What does conviction of IDF soldier mean for ICC war crimes battle?

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Twenty months into the Gaza border conflict, the IDF courts issued their first [conviction of a soldier](https://www.jpost.com/Arab-Israeli-Conflict/IDF-soldier-convicted-of-killing-Gaza-rioter-606298) for shooting one of the approximately 350 Palestinians who have been killed.

At the same time, the sentence was a mere one month of community service since the conviction was not for a more serious charge, like manslaughter, but essentially for the low-grade offense of violating the rules of engagement for opening fire.

Why was this the result, and what does all of this mean for the broader big battle before the International Criminal Court (ICC) over whether Israel’s legal system complies with international law or whether it has committed war crimes?

Official and unofficial statements from the IDF were short on details, leaving some critics to speculate about potential improper intentions.

Essentially, they said that the unnamed IDF soldier had violated open fire regulations in shooting toward the 15-year-old Palestinian Othman Helles as he was climbing the Gaza security fence, but that IDF investigators could not establish for sure one way or another whether that soldier’s bullet was the one that killed him.

What does this mean? How can the IDF know the soldier fired illegally toward Helles without knowing whether his bullet was the “kill-shot”?

The Jerusalem Post has learned that the primary issue has to do with the fact that no autopsy was conducted on the Palestinian. Moreover, even the limited medical report from Gaza from an external initial exam of Helles’s body did not cover standard medical issues that the Israeli medical system and courts expect to be addressed.

The question of autopsies is a recurring problem between Israel and the Palestinians in such cases.

Palestinians often object to autopsies both on religious grounds and over suspicions that Israel will twist the autopsy and its results to its advantage.

Even in the infamous Hebron shooter case, it took a petition to the High Court of Justice to secure the right to perform an autopsy, initially against the objections of the killed Palestinian’s family.

But from the IDF perspective, it has experience with defense lawyers picking apart a case where there is no autopsy or where an Israeli doctor was not involved in the autopsy.

These circumstances help defense lawyers create suspicions that Palestinian doctors will twist their results to help frame Israeli soldiers, the same way that Palestinians are suspicious of Israelis.

So the autopsy questions is really at the core of this particular case.

It may be that the sides should have already found a compromise mechanism with both sides and a third neutral party carrying out autopsies in such cases, but it is too late for this case.

Once the absence of an autopsy led the IDF prosecution to drop more serious charges like manslaughter, the more lenient sentence was almost inevitable.

Due to the autopsy question, it is also unclear how much Helles’s act of climbing the security fence – not as bad as firing a gun, but also far from passive nonviolence – played a part in the decision.

How will the ICC view the outcome and lenient sentence?

Israel can say that it prosecuted, convicted and sentenced a soldier, showing its system’s readiness to self-prosecute. If the ICC asks why this specific soldier was not prosecuted for manslaughter, the autopsy obstacle is a fairly straightforward.

It could be interesting if the ICC presses the sides to work out a compromise in the future. However, all of this means that the ICC will not likely regard this case as a major credit for the IDF due to the conviction of a soldier, nor will it regard it as a blemish due to the lenient sentence.

Rather, the ICC will want to assess the results of the five criminal investigations into the deaths of 11 Palestinians, which the IDF announced as of March.

The ICC will also assess whether these probes were sufficient relative to the number of Palestinians killed.

Ironically, the Helles probe started in July 2018 and is now resolved, whereas some of the probes initiated in March 2018 are still unresolved. Further, the Post did not receive updated information from the IDF when it requested to know the other probes’ statuses.

It is unfortunate that the ICC will be making a series of major announcements related to Israel in the next month without the IDF having issued more decisions on these 2018 probes.

Undoubtedly, more decisions would show the ICC that the IDF is not stalling on these cases.

From this perspective, it was wise of the IDF to issue the Helles decision before the upcoming ICC decisions, but it would have been wiser to already give a fuller picture.