Area in the Days Following the Fighting

As detailed above, allegations were raised in different sources according to which the IDF's strikes in the Rafah area in the aftermath of the fighting, that is from 19:00 on 1 August 2014 until 4 August 2014, implemented a less restrictive use of fire policy, and were conducted in an indiscriminate and disproportionate manner, out of a drive for "revenge" for the kidnapping of Lieutenant Goldin. Against this background, the FFA Mechanism examined the use of fire policy employed in the Rafah area during this time period as well.

This examination did not uncover any indication to suggest that the use of fire policy in the area was different, in any material or substantive respect, from the policy that was in place prior to the kidnapping, and no written or oral instruction was found that referred to a different or "permissive" policy. According to the FFA Mechanism's findings, in the days following the kidnapping, the intelligence gathering effort and combat operations were focused on Rafah, in order to continue attacking the military infrastructure in the area and to neutralize the threat facing Israel as a result of the operations of terror organizations in the area. As a result of these efforts, there was increased intelligence in the area regarding enemy activity, and as such, the number of aerial strikes increased in the area in the days following the fighting on 1 August 2014. It may be assumed that the alleged increase in the number of casualties in the area followed the increased intelligence gathering and operations efforts in the area, which led to an increase in the number of

military targets attacked in the area. According to the findings, all of the strikes were undertaken for the purpose of achieving clear military objectives, and no factual basis was found for allegations regarding a "permissive" use of fire policy, or for allegations that strikes were undertaken for purposes of extracting "revenge". This understanding accords with the findings of the examinations that were conducted regarding approximately 15 exceptional incidents that occurred in the Rafah area from 19:00 on 1 August 2014 until 4 August 2014, which were reviewed, as noted above, by the FFA Mechanism.

Additional Cases Closed by the MAG Following Examination by the FFA Mechanism

2. Allegations Concerning the Deaths of Five Persons as a Result of a Strike on a Building in Beit Hanoun (19 July 2014)

In an NGO publication, as well as in a report and complaint received by the MAG Corps from NGOs, it was alleged that on 19 July 2014, at around 10:30, five members of the a-Zwiedi family were killed as a result of an IDF ground attack on a building in Beit Hanoun. According to the complaint, the a-Zwiedi house was hit by a shell that was fired at a fourth-floor apartment in the family's home. The incident was subsequently referred to the FFA Mechanism for examination.

According to the factual findings collated by the FFA Mechanism and presented to the MAG, IDF forces were engaged in extensive combat operations against numerous enemy forces operating in the area in which the a-Zwiedi house was located. The IDF's ground operations in the area began on 18 July 2014 – one day prior to the alleged attack, after efforts had been made to clear the area of civilians. Nevertheless, a comprehensive examination determined that IDF forces did not direct any aerial or ground attack towards the house around the time of the alleged attack. In the course of the examination, at the FFA Mechanism's request, it received additional materials and information from the representative of the NGO that submitted the complaint to the MAG Corps, including images of the damaged building. These additional materials did not give rise to any change in the FFA Mechanism's assessment with respect to the incident.

After reviewing the factual findings and the material collated by the FFA Mechanism, according to which no IDF attack on the building was identified, the MAG instructed to continue the factual assessment through a preliminary investigation by the Criminal Investigative Unit for Operational Affairs (the 'CIUO') of the IDF Military Police.

In the course of the CIUO investigation, testimony was collected from the owner of the apartment who allegedly was present on the floor of the building that was targeted at the time of the attack, and whose wife was allegedly killed in the incident. Testimony was also collected from various professionals and from the operational entities involved in the hostilities in the area. Moreover, the IDF's relevant systems were analyzed alongside additional documentation,

together with the materials that were provided by the representative of the NGO that submitted the complaint.

The factual findings that were collated by the FFA Mechanism and the CIUO and presented to the MAG indicate that IDF forces did not conduct any aerial or ground strike against the house specified in the complaint and reports. Furthermore, according to the testimony of the professionals who analyzed the images submitted by the representative of the complainant and other sources of information, the damage caused to the house did not conform with the type of damage that could be caused by munitions that were in use by IDF forces. The professionals also testified that it was not possible to determine with certainty what kind of munition hit the house, nor its source. It was further determined that two of the alleged civilian casualties in the incident were military operatives in terrorist organizations operating in the Gaza Strip.

After reviewing the factual findings and the material collated by the FFA Mechanism and the CIUO, the MAG found that there was no basis to the allegation that members of the a-Zwiedi family were harmed as a result of a direct attack by IDF forces aimed at the family's home. The MAG further found that, in the event that the damage to the structure was caused as an indirect result of IDF operations in the area, such damage would have been the regrettable result of the active hostilities, which the operational authorities could not have foreseen prior to its occurrence. As a result, and as there were no reasonable grounds for suspicion of criminal misconduct, the MAG ordered the case to be closed, without opening a criminal investigation.

3. Allegation Concerning the Deaths of Nine Females as the Result of a Strike on a Building in Gaza City (21 July 2014)

In a report by an international organization, and in NGO reports and a complaint received by the MAG Corps, it was alleged that on 21 July 2014, at around 17:00, nine female members of the al-Qassas and Siyam families were killed, and others injured, as a result of an IDF aerial strike that hit the al-Qassas family's apartment in a building in Gaza City. According to the allegations, only this apartment, which was located on the top floor of the building, was hit in the strike. The incident was subsequently referred to the FFA Mechanism for examination.

According to the factual findings collated by the FFA Mechanism and presented to the MAG, it was determined, that the IDF did not conduct any aerial or ground strike against the structure referenced in the complaint, nor any other aerial or ground strike at the relevant time and place that could have resulted in the alleged damage to such structure. In the course of the FFA Mechanism's examination, the representative of the organization that submitted the complaint was requested to provide additional information and materials. The information and materials received included images of the apartment that was damaged, and they were also examined by the FFA Mechanism.

After reviewing the factual findings and the material collated by the FFA Mechanism, wherein, as previously mentioned, no IDF strike towards the family's home was identified, the MAG instructed to continue the factual assessment through a preliminary investigation by the Criminal Investigative Unit for Operational Affairs (the 'CIUO') of the IDF Military Police.

In the course of the CIUO investigation, testimony was collected from the owner of the apartment that was allegedly attacked. Testimony was also collected from professionals as well as the operational entities involved in the hostilities in the area. Moreover, the IDF's relevant military systems were analyzed alongside additional documentation, together with the materials that were provided by the representative of the NGO that submitted the complaint.

The factual findings collated by the FFA Mechanism and the CIUO and presented to the MAG indicate that IDF forces did not conduct any aerial or ground strike against the structure specified in the complaint and reports, nor did the IDF engage in any other aerial or ground strike at the relevant time and place that could have resulted in the alleged damage to such structure. Furthermore, according to the testimony of the professionals who analyzed the images submitted by the representative of the organization and other relevant documents, the explosion that occurred in the apartment did not reflect the damage caused by the munitions employed by IDF forces, and the alleged damage was not caused by an aerial strike. In their assessment, the factual findings likely indicate that a homemade explosive device detonated in the apartment.

After reviewing the factual findings and the material collated by the FFA Mechanism and the CIUO, the MAG found that there was no basis to the allegation that the female members of the al-Qassas and Siyam families were harmed as a result of IDF operations. Indeed, the examination's findings indicate, with a high level of probability, that the female members of the al-Qassas and Siyam families were harmed by an entity other than the IDF. As a result, the MAG ordered the case to be closed, without opening a criminal investigation.

4. Allegation Concerning the Deaths of 35 Persons as a Result of a Strike on a Building in Khan Younis (29 July 2014)

In media reports, as well as in NGO reports and complaints received by the MAG Corps, it was alleged that on the morning of 29 July 2014, approximately 35 persons were killed as a result of an aerial strike conducted by the IDF on a building in Khan Younis. According to some of these sources, some of the casualties were renting apartments in the building, and others were present in the building after having evacuated their homes. The incident was subsequently referred to the FFA Mechanism for examination.

According to the factual findings collated by the FFA Mechanism and presented to the MAG, on 29 July 2014, the IDF carried out an aerial strike against a senior commander in the Palestinian Islamic Jihad terror

organization, who according to real-time intelligence was involved in commanding military activities against Israel and who was present in the building at the time. It was further assessed that at least one additional military operative was in the building at the time.

During the planning stages of the strike it was assessed that in order to attack the senior commander, the strike must be carried out against the entire structure, and could not be limited to a particular portion of the building. Accordingly, the strike on the structure was planned for execution in a manner that would allow for the attack's aim to be achieved whilst minimizing the potential harm to nearby structures and those present therein. It was further found that it would not have been possible to provide a warning prior to the strike on the building, as such a warning would have frustrated the objective of the attack.

During the planning stages of the strike it was assessed, on the basis of intelligence and other checks that were undertaken in real time, that no civilians were present in the structure. Nevertheless, as the structure was a residential building, for the purposes of assessing the proportionality of the planned attack the forces worked according to the assumption – despite the aforementioned intelligence information – that civilians were present in the building. This stringency was presented to an IDF senior commander, who assessed that even when taking this assumption into account, the extent of the civilian harm expected to result from the attack would not be excessive in relation to the significant military advantage that was anticipated to result from a strike on the senior commander.

As mentioned, it is alleged that 35 persons were killed and 27 injured as a result of the strike. This figure is substantially higher than the number of civilians that were assumed to be in the building according to the stringency adopted by the forces. According to the findings, at least three military operatives of terrorist organizations were among those killed in the attack. There has been no confirmation that the senior commander was also hit in the strike. It was also found that the strike destroyed military infrastructure in the building. As a result of this incident, operational lessons were learned and implemented in various fields.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that the targeting processes in question accorded with Israeli domestic law and international law requirements. The decision to strike was taken by the competent authorities and the attack was aimed at a military objective – a senior military commander in the Palestinian Islamic Jihad and at least one other military operative. The attack complied with the principle of proportionality, as at the time the decision to attack was taken it was considered that the collateral damage expected to arise as a result of the attack would not be excessive in relation to the military advantage anticipated from it. With respect to the proportionality assessment, it was found that the requisite procedures – intelligence and others – to determine whether the

structure contained civilians were followed, and the professional assessment of the operational authorities with respect to the number of civilians that could be harmed from the attack was not unreasonable. This is so, despite the fact that after the strike it was understood that there was a discrepancy between the facts which led to the outcome of the attack and the information available to the commander at the time the decision to strike was made. Additionally, the strike was carried out using precautionary measures aimed to minimize the potential for harm to nearby structures and the civilians inside them. It was further found that the provision of a warning to the persons present in the targeted building was not required by law, as such a warning would have frustrated the objective of the attack.

The fact that in practice, civilians that were uninvolved in the hostilities were harmed, and to an extent that was not expected, despite the checks that were conducted, is a difficult and regrettable result, but it does not affect the legality of the attack *ex post facto*.

In light of the findings, the MAG did not find that the actions of IDF forces gave rise to reasonable grounds for suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed without opening a criminal investigation. In addition, the MAG recommended undertaking an operational lessons-learned process in order to mitigate the risk of similar such incidents in the future.

5. Allegations Concerning the Deaths of 19 Persons Resulting from a Strike on a Building in Al-Bureij (29 July 2014)

In reports by international organizations, in NGO reports and in a complaint received by the MAG Corps, it was alleged that on 29 July 2014, at around 00:30, 19 persons were killed as a result of an aerial attack conducted by the IDF on the Abu Jaber family's house in Al-Bureij. According to some reports, three structures were hit in the course of the strike, and according to one of the reports, 20 persons were killed in the strike. The incident was subsequently referred to the FFA Mechanism for examination.

The factual findings collated by the FFA Mechanism and presented to the MAG indicate that on 29 July 2014, the IDF carried out an aerial strike on a building that served as an active command and control center of the Hamas terror organization. The attack aimed to strike both the command and control center and the military operatives manning it, who – according to information received in real-time – were involved in military activities that endangered IDF forces operating in the area at the time. As such, it was assessed that a significant military advantage would be achieved by attacking the target at the time of the strike.

During the planning stages of the strike, it was assessed that civilians were likely to be present in the building, but that the extent of the collateral damage expected to result from the attack would not be excessive in relation to the significant military advantage that was anticipated to result from a strike on

the command and control center and the military operatives manning it. The strike on the structure was planned for execution by means of a precise munition suited to the attack, and in a manner that would allow for the attack's aim to be achieved whilst minimizing the potential harm to nearby civilians and adjacent structures. It was further found, that it would not have been possible to provide a warning prior to the strike on the building, as such a warning would have frustrated the objective of the attack.

After the fact, it became clear that there was a discrepancy between the information regarding the presence of civilians in the building, on the basis of which the strike was carried out, and the facts which were understood afterwards. As mentioned, it is alleged that 19 persons were killed as a result of the attack (and as mentioned above, one of the reports alleged that 20 persons were killed). This figure is substantially higher than the number of civilians that were assessed to be present in the building. It appears that most were killed inside the building, while it is possible that some were in adjacent buildings. According to the FFA Mechanism's findings, among the deceased were at least four military operatives belonging to terror organizations.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that the targeting processes in question accorded with Israeli domestic law and international law requirements. The decision to strike was taken by the competent authorities and the attack was aimed at military targets – an active command and control center of the Hamas terror organization and the military operatives who were manning it. The attack complied with the principle of proportionality, as at the time the decision to attack was taken it was considered that the collateral damage expected to arise as a result of the attack would not be excessive in relation to the military advantage anticipated from it. This assessment was not unreasonable under the circumstances, despite the understanding, after the fact, of the discrepancy between the prevailing facts on the ground – which, in the circumstances, could not have been foreseen through use of reasonable means in real time – and the information available to the operational authorities at the time the decision to strike was made.

Additionally, the strike was carried out using precautionary measures, including *inter alia*, the choice of munitions, and the method of the attack, all of which aimed to mitigate the risk of harm to civilians in the vicinity of the targeted structure, as well as to nearby structures and those present within them. It was also found that the provision of a warning to the individuals present in the targeted structure was not required by law, as it was expected to frustrate the objective of the attack. The extent of civilian casualties which actually occurred, which was not expected despite the checks that were undertaken, is a regrettable result, but does not affect the legality of the attack *ex post facto*.

In light of these findings, the MAG did not find that the actions of IDF forces gave rise to reasonable grounds for suspicion of criminal misconduct. As a

result, the MAG ordered the case to be closed, without opening a criminal investigation or ordering further action against those involved in the incident.

6. Allegation Concerning the Deaths of Five Persons Resulting from a Strike on a Building in Rafah (1 August 2014)

In a complaint and in a report by NGOs received by the MAG Corps, it was alleged that on 1 August 2014, at around 07:00, five members of the Amran family were killed as the result of an IDF aerial attack on their home in the area of "Tobat Zara", in Rafah. Subsequently, the incident was referred to the FFA Mechanism for examination.

The factual findings and the material collated by the FFA Mechanism and presented to the MAG indicate that, on 1 August 2014, at 07:00, prior to the humanitarian ceasefire entering into effect, the IDF carried out an aerial strike on a structure that was being used as an active Hamas command and control center. The strike aimed to attack both the command and control center and the military operatives manning it. During the strike planning process, it was assessed that the extent of the harm expected to result to civilians as a result of the attack would not be excessive in relation to the significant military advantage that was anticipated to result from a strike on the military command and control center and the military operatives who were manning it. It was further found, that it would not have been possible to provide a warning prior to the strike on the building, as such a warning was expected to frustrate the objective of the attack.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that the targeting processes in question accorded with Israeli domestic law and international law requirements. The decision to strike was taken by the competent authorities, and the objects of the attack were military targets – an active command and control center of the Hamas terror organization, and the military operatives assessed to be manning it at the time. The attack complied with the principle of proportionality, as at the time the decision to attack was taken it was considered that the collateral damage expected to arise as a result of the attack would not be excessive in relation to the military advantage anticipated to result from it. This estimation was not unreasonable under the circumstances. It was also found that the provision of a warning to the residents of the building was not required by law, as such warning would have frustrated the objective of the attack. The fact that, in practice, civilians who were uninvolved in the hostilities were harmed, is a regrettable result, but does not affect the legality of the attack *ex post facto*.

In light of the above, the MAG did not find that the actions of IDF forces raised grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation, and without any further steps to be taken against those involved.

7. Allegation Concerning the Deaths of Six Persons Resulting from a Strike on a Building in Nusseirat (2 August 2014)

In a report by an international organization, and in NGO reports and a complaint received by the MAG Corps, it was alleged that on 2 August 2014, at around 14:20, six persons were killed and others injured as a result of an aerial attack conducted by the IDF on the Abu Madi family's house in Nusseirat. The incident was subsequently referred to the FFA Mechanism for examination.

The factual findings collated by the FFA Mechanism and presented to the MAG indicate that on 2 August 2014, the IDF carried out an aerial strike on a building that served as an active command and control center of the Hamas terror organization. The building was located in proximity to a forested area wherein terrorist organizations had embedded rocket launchers that had been used to fire rockets towards Israel, including on the day of the attack. The aerial strike aimed to attack both the command and control center and the military operatives manning it, who – according to real-time intelligence – were involved in military activities that endangered IDF forces.

In the course of the strike planning process, it was assessed that the extent of the collateral damage expected to result from the attack would not be excessive in relation to the significant military advantage that was anticipated to result from a strike on the command and control center and the military operatives manning it. The strike on the building was planned for execution by means of a precise munition with a relatively low explosive load, and in a manner that would allow for the attack's aim to be achieved whilst minimizing the potential harm to civilians and civilian property outside of the targeted building or the adjacent building. It was further found, that it would not have been possible to provide a warning prior to the strike on the building, as such a warning would have frustrated the objective of the attack.

As mentioned, it was alleged that six persons were killed as a result of the strike. According to the findings, two military operatives were hit in the strike. It was further determined that the building adjacent to the targeted building was not significantly damaged as a result of the strike.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that the targeting processes in question accorded with Israeli domestic law and international law requirements. The decision to strike was taken by the competent authorities and the attack was aimed at military targets – an active command and control center of the Hamas terror organization and the military operatives who were manning it. The attack complied with the principle of proportionality, as at the time the decision to attack was taken it was considered that the collateral damage expected to arise as a result of the attack would not be excessive in relation to the military advantage anticipated from it. This assessment was not unreasonable under the circumstances.

Additionally, the strike was carried out using precautionary measures, including the choice of munitions and the method of the attack, which aimed to minimize the potential for harm to civilians in the vicinity of the targeted structure, as well as to nearby structures and those present within them. It was also found that the provision of a warning to the individuals present in the targeted structure was not required by law, as such warning would have frustrated the objective of the attack. The fact that, in practice, a number of civilians who were not involved in the hostilities were harmed, is a regrettable result, but does not affect the legality of the attack *ex post facto*.

In light of these findings, the MAG did not find that the actions of IDF forces gave rise to reasonable grounds for suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation or ordering further action against those involved in the incident.

8. Allegation Concerning an Attack on the "Italian Tower" in Gaza City (26 August 2014)

In media reports, in a report by an international organization, and in a report and complaint from NGOs received by the MAG Corps, it was alleged that near midnight between 25 and 26 August 2014, three out of four wings of a multi-story building known as the 'Italian Tower', as well as an adjacent commercial center known as the 'Italian Mall', located in the Nasser neighborhood of Gaza City, were destroyed as a result of an aerial strike carried out by the IDF. It was not alleged that any civilians were killed due to the attack. It was further alleged, that prior to the strike, which was carried out using a number of munitions, those present in the tower received warnings from the IDF that they must evacuate and distance themselves from the tower. According to one of the aforementioned reports, no military activity was conducted in the tower, and civilians were injured as a result of the strike. Subsequently, the incident was referred to the FFA Mechanism for examination.

The factual findings collated by the FFA Mechanism and presented to the MAG indicated that at around midnight on 25 August 2014, the IDF carried out an aerial strike on a multi-story building, multiple parts of which were used by senior commanders of Hamas' military wing for military operations, and which housed a concentration of military infrastructure, including for command and control purposes. During the planning stages of the strike, it was assessed that no civilians would be harmed, and that the expected damage to property would not be excessive in relation to the significant military advantage that was anticipated to result from neutralizing the center for military operations and the military infrastructure found within the structure. The strike was planned for execution late at night, by means of precise munitions, and in a manner that would allow for the attack's aim to be achieved whilst minimizing the potential harm to nearby civilians and adjacent structures. It was further found that, prior to the strike, a number of measures were employed to ensure the evacuation of persons from the structure and its

vicinity, including providing advance warning to residents of the structure by means of individual telephone calls, as well as the execution of a warning strike on the building's roof. As mentioned, no civilians were alleged to have been killed as a result of the strike. According to the findings, the majority of the structure's wings collapsed due to the strike, and damage was caused to an adjacent commercial structure.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that the targeting process in question accorded with Israeli domestic law and international law requirements. The decision to carry out the strike was made by the competent authorities, and the strike was aimed at a military objective – a concentration of military infrastructure used by the Hamas terror organization for military operations. The attack complied with the principle of proportionality, as at the time the decision to attack was taken it was considered that the collateral damage expected to arise as a result of the attack would not be excessive in relation to the military advantage anticipated from it. This assessment was not unreasonable under the circumstances.

Additionally, the strike was carried out using precautionary measures, including *inter alia*, the choice of munitions, and the timing and method of the attack, which included the provision of advance warning and the use of a warning strike on the roof of the building, all of which aimed to minimize the potential for harm to civilians in the targeted structure and its vicinity. As mentioned, no civilian deaths are alleged to have resulted from the strike.

In light of these findings, the MAG did not find that the actions of IDF forces gave rise to reasonable grounds for suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation or ordering action against those involved in the incident.

Incidents in Regard to which the MAG Ordered a Preliminary Investigation by the Military Police Criminal Investigative Unit for Operational Affairs in order to Supplement the Factual Examination

9. Allegation Concerning Attacks on Civilians in Khirbet Khuza'a (22-24 July 2014)

In the report from an international organization, as well as in NGO reports and a complaint received by the MAG Corps, it was alleged that between 22 and 24 July 2014, several civilians were intentionally killed by IDF fire while they were evacuating from the area of hostilities in Khirbet Khuza'a.

The various sources referred to different incidents, and some of the allegations in the different reports were inconsistent. The allegations concern three separate incidents. The first incident concerned a minor, from the Qdeih family, who according to the complaint was killed by fire directed at civilians while they were evacuating the area (according to some of the reports, the minor was hit by shrapnel and died as a result of delays in evacuating him to receive medical treatment); the complaint and reports are inconsistent with

respect to the date of this incident. The second incident, mentioned in only one report, concerned the death of Muhammad a-Najar, who was allegedly killed as a result of direct fire while he was amidst a group of civilians evacuating the area (no concrete complaint was received with respect to this alleged incident). The third incident concerned the death of three members of the a-Najar and Qdeih families, who, according to a number of reports, were shot while evacuating the area and while holding a white flag (no concrete complaint was received with respect to this alleged incident either). Subsequently, the incidents were referred to the FFA Mechanism for examination.

According to the factual findings collated by the FFA Mechanism and presented to the MAG, starting on 21 July 2014, and during the following several days, IDF forces were engaged in widespread hostilities in the area of Khirbet Khuza'a, the purpose of which was to target the large number of enemy forces concentrated in the area, to locate cross-border assault tunnels, and to destroy explosive devices, military infrastructure and weaponry that the terror organizations had embedded in the area. While fighting in the area, IDF forces encountered booby-trapped structures, and came under fire, including by mortars. On a number of occasions, IDF forces encountered military operatives making use of civilian cover in an attempt to advance towards and harm the forces.

As the enemy forces operated deep within built-up areas, whilst using the civilian population as cover, the hostilities occasionally occurred in the vicinity of civilians present in the area. In light of these circumstances, the fighting was planned and conducted in a manner that allowed for providing many suspensions in the hostilities for the purpose of allowing civilians and the injured to be evacuated from the area. The IDF also coordinated individual medical evacuations during the course of the maneuver.

With respect to the first incident, following the FFA Mechanism's comprehensive examination – which included questioning the command authorities that operated in the area, as well as cross-examining witness accounts as presented in the complaint and reports as against information available to the IDF concerning the operations in the area and the actions taken to evacuate the civilian population from the area – nothing was found that could shed light on the circumstances of the alleged incident. The FFA Mechanism's request to schedule a meeting with a resident of the Gaza Strip who allegedly witnessed the incident was declined, and its request that the representative of the organization that submitted the complaint to the MAG provide any relevant information in his possession went unanswered.

With respect to the second and third incidents, following a thorough investigation—which included determining the potentially relevant sectors and time periods to be examined on the basis of information from the NGO reports and information received from their representatives, and then questioning the commanders of the forces that operated in the relevant sectors during the

relevant time periods—no information was found to corroborate the allegations of direct fire upon evacuating civilians. Moreover, the FFA Mechanism expanded the scope of its examination, and questioned commanders of forces operating in additional sectors, and still nothing was found regarding direct or intentional fire by IDF forces on groups of evacuating civilians or on individual civilians. Because no concrete complaints were received concerning these incidents, it was not possible for the FFA Mechanism to turn to a complainant or to their representative and request information in their possession that could shed additional light on the alleged incidents. It should be noted that during the questionings that took place in the course of the examination, it was found that Palestinian terror organizations had fired at civilians trying to evacuate from the area.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that there was no indication that IDF forces directly or intentionally fired upon groups of civilians evacuating the area, nor upon individuals evacuating the area, in Khirbet Khuza'a. Nevertheless, due to the substance of the allegations, the MAG ordered further factual examinations through a preliminary investigation by the Criminal Investigation Unit for Operational Affairs (the 'CIUO') of the IDF Military Police. This preliminary investigation has not yet been completed.

Criminal Investigations which were Completed and in Regard to which the MAG has Decided to Close the Case

10. Allegations Concerning the Death of Nine Persons as a Result of an Attack on a Structure on the Khan Younis Coast (9 July 2014)

As previously reported, the MAG Corps received reports, as well as complaints from NGOs, wherein it was alleged that as a result of an IDF aerial attack on 9 July 2014, nine persons were killed in a café on the coast of Khan Younis. Subsequently, the incident was referred to the FFA Mechanism for examination.

The factual findings collated by the FFA Mechanism and presented to the MAG gave rise to reasonable grounds for suspicion that the attack was not carried out in accordance with the rules and procedures applicable to IDF forces. As a result, the MAG ordered the opening of a criminal investigation into the incident.

The investigation that was conducted was thorough and comprehensive. Testimony was collected from ten IDF soldiers and officers who were involved in the attack. Investigators also collected the testimonies of Gaza Strip residents who were allegedly witnesses to the incident and present in the vicinity of the attack. Additionally, a large number of documents relating to the attack were reviewed, along with materials from the IDF's relevant operational systems.

The findings of the investigation provide that on 9 July 2014, IDF forces carried out an aerial strike on a structure on the coast in Khan Younis that

served as a weapons depot for Hamas' Naval Forces. During the planning stages of the strike, it was assessed that no civilians would be harmed as a result of the attack. As a result of the investigation it was understood that a café was also operating within the structure, but that this information was not available to the IDF forces at the time of the attack, and that during the attack process, no information arose that indicated that the structure operated as a café or that there was civilian presence in the structure at the time of the attack.

Nevertheless, because prior to the strike the possibility of civilian presence in the structure could not be completely ruled out, the IDF forces planned the strike to occur during the night, in order to minimize the possibility of harm to civilians, with the understanding that people were not expected to be inside the building at night. Furthermore, real time visual surveillance was deployed during the strike to verify that there were no civilians in the vicinity of the structure, and a precise munition was used, designed to hit the target without damaging nearby structures. As mentioned above, it is alleged that the strike resulted in the death of nine persons. According to the findings, at least two of those killed were military operatives.

After reviewing the investigation's findings, the MAG found that the attack process in question accorded with Israeli domestic law and international law requirements. The decision to attack was taken by the competent authorities, and the attack was aimed at a military objective – a weapons depot belonging to Hamas' Naval Forces. The fact that, in retrospect, it was determined that the structure also served as a café, does not affect the legality of the attack *ex post facto*. The attack complied with the principle of proportionality, as at the time the decision to attack was taken the operational authorities assessed that no harm to civilians was expected to occur as a result of the strike. This assessment was not unreasonable under the circumstances.

Moreover, the attack was carried out while undertaking several precautionary measures, which aimed to prevent any harm to civilians. Such measures included the choice of a munition which was not expected to cause harm to nearby structures or civilians near the target, the deployment of real time visual surveillance, and the timing of the strike during nighttime. The MAG found that the professional discretion exercised by all the commanders involved in the incident had not been unreasonable under the circumstances.

The fact that, in practice, civilians who were uninvolved in the hostilities were harmed, is a regrettable result, and was not foreseen at the time the decision to strike was made, but it does not affect the legality of the attack *ex post facto*.

Accordingly, the MAG ordered that the case be closed without any further legal proceedings – criminal or disciplinary – to be taken against those involved in the incident.

11. Allegation Concerning the Abuse of a Resident of Khirbet Khuza'a while Being Detained and Looting of his Property (17 July 2014)

As previously reported, in a report by an international organization it was alleged that a resident of Khirbet Khuza'a (who remains anonymous in the report) was detained by IDF soldiers and questioned, and that during the questioning he was physically struck. Additionally, it was alleged that the soldiers took a cash sum from his pocket, which was not returned to him on his release. In response to these reports, the MAG ordered the opening of a criminal investigation into the incident.

The investigation found that IDF forces were not located at all in the area of the municipality of Khuza'a at the time of the alleged incident, and rather only entered the area five days after the date of the alleged incident. It was also found that no Palestinians were detained in the Gaza Strip at all on the date of the alleged incident.

Nevertheless, for the sake of completeness, the files of all the detainees detained during Operation 'Protective Edge' were reviewed, and no detainee could be identified matching the description of the person referenced in the report (with respect to place of residence, date of detention, and length of time in detention).

The investigators also attempted to locate the Palestinian man whose house the complainant was detained and questioned in, but he also could not be found.

Under these circumstances, and in the absence of evidence to support the allegation and thus provide a basis for a suspicion of criminal misconduct by IDF soldiers, it was decided to close the case.

12. Allegation Concerning the Deaths of 27 Persons as a Result of a Strike on a Structure in Khan Younis (20 July 2014)

In media reports and in complaints from NGOs, it was alleged that on 20 July 2014, 27 persons were killed as the result of an IDF strike on the house of the Abu Jame` family in Khan Younis, and others were injured. Subsequently, the incident was referred to the FFA Mechanism for examination.

The factual findings and materials collated by the FFA Mechanism and presented to the MAG, indicated the existence of grounds for a reasonable suspicion that the incident involved a deviation from the rules and procedures applicable to IDF forces. As a result, the MAG ordered a criminal investigation into the incident.

The investigation was thorough and comprehensive. Testimony was collected from one of the individuals injured in the attack, as well as 16 officers who were involved in the approval and carrying out of the attack. Additionally, an

extensive number of documents were retrieved, including materials found in the IDF's relevant operational systems, death certificates, and more.

The investigation's findings provide that on 20 July 2014, IDF forces carried out an aerial strike on a structure in use by Palestinian terrorist organizations for military activities against IDF forces maneuvering in the area. The strike intended to target the military infrastructure in the structure as well as a command level military operative, who according to real-time intelligence was commanding military operations against IDF forces from within the structure. During the planning and execution stages of the strike, which took approximately 24 hours, additional information about the structure was received, which corroborated the understanding that the structure contained military infrastructure that presented clear and immediate danger to IDF forces maneuvering in the area.

During the planning stages of the strike it was assessed, on the basis of intelligence information and other checks that were undertaken, that civilians were likely to be present in the structure, but that the expected civilian harm resulting from the strike would not be excessive in relation to the significant anticipated military advantage that would result from striking the military infrastructure and the command level military operative manning it.

Among the precautions taken, including in order to conduct an assessment of how many civilians were present in the structure, it was decided to undertake a process of gathering additional intelligence on the target; a process which continued for approximately 24 hours. Additionally, surveillance conducted on the structure for a number of hours revealed no civilian movement, except for a single unidentified man who entered the structure prior to the attack.

Contrary to the allegation, it was found that a number of warnings were issued in the area of the strike, using various means, which called on civilians to evacuate from the area. It was further found that it would not have been possible to provide a specific warning to those present in the structure prior to the strike, as such a warning was expected to frustrate the objective of the attack. Moreover, it was also found that because the precise location of the military activity in the structure was not known, the strike could not be limited to a particular portion of the building.

As mentioned, it was alleged that 27 persons were killed as a result of the strike, a number far higher than the number of civilians that was assessed to possibly be in the structure. According to the findings, the targeted military operative was among those killed, together with additional military operatives that were apparently killed in the attack.

After reviewing the investigation's findings, the MAG found that the attack process in question accorded with Israeli domestic law and international law requirements. The decision to attack was taken by the competent authorities, and the attack was aimed at a military objective – a structure used by Palestinian terrorist organizations for military activities against IDF forces

maneuvering in the area, and a command level military operative present therein. The attack complied with the principle of proportionality, as at the time the decision to attack was taken it was assessed that the collateral damage expected to arise as a result of the attack would not be excessive in relation to the military advantage anticipated from it. This assessment was not unreasonable under the circumstances. Additionally, the strike was carried out using precautionary measures aimed at minimizing the potential for harm to civilians, including a lengthy intelligence gathering process which included the use of surveillance prior to the attack, in order to assess the presence of civilians in the structure and in its vicinity. It was further found that the provision of a specific warning prior to the attack to those present in the structure was not required by law as it was expected to result in the frustration of the strike's objective.

The MAG found that the professional discretion exercised by all the commanders involved in the incident had not been unreasonable under the circumstances. The extent of harm, in practice, to civilians who were uninvolved in the hostilities is a regrettable result, and which was not expected at the time the decision to strike was made, but it does not affect the legality of the attack *ex post facto*.

Accordingly, the MAG ordered that the case be closed without any further legal proceedings – criminal or disciplinary – to be taken against those involved in the incident.

13. Allegation Concerning the Abuse of a Resident of Khuza'a under Detention (23 July 2014)

As previously reported, the MAG Corps received a complaint on behalf of a resident of Khuza'a alleging that after his capture by IDF forces, he was struck without provocation by IDF soldiers during his questioning. In response to these reports, the MAG ordered the opening of a criminal investigation into the incident.

The case was closed after the complainant failed to meet with investigators to provide testimony. The complainant declined to give testimony despite the fact that, after a request of his representative, he was provided with a guarantee that he would not be arrested while providing his testimony. Under these circumstances, and in the absence of evidence to support the allegation and thus provide a basis for a suspicion of criminal misconduct by IDF soldiers, it was decided to close the case.

14. Allegation Concerning Mistreatment and Endangering of a 17-year old Palestinian in Khirbet Khuza'a (23-27 July 2014)

As previously reported in media reports and in a report by an international organization, which alleged unlawful acts (including allegations of assault and threats) by IDF forces against A., who was 17 at the time of the incident, and

who was allegedly held by IDF forces in the area of Khirbet Khuza'a, the MAG ordered a criminal investigation into the incident.

The investigation was thorough and comprehensive. Testimony was collected from numerous IDF soldiers and commanders who were involved in A.'s detention. Additionally, numerous relevant documents were obtained, including written orders, daily reports, operational procedures, sketches, and operational logs. Moreover, multiple attempts were made to obtain testimony from A., however his father – an official in Hamas' political wing – delivered an affidavit to the investigators stating that he refuses to permit his son to meet to give to testimony.

Accordingly, the investigation focused on examining the allegations raised by A. in media reports. In these reports, it was alleged, among other things, that during his detention by IDF forces, he was subjected to continued abuse, including physical violence. In one report, it was alleged that the complainant was also threatened in a sexual manner. Furthermore, it was alleged that IDF forces used A. as a “human shield”, was forced to carry out actions that put him at risk, and to dig in order to locate tunnel openings.

Placing the alleged incident in context, starting on 21 July 2014, and during the following several days, IDF forces were engaged in widespread hostilities in the area of Khirbet Khuza'a.

As the enemy forces operated deep within built-up areas, whilst using the civilian population as cover, the hostilities occasionally occurred in the vicinity of civilians present in the area. In light of these circumstances, the fighting was planned and conducted in a manner that allowed for providing suspensions in the hostilities for the purpose of allowing civilians and the injured to be evacuated from the area.

The investigation's findings provide that A. was held by IDF forces, as during an attempt by IDF forces to facilitate the evacuation of civilians, he was identified acting in a suspicious manner. After initial questioning, it was understood that A. had links to Hamas, and it was assessed that he possessed intelligence with respect to the location of Hamas combat tunnels in the area – information which would directly affect the safety of the forces and other forces in the area, and their ability to carry out their mission (it was later discovered that A. also possessed intelligence regarding the location of rocket launchers). In light of the military necessity, it was decided to continue to hold A. temporarily in order to obtain the crucial intelligence that he possessed, which was relevant to the forces' operations. Accordingly, A. was detained by the force for four days.

The reported allegations of violence, abuse, and threats directed towards A. were thoroughly examined during the course of the investigation, and no support was found for them.

Similarly, no support was found for the allegation that A. was held in unfit conditions. The investigation found that A. was held in appropriate and reasonable conditions given the circumstances, similar to the living conditions of the soldiers by whom he was being held. A. was provided with food and water on a continuous basis out of the force's own supply. A. slept in the same place and conditions as the soldiers, while fully clothed. Additionally, A. was permitted to pray when he asked to do so. Though A. was handcuffed for a significant portion of the time that he was held, this was done out of concern that he would seek to escape or harm the soldiers.

Finally, no support was found for the allegation that the forces used A. as a 'human shield', or that he was compelled to perform physical activities that placed him in danger. A. was placed with a platoon that walked in the middle of the company, and did not walk at the head of the force as alleged. The areas and structures that he entered were cleared by IDF forces prior to his entry, in order to prevent any harm to the platoon he was accompanying.

According to the testimony of the soldiers and their conduct, it was found that the only reason A. was detained was in order to retrieve the intelligence in his possession, and no indication was found to suggest there was any intention to purposefully endanger A., or to use his presence in order to shield the soldiers from hostile military activities. Moreover, it was found that A. was not compelled or otherwise requested to perform any physical activities. It was found that in the course of searching through the structures they had entered, the soldiers moved various physical objects, and there were instances in which A. willingly, and of his own initiative, helped them (apparently, in order to ingratiate himself with them and gain their trust). As previously mentioned, all of the places A. entered with the soldiers were first cleared of enemy presence.

According to the findings, in a sole incident A. may have tried to engage in digging. In this incident, one of the soldiers attempted to dig at a spot where A. claimed there was an opening to a tunnel. After the soldier failed to locate an opening, A. insisted that the opening existed. In order to prove that there was an opening where he said it was, he apparently tried to begin digging but stopped after a few moments. A. was not compelled to dig, and in any event, the understanding of the forces at this point was that no tunnel existed in the location and that A.'s actions did not entail any risk of harm to him.

Nevertheless, the investigation materials raised a number of deficiencies in the conduct of the forces. Among them are that A. was held for a prolonged period without the forces reporting and receiving authorization from the competent authorities in contravention of IDF procedures, and without the detention being documented in accordance with IDF procedures. It would also have been more proper to have better prevented A. from entirely engaging in some of the aforementioned activities, even if his conduct was of his own initiative and without being compelled to engage in such activities. Accordingly, the MAG recommended taking command measures against the relevant persons,

as well as clarifying the relevant instructions in the IDF in order to prevent the occurrence of similar incidents in the future.

Accordingly, and considering that A. failed to give testimony to the investigators, the MAG ordered that the case be closed without any further legal proceedings – criminal or disciplinary – to be taken against those involved in the incident.

15. Allegation Concerning the Death of Approximately 15 Persons as a Result of a Strike in the Vicinity of an UNRWA School in Beit Hanoun (24 July 2014)

As previously reported in media reports, in reports and complaints from an international organization and from NGOs received by the MAG Corps, it was alleged that an IDF strike in the vicinity of an UNRWA school in Beit Hanoun on 24 July 2014, at around 1500, resulted in the deaths of 15 persons, as well as injuries to others. Subsequently, the incident was referred to the FFA Mechanism for examination.

The factual findings collated by the FFA Mechanism and presented to the MAG, indicated the existence of grounds for a reasonable suspicion that the incident involved a deviation from the rules and procedures applicable to IDF forces. As a result, the MAG ordered a criminal investigation into the incident.

The investigation that was conducted was thorough and comprehensive. Testimony was obtained from numerous IDF soldiers and officers, as well as from seven Palestinians. Moreover, the investigation reviewed materials from the IDF's relevant operational systems, witness affidavits received from Palestinians, and more. Additionally, video clips, radio communications and pictures were obtained, some of which was given to the investigating authorities by UNRWA and an NGO.

Documents reviewed in the course of the investigation showed that on 10, 17, and 20 July 2014, mass messaging was directed at the residents of Beit Hanoun through leaflets, radio and television broadcasts, telephone calls and voice messages, all calling on the residents to evacuate from the area. The evacuation was called for due to the IDF's intention to enter the area for the purpose of locating and neutralizing a cross-border assault tunnel that, according to the information available to the IDF, originated in the Beit Hanoun area and ran into Israeli territory.

According to the testimony of commanders and soldiers, the civilian population did indeed evacuate from the area, and no civilians were identified during the ensuing fighting – with the exception of the civilians taking shelter in the UNRWA school, which was known to the IDF to be operating as a shelter for civilians who had evacuated their homes. It was also found that the commanders of the force tried to bring about the evacuation of the school, in order to avoid harm to those therein in light of the fighting that was occurring in the area, and that many attempts were made to try and coordinate the

evacuation of the school and the transfer of civilians to a different shelter in a more remote area.

On the day of the incident, in the early morning hours, the IDF began advancing in order to clear enemy forces from the area. IDF forces came under heavy attack from enemy forces, who fired anti-tank missiles, small arms fire, and sniper fire against IDF forces. During the maneuver, IDF forces identified explosive devices embedded in the area next to the school. While the forces were engaged in neutralizing the explosive devices, they were fired upon from a number of structures, resulting in injuries to an officer and to a soldier. A short time later, another unit was fired upon from the same area.

Following the combat, IDF forces evacuated the injured and moved back to defensive positions. Shortly thereafter, an order was given to fire towards the area of combat, in order to prevent the persistent enemy fire on IDF forces, and to facilitate the forces' re-entry into the area.

The investigation's findings provide that the commanders who ordered the fire assessed that, with the exception of the school, the area was devoid of civilians. Accordingly, the precautions taken during the firing were mainly aimed at preventing harm to the school, and at reducing the risk of civilian casualties. The findings also provide that the forces were instructed to avoid any possible harm to the school and the civilians therein, and that the central consideration in choosing the impact point for the fire was ensuring strict compliance with safety margins from the school.

The forces directed mortar fire at an impact point located approximately 130 meters away from the school's boundary (a distance significantly greater than the relevant safety margin). The firing was conducted using a single mortar so as to increase accuracy, and while employing visual surveillance and shells with the lowest possible potential to cause damage.

In retrospect, it turned out that three of the shells landed within the school grounds and hit persons located therein. The investigation materials showed that this outcome was not foreseen in real-time by the IDF forces, and was caused due to an unintentional and unexpected deviation of the shells from the intended impact point.

When it was discovered that the school had been hit, all forces in the area were instructed to cease fire immediately, and coordination efforts were undertaken to facilitate the passage of supply and medical vehicles into and out of the school.

As a result of this event, the IDF implemented operational lessons-learned, which were intended to reduce the risk of such incidents occurring in the future.

It should be noted that, in the course of the investigation, allegations were raised by various sources that a mortar shell or rocket fired by a Palestinian

terror organization hit the school. No evidence was found to corroborate these allegations.

After reviewing the investigation's findings, the MAG found that the firing procedures in question accorded with Israeli domestic law and international law requirements. The decision to fire was taken by the competent authorities, for a clear military purpose, and the fire was aimed towards a source of persistent enemy fire emanating from a number of different locations in the area, which put the forces in clear danger. The attack complied with the principle of proportionality, as despite the outcome of the attack, which was only discovered in retrospect, at the time the decision to attack was taken it was estimated that no collateral damage to civilians was expected to result, and certainly no excessive collateral damage was expected. This estimation was not unreasonable under the circumstances. In addition, the attack was carried out while undertaking several precautionary measures aimed at preventing harm to civilians, including the use of the most precise munitions available to the forces, and the use of visual surveillance. The MAG found that the professional discretion exercised by all the commanders involved in the incident was not unreasonable in the circumstances. The fact that civilians uninvolved in the hostilities were harmed as a result of the attack, which was not expected at the time the decision to attack was made, is a regrettable result, but does not affect the legality of the attack *ex post facto*.

Accordingly, the MAG ordered that the case be closed without any further legal proceedings – criminal or disciplinary – to be taken against those involved in the incident.

16. Allegation Concerning the Death of an Ambulance Driver in Beit Hanoun (25 July 2014)

As previously reported in a report by an international organization, and in a complaint and in reports received from NGOs, it was alleged that on 25 July 2014, at approximately 16:15, an ambulance driver was killed by IDF fire. Subsequently, the incident was referred to the FFA Mechanism.

The findings of the FFA Mechanism did not provide sufficient information as to these allegations. As a result, the MAG ordered a criminal investigation into the incident.

The investigation that was conducted was thorough and comprehensive. Testimony was obtained from three Palestinians who witnessed the incident, as well as from tens of IDF soldiers and officers of different ranks who were involved in various aspects of the incident. Additionally, numerous documents and exhibits were reviewed, including materials from the IDF's relevant operational systems, medical files, and more.

The investigation's findings provide that IDF forces were operating in the Beit Hanoun area in order to locate a cross-border assault tunnel that originated in Beit Hanoun and ran into Israeli territory.

Prior to the IDF forces' entry into the area, mass warnings were provided to the population, and many of the civilians evacuated the area. As such, the forces encountered very few civilians during the fighting. During their advance, IDF forces were engaged in fighting with military operatives of various terrorist organizations, during which IDF soldiers were injured.

Prior to the incident, a warning from intelligence was received regarding a plan to carry out an attack using a vehicle-borne explosive device, and specifically that an ambulance may be used for this purpose.

The investigation findings provide that in the late afternoon of 25 July 2014, an ambulance approached an area where IDF forces were present, without prior coordination and without an apparent need for medical assistance to civilians in the area. This was counter to the accepted procedure, according to which the entry of ambulances into areas of active hostilities are coordinated with the forces.

The ambulance approached the IDF forces at speed, while making sharp turns on the narrow road which led to the IDF forces, and all in the course of a few seconds. Given all these circumstances, the forces believed that the ambulance was carrying out an attack against them, and that it constituted a clear and immediate threat to their lives. The forces quickly inquired up the command chain whether the entry of an ambulance to the area had been coordinated, and were informed that it had not been. At this point, when the ambulance was at a distance of only about 100 meters from the forces, and continuing at speed towards them, the commander of the force decided to fire one tank shell which hit the ambulance. As a result, one of the passengers in the ambulance was killed.

Shortly after the incident, additional ambulances arrived at the scene, and one of them also drove towards the forces. The forces suspected that this vehicle, which at the time was a few hundred meters away from them, also presented a clear danger, and warning fire was conducted in front of the ambulance. The warning fire, it appears, hit the driver of the ambulance. In retrospect, it was understood that the entry of the ambulances was coordinated in order to evacuate the injured from the first ambulance, but that due to gaps in communication between the forces, this information did not reach the forces in the field.

As a result of this incident, operational lessons-learned were implemented, including with respect to coordinating the entry of ambulances into an area of active hostilities, and which were intended to reduce the risk of such incidents occurring in the future.

After reviewing the investigation's findings, the MAG found that the fire accorded with Israeli domestic law and international law requirements. The

decision to fire in both cases was taken after an assessment was made that the vehicles intended to carry out attacks against the forces, and that they therefore presented a clear danger. In both cases, the assessment was based on the fact that the ambulances had entered an area of active hostilities, without the forces in the field being aware of any prior coordination (in the first instance, no coordination was conducted at all); the high speed at which the ambulances were advancing; the direction of the ambulances towards the forces; and the intelligence warning regarding a possible attack using ambulance-borne explosive devices. The speed with which the events unfolded did not permit the forces sufficient time to warn the ambulances prior to opening fire. The MAG found that the professional discretion exercised by all the commanders involved in the incident had not been unreasonable under the circumstances. The harm, in practice, to medical personnel and to the ambulances, is a regrettable result, but it does not affect the legality of the attack *ex post facto*.

Accordingly, the MAG ordered that the case be closed without any further legal proceedings – criminal or disciplinary – to be taken against those involved in the incident.

17. Allegation Concerning the Death of a Person Resulting from IDF Fire and the Use of Civilians as ‘Human Shields’ in Khirbet Khuza'a (25 or 29 July 2014)

In a report by an international organization and in a complaint from an NGO that was received by the MAG Corps, it was alleged that on 29 July 2014 between approximately 13:00 and 14:00, Mr. Muhammad Tawfiq Muhammad Qdeih was killed by IDF fire in Khirbet Khuza'a while carrying a white flag (in some media reports it was alleged that the incident occurred on 25 July 2014). It was also alleged that the deceased's family members were used as ‘human shields’. Subsequently, the MAG ordered a criminal investigation into the incident.

The investigation was thorough and comprehensive. Over 60 testimonies from soldiers and commanders were collected, as well as testimonies from five Palestinians who were witnesses to the incident (a number of additional Palestinian witnesses refused to provide testimony to the Military Police). In addition, hundreds of documents were collected, including affidavits and materials from relevant IDF systems.

The investigation's findings provided that on 25 July 2014, the IDF began operations in the central area of Khirbet Khuza'a targeting military operatives, destroying military infrastructure and locating cross-border assault tunnels. This was done further to extensive and comprehensive intelligence information, which indicated that numerous military operatives, booby-trapped buildings, tunnels and additional infrastructure were located in the area, serving Palestinian terror organizations in the hostilities against Israel.

On 10 July 2014 and 20 July 2014, prior to the initiation of a ground maneuver, the IDF undertook widespread measures to provide advance

warning to the local population, with the aim of distancing them from the intended maneuvering area. These measures included utilizing various means, including voice messages to telephones, television and radio messaging, individual phonecalls with key figures and more.

Following these measures, and prior to the maneuver, intelligence authorities assessed that the majority of the civilian population had evacuated the area.

Soon after the maneuver began, IDF forces identified civilians in the area, and their operations were halted in order to allow these civilians to evacuate. Subsequently, no additional civilians were identified in the area during the hostilities.

Prior to the hostilities in the area, IDF forces received intelligence information that military operatives of the terror organizations were using the cover of the civilian population in order to advance towards IDF forces and attack them. It was also found that there was intelligence information regarding the use of white flags by military operatives for this purpose.

During the hostilities in the area, IDF forces operated to locate military operatives and military equipment that was located in many cases in civilian buildings – operations which required thorough searching many buildings in the area of the hostilities. The forces uncovered large amounts of weaponry (including RPG launchers), maps, communication equipment and more. At the same time the forces encountered, among other things, booby-trapped buildings and were fired upon (including by mortars). In a number of incidents, the forces encountered military operatives who disguised themselves as civilians in order to advance towards and attack them.

On the day of the alleged incident, and during the operations to locate military operatives in the area, an IDF force entered a private home with two levels and a basement. Afterwards it was understood that the basement was used as a shelter for civilians in the area, but at the time the forces were unaware of this fact. At a certain point, the forces breached an internal door which led to a stairwell. After breaching the door, the soldiers identified a man down the stairs carrying pieces of white clothing, apparently in an attempt to wave a "white flag". The man began to climb the stairs while trying to communicate with the soldiers in a number of languages, while the soldiers ordered him in Arabic to stop and raise his hands.

The man did not respond to the soldier's orders, and continued to move towards them. The investigation's findings provide that at this point, as the soldiers believed that the man constituted a threat, the soldiers fired two bullets into the stairwell above the man's head, in order to warn him. Despite this, the man continued to move towards the soldiers. When the man was almost within reach of the soldiers, believing that the man presented a clear and immediate danger to the forces, one of the soldiers fired one bullet at the man, which caused the man to fall backwards.

The investigation's findings provide that the force intended to provide medical assistance to the man, but were unable to do so before ensuring that there was no danger from the surroundings. When the soldiers identified civilians nearby, they asked them in Arabic to bring the man towards them so they could provide medical assistance. Afterwards, a military paramedic tried to provide medical assistance in order to save the man's life, but was unsuccessful. After it became apparent that the man was deceased, the forces covered him with a blanket. Afterwards it was understood that the man was the deceased referred to in the complaint referenced above.

During the testimonies of the Palestinian witnesses, there arose an allegation that civilians were used as 'human shields' in order to provide covering fire from the windows of the building, and that civilians were physically struck by IDF forces inside the building.

The investigation's findings that the testimonies in this regard were inconsistent, included contradictions and were lacking in details. In this regard testimonies were collected from tens of soldiers, who denied the allegations in their entirety, and claimed that they treated the civilians that were in the building with respect.

After reviewing the investigation's findings, the MAG found that they do not indicate criminal misconduct by those involved in the incident. The decision to fire was not unreasonable in the context of the complicated circumstances of the hostilities in which the forces were engaged – in an area with a high concentration of military operatives, the fast progression of the incident, the failure of the deceased to heed the forces' orders, and the underlying awareness of intelligence information regarding the misuse of civilian symbols, including "white flags", by enemy forces.

The MAG also found that the forces' request for assistance from the civilians to bring the man who had been shot towards the forces for medical assistance, when the belief that the man presented a threat had not yet been disproved, constituted unprofessional conduct, but did not constitute an offence warranting criminal measures. This is due to the exceptional circumstances of the incident, and specifically the motivation of the act, which was to provide life-saving medical assistance, the life-threatening and strenuous operational activity, and the fact that no harm was caused as a result to the other civilians. Therefore, the MAG recommended command measures with regard to the incident, and the relevant procedures were clarified in order to prevent such incidents from occurring in the future.

With regard to the additional allegations concerning the use of civilians as shields for conducting covering fire, and concerning striking civilians physically, the MAG did not find an evidentiary basis for these allegations.

Accordingly, the MAG ordered that the case be closed without any further legal proceedings – criminal or disciplinary – to be taken against those involved in the incident.

Court Decisions Following Indictments by the MAG Corps

18. Judgments Concerning Incidents of Looting in Shuja'iyya (20 July 2014)

As reported previously, on 20 April 2015, the MAG Corps filed indictments to the Military Court against three soldiers, who were accused of the offence of looting, which allegedly occurred during Operation 'Protective Edge'. Additionally, two of the soldiers were also indicted for the offence of obstruction of a criminal investigation.

According to the facts alleged in the indictments, two soldiers were accused of looting 2,420 ILS from a house they were positioned in, in the neighborhood of Shuja'iyya, while another soldier was accused of aiding and abetting the offence.

The investigation conducted by the IDF Military Police Criminal Investigative Division into the circumstances of the incident was opened while Operation 'Protective Edge' was still ongoing, in response to the soldiers' Battalion Commander's reporting of the incident to the Military Police Criminal Investigative Division shortly after its occurrence.

At the conclusion of the proceedings, the three soldiers were convicted of different offences in accordance with their involvement in the incident.

In November 2015, one of the soldiers, holding the rank of first sergeant, was convicted of receiving stolen property and conduct unbecoming. The soldier was sentenced to 60 days imprisonment, to be served through military duties, in addition to a suspended sentence and a demotion to the rank of private.

In September 2016, the second soldier, holding the rank of first sergeant, was convicted of aiding and abetting theft, obstruction of justice, and conduct unbecoming. This soldier was sentenced to two and a half months imprisonment, to be served through military duties, in addition to a suspended sentence and a demotion to the rank of private.

The third soldier, also holding the rank of first sergeant, was convicted for theft, obstruction of justice and conduct unbecoming, and was sentenced to four months imprisonment, to be served through military duties, in addition to a suspended sentence and a demotion to the rank of private. An appeal was filed by both sides. In July 2017 the appeals were rejected by the Military Court of Appeals and the conviction and sentence remained in force.