IDF closes largest war crimes probe of 2014 Gaza war

August 15, 2018

By Yonah Jeremy Bob

The Jerusalem Post

<https://www.jpost.com/Israel-News/IDF-closes-largest-war-crimes-probe-of-2014-Gaza-war-564946>

The IDF closed the largest war-crimes probe into the 2014 Gaza war without recommending any criminal charges, although it said it had learned lessons on how to reduce harm to civilians in the future.

One particular incident that occurred on August 1, 2014, is known as “Black Friday” for the large number of Palestinian civilians who were killed in one broad battle – which also involved invoking “the Hannibal Protocol,” a special order to intensify attacks in an effort to thwart the capture of a soldier.

There has been an ongoing debate on whether 150 Palestinian civilians were killed or the number was as “low” as 40, but the IDF on Wednesday set the number “as high as 70.”

It has been highlighted by the International Criminal Court and the UN as the most important war-crimes probe of the war, and the IDF’s handling of it could heavily impact whether the ICC decides to delve deeper into the Israeli-Palestinian conflict.

During Operation Protective Edge, about 2,100 Palestinians died and some 11,000 were injured. Seventy-three Israelis died, thousands were injured, and Israel carried out thousands of air strikes on Gaza as 4,564 rockets, mortars and projectiles were launched against Israel.

But Black Friday was the single bloodiest incident, especially for the number of dead Palestinian civilians.

The incident started at 9:06 a.m. when Hamas violated a cease fire by attacking three IDF soldiers near Rafah in southern Gaza. One of them, Hadar Goldin, was kidnapped but believed to be still alive.

At 9:36 a.m., Col. Ofer Winter gave the Hannibal Protocol order to pursue the kidnappers with extra force.

By 9:47 a.m., the IDF started to unleash a massive show of tank fire, artillery and air power alongside a hard push forward of infantry.

Two-hundred structures were destroyed and there were well over 1,400 major strikes. The IDF said that it killed 42 Hamas operatives, and that some of the 70 other Palestinians may also have been Hamas operatives, but admitted a large number were civilians.

Global critics have accused the IDF of killing 70 Palestinian civilians with a massive show of force merely to save one kidnapped soldier, and that the show of force was grossly disproportionate under the laws of warfare.

Domestic Israeli critics accused the IDF forces involved of trying to kill Goldin rather than allow his capture, which could have allowed Hamas to pressure Israel to release hundreds of Palestinian prisoners as in the 2011 Gilad Schalit exchange deal.

Essentially, IDF Military Advocate General Maj. Gen. Sharon Afek closed the probe without criminal charges because he said that the operation was split into two parts and that neither, when looked at individually as opposed to jointly, showed a violation of the rules of war.

In fact, the IDF probe – which required three separate teams of investigators led by a reserve officer with the rank of brigadier general due to the massive number of forces involved – said that the part of the IDF forces trying to block the escape of Hamas kidnappers at most killed 10 Palestinian civilians.

The other 60 possible civilian casualties, the IDF said, were killed in unrelated battles between the IDF and Hamas near that area, but having more to do with the broader end of the cease fire.

For example, as the IDF and Hamas got into a series of dozens of Black Friday sub-battles, the IDF struck two buildings near the Balbisi Junction where it had intelligence that Hamas had a command center.

It turned out that there were more civilians left in the area than expected – the IDF believed most civilians had fled following earlier fighting in the area – but this was not known by commanders in real time.

Human rights reports have alleged that 16 Palestinian civilians were killed in the attack, but the IDF says that since its intelligence indicated there were fewer civilians and many Hamas members, the real-time decision was legal.

The IDF also said that it could not give its typical warning to evacuate the building as this would have sacrificed the element of surprise.

In another Black Friday sub-incident, human rights reports indicated that civilian Asil Abu Machsan was killed by IDF fire as he and his family were fleeing from their house near where the battle was heating up.

According to the IDF, they could not determine with any certainty how Abu Machsan had died – neither when the IDF or Hamas killed him in a cross-fire battle, nor with what he had been killed, if in fact the IDF had killed him.

While this would make any criminal case difficult, the military said that even if it could determine that it killed Abu Machsan and how he was killed, it still would have closed the case because the area he fled through was the site of extensive cross-fire with Hamas, including Hamas firing a missile on a nearby IDF position.

In the case of such a cross-fire, while the IDF said Abu Machsan’s death was tragic, it would not have violated the laws of warfare, which take into account some amount of collateral harm to civilians.

In yet another incident, the IDF struck the area’s al-Najar hospital multiple times.

According to the IDF probe, there were several Hamas positions nearby, some as close as merely 90 and 200 meters from the hospital. While the IDF said that it had the location labeled as a sensitive site that it should avoid hitting, it believed that its firing at the nearby Hamas sites – which it said was legal and critical – could have led to indirect misses or damage to the hospital.

However, the IDF again asserted that such collateral damage, given the fog of war and Hamas’ operations being purposely near the site, left the IDF no choice and were legal.

Turning back to the Hannibal Protocol part of the incident, the IDF admitted that, just as a March comptroller report had stated, there was a serious disconnect between the text and understanding in the field of how much force could be used versus the text and understanding back at headquarters.

Wednesday’s report also indicates that the IDF fired over 1,000 artillery rounds at 31 distinct positions and over 250 rounds at 10 other distinct positions, in order to try to cut off Hamas forces from escaping with the kidnapped soldier.

Despite that massive show of force and the gap between the more restrictive Hannibal Protocol text at headquarters and the one being used in the field, the IDF legal division found that the actions of the IDF soldiers in the field did not go beyond the bounds of the laws of war.

When questioned about a September 2014 interview given by key officers and soldiers involved in the Hannibal Protocol part of the incident, sources indicated that even if those soldiers misunderstood the spirit of the protocol, their actions had not led to the unlawful killing of civilians.

Sources redirected attention back to the fact that 60 of the approximately 70 civilians who were killed were not killed in the fighting relating to the Hannibal Protocol, but due to other broader fighting in the area with Hamas.

At the level of learning lessons for the future, the IDF did suspend use of the Hannibal Protocol after the war and eventually nullified the old version, producing a more restrictive one.

The massive IDF report on the incident, which really breaks it down into dozens of sub-battles, also relates to a string of other similar situations after August 1, 2014.

The report provides information on the closing of several other war-crimes probes from the 50-day war involving a few hundred other Palestinian civilians killed, especially when attacking Hamas and Islamic Jihad operatives in buildings.

In each case, the IDF claims either that it could not confirm that it had killed the civilians; that it could not have reasonably known they were there in real time; or that the mix of civilians and Hamas combatants was sufficient to be legal under the laws of war.

In some cases, the IDF admitted its intelligence underestimated the number of civilians and might have even missed its main target, adding that it would learn lessons to avoid this occurring in the future.

The IDF also closed a case where its forces fired on multiple ambulances, killing some of its passengers, saying that the ambulances were moving toward their forces at high speed with no prior coordination and that they did not fire until the ambulances were in proximity to be able to attack. This was another case where the IDF said it needed to learn lessons.

There is also an update on IDF soldiers sentenced to several months in prison for theft from Palestinians. According to the report, the soldiers’ appeals of their sentences were rejected in 2017.