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Mr. B. Gantz, former IDF Chief of General Staff

Mr. A. Eshel, IDF Air Force Commander

P/A: Israeli Ministry of Defense

CC: Embassy of Israel, the Netherlands

Amsterdam, 19 June 2017

Our ref. 20150012.LZ/BV

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NOTICE OF LIABILITY

Subject: Aerial bombardment of Ziada family apartment building in Al Bureij (Gaza) on 20 July 2014

Dear sirs,

On behalf of our client **Mr. Ismail Ziada, born on 7 March 1975**, who has chosen domicile at the business address of the undersigned, his lawyers, on the Linnaeusstraat 2A in Amsterdam, the Netherlands (1092 CK), we are hereby sending you a notice of liability with regard to the following.

Our client is a surviving relative of Muftia Mohamed Ziada, Jamil Shaban Ziada, Yousef Shaban Ziada, Omar Shaban Ziada, Bayan Ziada and Shaban Jamil Ziada ('the Victims'). All six were killed as a result of a missile that struck the Ziada family apartment building in Al Bureij refugee camp in Gaza (Occupied Palestinian Territory; 'OPT') on 20 July 2014; a house guest was also killed and another house guest as well as a passerby were injured.

The case file shows that the attack on the apartment building was conducted in violation of international humanitarian law and constitutes an unlawful act under the applicable law. As the plane that fired the missile was operating under your orders and/or authority, our client holds you liable for the damage he has suffered and will suffer in future.

We will first discuss the relevant facts of the case, the applicable law and the unlawful acts committed against our client for which he holds you liable. We will conclude with his claim for damages.

FACTS

'Operation Protective Edge'

A full discussion of the historical background of the Israel-Palestine conflict goes beyond the scope of this notice of liability. This overview will therefore focus on the events leading up to 'Operation Protective Edge' ('OPE'), the military operation carried out in Gaza by the Israeli Defense Force ('IDF') in the context of which the attack in question took place. We note that the IDF operates under the command of the IDF Chief of General Staff, and that the officer under whose specific authority the missile was fired on the Ziada family apartment building is the IDF Air Force Commander.

The apartment building was located in Al Bureij refugee camp in Deir Al Balah district. Though Israel had formally disengaged from the strip in 2005 it was (and is) *de facto* still the occupying power in light of the level of control it exercises over the territory and its inhabitants. This is also the prevalent view of the international community.¹

Israel implemented a full block of Gaza in 2007 which remains in effect today and severely restricts the rights of all of its inhabitants. Importantly, as a result of the block it is generally impossible for Palestinians to enter and exit Gaza freely, also when it is under attack by the IDF. In the summer of 2014, Israel launched OPE against Gaza. The first phase of OPE commenced on 8 July 2014 and consisted mainly of air strikes. On July 17 2014, Israel started the second phase which consisted of ground operations. The final phase started on 5 August 2014 and was characterized by alternating ceasefires and ongoing air strikes and shelling. OPE ended in a ceasefire on 26 August 2014.²

As a result of OPE, hundreds of thousands of civilians in Gaza were forced to flee their homes, particularly those who live in the northern and eastern parts of the strip (such as Al Bureij). Due to the increasing number of displaced people, the United Nations Relief and Works Agency for Palestine Refugees in the Near East ('UNRWA') opened two schools to host about 6,000 displaced people.

¹ See i.a. UN Doc. A/HRC/12/48, 25 September 2009 re: 'Operation Case Lead', par. 276-279 as well as UN Doc. A-HRC-29-CRP.4 re: 'Operation Protective Edge', 24 June 2015, p. 8-9. See also the ICC decision regarding the Israeli interception of an aid flotilla bound for the Gaza strip on 31 May 2010, 'Situation on Registered Vessels of Comoros, Greece and Cambodia, article 53(1) Report', 6 November 2014, par. 27-29. See further e.g. S. Weill & V. Azarova, 'The 2014 Gaza War: reflections on *jus ad bellum*, *jus in bello* and accountability', in *The War Report: Armed Conflict in 2014*, ed. A. Bellal (OUP: Oxford, 2015), p. 369.

² UN Doc. A/HRC/29/52 re: 'Operation Protective Edge', 24 June 2015, p. 6.

According to the UN Commission of Inquiry, more than 6,000 IDF-air strikes were carried out in Gaza, many of which hit residential buildings.³ It is beyond a doubt that OPE took a significant toll on the local population in Gaza. The UN has reported:

“In Gaza, the scale of the devastation was unprecedented. The death toll alone speaks volumes: 2 251 Palestinians were killed, including 1462 Palestinian civilians with 299 women and 551 children. 11 231 Palestinians, including 3540 women and 3 436 children, were injured with almost 10 per cent suffering permanent disability as a result. While the casualty figures gathered by the UN, Israel, Palestine and non-governmental organizations differ, regardless of the exact proportion of civilians to combatants, the high incidence of loss of human life and injury in Gaza is heart-breaking; all the more so in the many cases in which several family members died together (...) Alongside the toll on civilian lives there was enormous destruction of civilian property in Gaza: 18 000 housing units were destroyed in whole or in part. (...) [A]n estimated 80 000 homes and properties need to be rehabilitated. These “housing units” were not only the monetary equivalents of material investments. Many of them were homes. (...)

At the height of [the hostilities in the summer of 2014], the number of internally displaced persons reached 500 000, which is equivalent to 28 per cent of the population [of Gaza] (...) Many fled to temporary shelters which were severely overcrowded and lacked adequate sanitary conditions (...)

The end of the hostilities did not necessarily mean respite: temporary and often inadequate accommodation arrangements offered little protection during the winter, resulting in the deaths of at least four children. In May 2015 – many months after the violence had ended, about 100 000 people remain displaced in the Gaza Strip, according to OCHA estimates.”⁴

The situation in Gaza was especially harrowing as the people living there had no possibility to exit the area at times. Within the context of OPE, IDF troops attacked all areas of the Gaza Strip. According to the UN commission, 44% of Gaza was either a no-go area or the object of evacuation warnings during the 2014 hostilities in Gaza. “These terrifying circumstances created a sense of entrapment, of having ‘no safe place’ to go.”⁵

Military operations in *Al Bureij*

Within the context of OPE, the district Deir Al Balah was under attack by IDF tanks and artillery batteries between 8 and 12 July 2014.

³ UN Doc. A/HRC/29/52 re: ‘Operation Protective Edge’, 24 June 2015, p. 9.

⁴ UN Doc. A/HRC/29/CRP.4 re: ‘Operation Protective Edge’, 24 June 2015, par. 574-579.

⁵ UN Doc. A/HRC/29/52 re: ‘Operation Protective Edge’, 24 June 2015, p. 6-7. See more extensively, UN Doc. A/HRC/29/CRP.4, 24 June 2015, par. 396-399.

On 17 July 2014, the IDF-military operations zoomed in on the border and eastern parts of Al Bureij refugee camp, where the apartment building was located. Many families were forced to evacuate these areas in groups.

On 18 July 2014, at approximately 19:30 o'clock the IDF intensified its attack on Al Bureij, honing in on Wadi Gaza village (Johr Al Deek) in the northeastern area of the refugee camp. Prior to this leg of OPE, the IDF air force and IDF drones had attacked various houses, fields and the only government clinic thereby paving the way for a ground assault. IDF soldiers were positioned in Wadi Gaza village (Johr Al Deek), specifically in the southern neighborhoods Al Nabaheen and Abu Hjaiyer. To wit, the IDF ground assault did not advance deeper into Al Bureij. At the time of the missile attack on the apartment building, the IDF troops were located approximately 2 km south of Block 12 of Al Bureij, where the apartment building once stood.

On 19 July 2014, IDF warplanes dropped leaflets on Al Bureij refugee camp that contained a general warning to residents of an impending attack on the camp, and the instruction to evacuate to the town of Deir Al Balah, located approximately 5,5 km south of Al Bureij. Some residents heeded this general warning because they passed a horrifying night as a result of intensive shelling of the area. Others remained in their homes as they lacked a safe haven in Gaza, including Deir Al Balah and the available UNWRA-shelters (the conditions in which were reputed to be very difficult). In general, the UN Commission of Inquiry summarized the possibilities for Palestinians in Gaza to heed evacuation warnings as follows:

“Against the backdrop of a densely populated small area such as Gaza, from which no exit or fleeing is possible, 44 per cent of which is either a no-go area or has been the object of evacuation warnings, with, at times, 28 per cent of the population displaced, and with severe constraints on humanitarian assistance, warnings cannot be expected to “empty” entire areas. Furthermore, the generalized and often unspecific warnings sometimes resulted in panic and mass displacement, further exacerbating the situation.”⁶

This is corroborated by investigations conducted in Gaza by B'Tselem in the wake of OPE.⁷

Attack on the Ziada family apartment building

The Ziada family apartment building was located in Al Bureij refugee camp, in the Deir Al Balah district of Gaza. The apartment building was a three-story building with a surface area of 180 m² in ‘Block 12’ of the camp.

⁶ UN Doc. A/HRC/29/CRP.4, 24 June 2015, par. 399.

⁷ B'Tselem, *Black Flag: the legal and moral implications of attacking residential buildings in the Gaza Strip, summer 2014* (2015), p. 55-57 ('2. Warning that required residents to evacuate vast areas').

The apartment building was home to four branches of the Ziada family, with a total of 25 members (including 4 women and 16 children).

More specifically, the apartment building was inhabited by Muftia Mohamed Ziada, along with four of her eight sons and their respective families:

- Jamil Shaban Ziada, his wife Bayan Abdel Latif Ziada and their six children;
- Yousef Shaban Ziada and his wife Khitam Ziada and their four children.
- Omar Shaban Ziada, and his wife Hadil Sami Ziada and their two children;
- Khaled Shaban Hassan Ziada his wife Kholoud Ziada and their four children;

On 20 July 2014, Muftia Ziada was still in the apartment building along with her sons Jamil, Yousef and Omar and Jamil's wife Bayan and their 12-year old son Shaban Jamil Ziada. Mr. Mohammed Mahmoud Al Maqadma and Mr. Salah Zuheir Al Shashniya were visiting the apartment building at the time. The other inhabitants of the apartment building were either out for the afternoon, or had taken refuge elsewhere in Al Bureij, following artillery shelling in the northern areas of the camp on 18-19 July 2014, and on the neighboring houses in the morning of 20 July 2014. The members of the Ziada family who were still in the apartment building that afternoon, had informed the others that they too were intending to leave.⁸ Indeed, Al Shashniya has stated that several explosions that took place in the neighborhood at around 13:30 o'clock had prompted Yousif to call a taxi to evacuate his family from the apartment building.⁹ However, as Yousif went downstairs to prepare his family for evacuation, an Israeli warplane fired a missile at the apartment building, razing it to the ground.

Statements given by Al Shashniya, Al Najjar and other neighbors who were in the immediate vicinity of the Ziada apartment building during the attack as well as statements given by two ambulance members and Khaled Ziada who arrived on the scene shortly afterwards, reveal that the IDF-missile was fired on the building without prior warning.

The attack killed all six Ziada family members who were still in the building, as well as their guest Al Maqadma. Al Shashniya, also a house guest, was critically injured and neighbor Rami Riyad Abdel Karim Al Najjar, who was passing by the apartment building at the time of the attack, was struck by shattered glass.¹⁰

⁸ Statement by Khaled Ziada (17-05-1969), son of Muftia and resident of the apartment building. Khaled Ziada, his wife and their children were not at the apartment building during the attack.

⁹ Statement by Al Shashniya (17-04-1991), family friend and survivor of the attack

¹⁰ Statement by Al Najjar (27-08-1986), resident of Block 12. Al Najjar lived approximately 20 meters away from the Ziada family house and had come back to check on his own house that afternoon. He left his home around 13:30 o'clock heading west, at which point he was struck by debris resulting from the attack on the house. He was later found unconscious and taken to Al Shifa Hospital in Gaza where he was discharged the next day after treatment.

Contrary to the Ziada apartment building, the surrounding houses were not destroyed indicating that the building had been targeted specifically.

There is no information available as to why the Ziada family apartment building had been targeted by the IDF air force that day.

APPLICABLE LAW

The applicable legal framework in the OPT is the law of belligerent occupation,¹¹ meaning that in principle Palestinian law applies to the present case. Regulation 43 of the Fourth Hague Convention of 1907, to which Palestine is a party, prescribes the following:

“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting unless absolutely prevented, the laws in force in the country.”¹² [emphasis added]

In the present case, the interpretation of Palestinian law will hinge on the applicable international law: in particular the laws and customs of war (international humanitarian law; ‘IHL’), international criminal law and international human rights law. These bodies of law are binding on Israel and through it, its military, also during operations in the OPT. Military operations conducted in violation of these rules, give rise to individual criminal liability. As such, this law is also instructive for the way in which content is given to the duties and obligations of individuals in civil law, for example in an tort-action to recover damages.

International Humanitarian Law (‘IHL’)

Though Israel is not a party to all legal instruments outlining the laws and customs of war it is nevertheless bound by them. For example, the Fourth Hague Convention and the annexed Regulations to which Israel is not a party, is recognized by all civilized nations and as being declaratory of the laws and customs of war. Israel has itself accepted that the Regulations reflect customary international law.¹³ This also applies to the Geneva Conventions,¹⁴ the Fourth of which concerns the Protection of Civilian Persons in Time of War. That convention is also applicable in cases of belligerent occupation, and applies *de jure* in the

¹¹ P. Maurer, ICRC Review, Volume 94, nr. 888 (winter 2012), p. 1506: “In the Occupied Palestinian Territory – that is, the West Bank, East Jerusalem and the Gaza Strip – the applicable legal framework is the law of belligerent occupation.”

¹² Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

¹³ Israel, Ministry of Foreign Affairs, *The 2014 Gaza Conflict* (Full Report), p. 138, fn 396, available on <http://mfa.gov.il/ProtectiveEdge/Documents/2014GazaConflictFullReport.pdf> (accessed 18 January 2017).

¹⁴ Palestine is party to all four Geneva Conventions since 2 April 2014, and Israel has been party since 6 July 1951.

OPT.¹⁵ The Additional Protocols (I-II) to the Geneva Conventions concern the protection of Victims in (non-)international armed conflict and also reflect customary law. Israel has acknowledged some of the provisions in the protocols indeed reflect customary law.¹⁶

IHL dictates that all attacks within the context of OPE must comply with the principle of (i) distinction, (ii) proportionality and (iii) be preceded by effective precautions in order to protect the interests civilians. We will discuss these *inter alia* based on the more general Rules of Customary International Humanitarian Laws as formulated by the International Committee for the Red Cross ('ICRC'). These rules have been codified in the various IHL-instruments that also apply in the OPT.

The principle of distinction

The first rule of Customary International Humanitarian Law states that:

“The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.”

This Rule is part of the fundamental principle of distinction between civilian and military objects that binds both Israel and Palestine, and therefore necessarily gives content to individual acts conducted on behalf of those States. The ICRC has formulated a total of 24 customary rules of IHL which further outline the principle of distinction. Importantly, Rule 8 states that military objects are limited to:

“[T]hose objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.”

Alternately, all objects that are *not* military objects according to that definition, are considered civilian objects (Rule 9). According to state practice, in principle residential areas are considered *prima facie* civilian objects and attacks against such objects are condemned.¹⁷ Rule 10 allows for the possibility that a civilian object loses its protected status during the time that it can be considered a military objective. In principle, the presumption that an object is civilian prevails

¹⁵ The applicability of the Fourth Geneva Convention in the OPT was confirmed i.a. by the ICJ, see ICJ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, par. 90-101. With regard to the reasoning of the ICJ re: the applicability of the Fourth Geneva Convention in the West Bank in par. 101, it is to be noted that just Egypt, just like Jordan and Israel, was a party to the Geneva Conventions in 1967. The ICJ thereby rejected Israel's position that the Fourth Geneva Convention does not apply *de jure* to the OPT.

¹⁶ Israel, Ministry of Foreign Affairs, *The 2014 Gaza Conflict* (Full Report), p. 138, fn 396, available on <http://mfa.gov.il/ProtectiveEdge/Documents/2014GazaConflictFullReport.pdf> (accessed 18 January 2017).

¹⁷ Commentary ICRC Rule 9, available on https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule9.

and a careful assessment is always required as to whether the prevailing conditions justify an attack in a particular case.¹⁸ This is in line with Rule 16, that requires that everything feasible must be done to verify that a potential target is indeed a military object.¹⁹ In relation to potential individuals that may be targeted, IHL prescribes that a member of an armed group has to have a continuous combat function to constitute a “legitimate military target”.²⁰ When in doubt about whether an object is being used to make the requisite “effective contribution to military action”, IHL dictates that it shall be presumed *not* to be so used.²¹

The principle of proportionality

The customs and laws of war dictate that:

“Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.”

Attacks that are conducted without due regard for the above are considered disproportionate and are thus in violation of IHL.

The requirement to take effective precautions

IHL requires that parties take effective precautions to ensure that civilian losses be kept to a minimum. Rule 15 describes this requirement as follows:

“In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.”

Based on research done in relation to OPE, it can be said generally that the precautionary measures available to the IDF were telephone calls/text messaging, distributing leaflets and so-called ‘door-knocking’ which involves dropping a low-level explosive on the roof of a building in order to warn those inside of an impending (heavier) attack.

International criminal law

Individuals involved in military operations on behalf of the State of Israel are equally bound by these obligations. Insofar as grave breaches of international humanitarian law are perpetrated, the perpetrators are acting unlawfully and are

¹⁸ This presumption of the *civilian* character of an object has been formulated in Additional Protocol I to the Geneva Conventions, and is also contained in numerous military manuals.

¹⁹ Commentary ICRC Rule 10, available on https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule10.

²⁰ ICRC, *Interpretative Guidance on the Notion of Direct Participation in Hostilities Under International Humanitarian Law*, p. 71.

²¹ Art. 52(3), Additional Protocol I, which reflects customary international law.

subject to penal sanctions pursuant to article 146-147 of the Fourth Geneva Convention. In situations of criminal liability, civil liability is triggered as well.

Grave breaches constitute war crimes, and can be related to the conduct in hostilities. Examples are directing attacks against civilians or civilian objects, launching an attack with the knowledge that incidental loss of life and damage to civilian objects would be excessive to the concrete and direct military advantage and launching indiscriminate attacks. War crimes can also concern protected persons or property, such as the extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly.²²

UNLAWFUL ACTS

Based on the available evidence about the attack on the Ziada family apartment building, it can be concluded that it was conducted in violation of the laws and customs of war and amounts to a war crime.

First of all, the apartment building was a *prima facie* civilian object. There is no evidence to suggest that, based on the circumstances prevailing at the time, the total destruction of the building with occupants inside provided the IDF with a direct military advantage which could under certain circumstances have justified the loss of civilian lives, injuries to civilian parties and the destruction of civilian private property. Even if one was to assert that somebody inside the apartment building was a (potential) military target, there is no evidence to suggest that this was verified prior to the attack or that this individual could not have been taken out at another time. In fact, all evidence points to the conclusion that the apartment building was specifically targeted and attacked in such a way that all those inside would be killed, regardless of whom in fact was inside.

When the Ziada-case is considered in light of the investigations by the UN Commission of Inquiry and NGO's B'Tselem en Amnesty International, it can be concluded that the levelling of the Ziada family apartment building was part of a pattern of destruction of residential buildings without a clear and direct military advantage, seen throughout OPE.

The onus is on Israel to explain the factual elements that rendered the apartment building or the person(s) inside legitimate military target. Sweeping statements about 'military use' of residential buildings or references to a possible occupant's past actions with no link to the targeted house itself, are insufficient in this respect. There is no information available about a clear military objective that could have been gained from the attack against the Ziada family apartment building that warranted the destruction of the entire apartment building including all its occupants, nor are there any indications that the building itself was a

²² UN Doc. A/HRC/29/CRP.4, 24 June 2015 re: 'Operation Protective Edge', pp. 15-17.

legitimate military target. In lieu thereof, the apartment building must be considered a civilian object, rendering the air strike in violation of the applicable laws and customs of war.²³

Secondly, the air strike was conducted without prior warning. This is confirmed *inter alia* by the witness account provided by Al Shasnya who survived the attack. Though leaflets were dropped on Al Bureij on 19 July 2014, they only contained a general warning to evacuate and did not specify which target would be attacked and when. Generally speaking, reports on warning leaflets distributed by the IDF during OPE reveal that they were indeed often of a general nature, and did not indicate with specificity which targets would be hit, thereby rendering them ineffective. In any case the leaflets dropped in Al Bureij did not constitute an effective warning in this case.

Investigations conducted by the UN Commission of Inquiry and NGO's B'Tselem and Amnesty International reveal effective warnings were generally lacking during OPE.

With regard to the civilian status of the apartment building and the lack of effective precautionary measures, it is worth noting the IDF's "sterile environment" policy. In the past, also with in relation to OPE, the IDF has taken the position that anybody still present in an area after an IDF-warning has been issued, is considered a *terrorist* and therefore a *de facto* military target.²⁴ This assertion is supported by IDF-soldier testimonies gathered by NGO Breaking the Silence:

"[T]he soldiers were briefed by their commanders to fire at every person they identified in a combat zone, since the working assumption was that every person in the field was an enemy (...) [While official military orders allow for fire only after identifying a weapon, intent, and the enemy's realistic capability, many soldiers testified that they were told to shoot at any threat, imminent or suspected]".²⁵

Insofar as the leaflets dropped on Al Bureij on 19 July 2014 would be said to constitute the formal IDF 'warning', the aforementioned reasoning would mean that all those remaining in the refugee camp after the drop were considered *terrorists*. However, the assertion that precautionary measures could lead to the type of "sterile environment" asserted by the IDF and that this would justify labelling those left behind as *de facto* military targets, is fundamentally wrong.

²³ UN Doc. A/HRC/29/52, 24 June 2015, p. 9-10. See also B'Tselem, *Black Flag: the legal and moral implications of attacking residential buildings in the Gaza Strip, summer 2014* (2015), p. 47-48 in which the lack of concrete information from the IDF about the military advantage to be gained from the attacks on residential buildings is described.

²⁴ See UN Doc. A/HRC/29/CRP.4, 24 June 2015, par. 400-404. Major Amitai Kanarik's position about the creation of a "sterile" situation is also quoted in B'Tselem, *Black Flag: the legal and moral implications of attacking residential buildings in the Gaza Strip, summer 2014* (2015), p. 56 (Major Amitai Kanarik)

²⁵ Breaking the Silence, *This is how we fought in Gaza* (2014), p. 17-18 ('Introduction', with reference to IDF soldiers' testimonies 2, 24, 28 56 and 75).

Even an effective precautionary measure does not relieve Israel and the individuals acting on its behalf of the obligations imposed by the customs and laws. IHL dictates that civilians only lose their protected status if they participate directly in hostilities.²⁶

That being said, as discussed the leaflet-dropping on Al Bureij refugee camp did not even constitute an *effective* warning of an imminent attack on the Ziada family apartment building.

Thirdly, and even aside from the question whether the apartment building was a legitimate military target, the attack was disproportionate. The principle of proportionality prohibits any attack that is expected to cause collateral damage if that loss of life, injury to civilians or damage to civilian objects is excessive in relation to the *concrete and direct* military advantage anticipated.

The Gaza Strip is 365 km² in size and, with its estimated population of 1.8 million people, is considered densely populated. Reports show that more than 6,000 air strikes were carried out against Gaza during the 51-days of OPE: an average of 117 air strikes per day. According to the UN Commission of Inquiry, many of those air strikes hit residential buildings. The fact that precision-guided weapons were used in all cases indicates that these air strikes “were directed against specific targets and resulted in the total or partial destruction of entire buildings.”²⁷ In fact, the targeting of residential buildings was viewed by the Commission as one of the key characteristics of the hostilities of 2014, and a “new pattern” to the violence unleashed on the OPT by Israel.²⁸ The IDF policy to attack inhabited homes causing them to collapse on those inside, has also been documented by Amnesty International²⁹ and B’Tselem.³⁰

The scope of the damages to civilian objects (both in terms of property and injury/lives lost) was already apparent in the early days of OPE. The fact that those figures did not lead to increased care and a change in IDF-policy with regard to the bombing of residential areas, indicate a top-down allowance of the amount of civilian damages that OPE caused.³¹

The attack on the Ziada family apartment building constitutes a grave breach on account of the means and method of the attack: particularly the almost slapdash IDF-policy of levelling entire buildings in hopes of taking out perceived enemies who may be inside.

The disproportionality of attacks such as these was evinced also in view of the general ineffectiveness of the precautionary measures taken within the context of the operation and fact that no steps were taken to change the *modus operandi*

²⁶ As is laid down literally in Art. 51(3), Additional Protocol I. See also UN Doc. A/HRC/29/CRP.4, 24 June 2015, par. 404.

²⁷ UN Doc. A/HRC/29/52, 24 June 2015, p. 9.

²⁸ UN Doc. A/HRC/29/52, 24 June 2015, p. 7.

²⁹ AI, *Families under the rubble: Israeli attacks on inhabited homes* (2014).

³⁰ B’Tselem, *Black Flag: the legal and moral implications of attacking residential buildings in the Gaza Strip, summer 2014* (2015).

³¹ See also UN Doc. A/HRC/29/52, 24 June 2015, p. 11.

once the toll that OPE was taking on Gaza became apparent. The toll of OPE on the civilian population of Gaza was already evident in the early stages of the OPE and cannot have escaped your attention as IDF Chief of General Staff respectively IDF Air Force Commander. These circumstances raised the concern of the UN Commission of Inquiry that attacks such as these were part of a broader strategy that was at least tacitly approved in the highest echelons of the Israeli Government.³² NGO B'Tselem came to similar conclusions in the aftermath of OPE.³³

In the absence of information about the direct military advantage to be gained from destroying the entire Ziada apartment building with its occupants still inside, it must be assumed that the attack was disproportionate and constitutes a war crime. This is also the general conclusion that can be inferred from the discussion about air strikes against residential buildings in the report by the UN Commission of Inquiry.³⁴

Summary

We conclude that the Ziada family apartment building was not a (legitimate) military object, that the air strike was conducted without effective prior warning and was disproportionate. Neither can the destruction of the Ziada family apartment building be justified as legitimate collateral damage within the context of military operations. The attack therefore constitutes a grave breach of international humanitarian law, that triggers both criminal- and civil liability (torts) vis-à-vis our client.

DAMAGE

Our client has suffered damage as a result of the unlawful death of his loved ones, and the total destruction of his family apartment building in Gaza. His damage is both material and immaterial in nature.

The events of 20 July 2014 constitute a violation of his personal integrity, his (mental) health and his right to family life.³⁵ He has been permanently damaged

³² See also UN Doc. A/HRC/29/52, 24 June 2015, p. 11: “[43] The limited effectiveness of the [known possible] precautionary measures must have become abundantly clear in the early days of the operations, given that many buildings were destroyed together with their inhabitants. The apparent lack of steps to re-examine these measures in light of the mounting civilian toll suggests that Israel did not comply with its obligation to take all feasible measures before the attacks [44] Furthermore, the large number of targeted attacks against residential buildings and the fact that such attacks continued throughout the operation, even after the dire impact of these attacks on civilians and civilian objects became apparent, raise concern that the strikes may have constituted military tactics reflective of a broader policy, approved at least tacitly by decision-makers at the highest levels of the Government of Israel.”

³³ B'Tselem, *Black Flag: the legal and moral implications of attacking residential buildings in the Gaza Strip, summer 2014* (2015), p. 58.

³⁴ UN Doc. A/HRC/29/52, 24 June 2015, p. 10.

³⁵ For a more in-depth analysis, see UN Doc. A/HRC/29/CRP.4, 24 June 2015 re: ‘Operation Protective Edge’, pp. 153-161.

by the attack and the death of so many of his family members and the destruction of his family's apartment building.

The air strike also violated the right to life, security health, privacy and property of our client's family members on whose behalf he is also addressing you in this case.

CONCLUSION

Based on our study of the case file, we conclude that you, as commanding officers in the IDF, are liable for our client's damage. As such, he seeks to recover damages from you.

We request that you inform us within six weeks whether you accept liability in this case and are prepared to compensate our client's damage.

Sincerely,



Liesbeth Zegveld



Brechtje Vossenberg