



בצלם - מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.).

مركز المعلومات الإسرائيلي لحقوق الإنسان في الأراضي المحتلة-بتسيلم

B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories

31 December 2008

Mr. Menachem Mazuz
Attorney General

Via Fax: 02-6467001

Dear Sir:

Re: Harm to civilian objects in the Gaza Strip

Since the beginning of the military operation in the Gaza Strip, on 27 December, the army has bombed dozens of houses, public buildings, and other structures throughout the Gaza Strip. That same night, the prime minister stated that, “the operation in Gaza Strip is intended first and foremost to improve the security situation of residents living in the south of Israel” and added that the operation is not aimed at the civilian population in the Gaza Strip.

These comments ostensibly indicate an intention to safeguard one of the fundamental principles of international humanitarian law, the principle of distinction. As you know, this principle states that all parties engaged in combat must distinguish between civilian objects and military objects, and are forbidden to intentionally attack civilians and civilian objects.

Article 52(2) of the First Additional Protocol to the Geneva Conventions states two cumulative conditions that must be met for an object to be considered a military objective. First, they “are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action,” and second, military objectives are those “whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.” The interpretation given by the International Committee of the Red Cross to the First Protocol states that the attack must bring about, as the article states, a “definite military advantage” and that an attack is not permitted if there only exists a potential or indeterminate advantage. Also, the advantage must exist with respect to each of the objects attacked. The provisions of this section are considered customary law and therefore also bind Israel. See Yves Sandoz, Christophe Swinarski and Bruno Zimmermann (eds.), *Commentary on the Additional Protocols* (Geneva: International Committee of the Red Cross, Martinus Nijhoff Publishers, 1987), 636-637.

However, other statements made by Israeli officials in recent days conflict with this position and raise concern that the army is not maintaining the requisite distinction in its attacks in Gaza. For example, following the prime minister's comments mentioned above, he stated that, "Israel is not at war with the Palestinian people but with Hamas, which has dedicated itself to acting against residents of Israel. Accordingly, the objects attacked today were selected with the emphasis being to prevent harm to innocent persons." In an article published in yesterday's *Washington Post*, a senior military official was quoted as follows: "There are many aspects of Hamas, and we are trying to hit the whole spectrum, because everything is connected and everything supports terrorism against Israel." Major Avital Liebowitz, of the IDF Spokesperson's Office, told the military correspondent that the army had indeed widened its target list from previous operations, saying Hamas has used ostensibly civilian operations as a cover for military activities. "Anything affiliated with Hamas is a legitimate target," she said.

These comments indicate that the operation in Gaza is aimed against every person and entity tied in some way to Hamas, even if they are not engaged in military action against Israel. This concern is reinforced when we consider the objects that were bombed in recent days. B'Tselem does not have the necessary information to decide whether each of the objects selected for attack meet the conditions specified in article 52(2) of the First Protocol; however, examination of military actions in recent days raises a question as to the legality of some of Israel's targeting.

For example, the military bombed the main Police building in Gaza and killed, according to reports, forty-two Palestinians who were in a training course and were standing in formation at the time of the bombing. Participants in the course were studying first-aid, handling of public disturbances, human rights, public-safety exercises, and so forth. Following the course, the police officers are assigned to various arms of the police force in Gaza responsible for maintaining public order.

Another example is yesterday's bombing of government offices. These offices included the Ministry of Foreign Affairs and the Ministry of Labor, Construction and Housing. An announcement made by the IDF Spokesperson's Office regarding this attack stated that, "the attack was carried out in response to the ongoing rocket and mortar-shell fire carried out by Hamas at Israeli territory and in the framework of IDF operations to strike at Hamas governmental infrastructure and the organization's activists."

These are only a couple of examples of attacked objects that are ostensibly clearly civilian objects. It would seem that the activity carried out in these places is not military activity aimed against Israel, nor did the IDF Spokesperson's Office make such a claim. Clearly, then, they cannot be considered military objects in accord with the provisions of international humanitarian law – they do not make an effective contribution to the military activity against Israel and the attack provides Israel with no *military* advantage whatsoever, and certainly not a definite *military* advantage.

Hamas is certainly responsible for missile fire at Israeli civilians, and this constitutes a war crime. However, as the entity effectively governing the Gaza Strip, it is responsible

also for daily life there. As such, it supervises the activity of all civilian systems in the Strip – among them welfare, health, housing, and law. It must ensure public order and safety also by means of a police force. Therefore, even if Hamas is a “hostile entity” whose principal objective is to undermine the existence of the State of Israel, this does not lead to the conclusion that every act it carries out is intended to harm Israel and that every government ministry is a legitimate target.

The argument that striking at objects of this kind is consistent with international humanitarian law is untenable. Such an interpretation, which relates to these bodies as military objects, expands the provisions of international humanitarian law in a way that is inconsistent with the provisions of article 52(2) of the First Protocol, and contravenes the principle of distinction that lies at the foundation of IHL. Intentional attacks on civilian targets are war crimes.

I urge you to communicate these concerns to the relevant officials, and to clearly impress upon them that attacks may not be aimed at civilian objects, and the consequences of acts carried out in contravention of these rules.

I would appreciate your response to my letter as soon as possible.

Sincerely,

Jessica Montell

Executive Director