

1.4.2025

To: The Attorney General

Military Advocate General

Subject: Reasonable Suspicion of War Crimes and the Duty to Investigate

We hereby approach you with a request that you immediately order an investigation of the reasonable suspicion that in the attack carried out by IDF forces in Gaza on 18.3.2025, several violations of the laws of war were committed that may constitute war crimes.

1. Factual Background

a. IDF Spokesperson Statement

On 18/3/2025, the IDF spokesperson issued the following statement:

"The IDF and Shin Bet attacked dozens of terror targets and Hamas militants throughout the Gaza Strip in the last day, including mid-level commanders and senior officials in Hamas's political wing. This was done with the aim of damaging Hamas's military and governing capabilities and removing the threat to the State of Israel and its citizens.

"In these attacks, the IDF and Shin Bet eliminated the terrorist Issam Diab Abdullah al-Daalis, prime minister of the Hamas government and the senior governing figure in the Gaza Strip, who replaced Rawhu Mushtaha, who was eliminated in July 2024. As part of his role, he was responsible for the functioning of the Hamas terrorist organization's rule of terror in the Strip, including all the organization's systems and their use for terrorist activities.

"Additionally, at this stage, based on information in the possession of the IDF and Shin Bet, it can be determined with high probability that the following senior terrorists were eliminated in the attacks of the past day:

- Mahmoud Marzouq Ahmad Abu-Taha - served as Interior Minister in the Hamas government and was responsible for the internal security mechanisms of the Hamas terrorist organization and their use for terrorist purposes.
- Bahgat Hassan Mohammed Abu-Sultan - head of the internal security apparatus of the Hamas terrorist organization and its use for terrorist purposes.
- Ahmad Omar Abdullah al-Hatta - served as Justice Minister in the Hamas terrorist organization's government and used all activities for terrorism."

b. Media Reports on the Attack

Media in Israel and worldwide reported on the attacks carried out by IDF forces. According to the reports, the attacks were carried out in the early hours of Tuesday, 18/3/2025, as some residents were getting up for the suhoor meal. The Ministry of Health in Gaza reported that 436 people were killed in these attacks, including 183 children, 94 women, and 34 adults over the age of 65. (Nir Hasson and Hanin Majadli, "The Bloodbath," Haaretz Supplement, 28.03.2025, p. 16).

Reports on the attack and the large number of fatalities and wounded, including many children, appeared in the New York Times, CNN, AP, and Reuters. The UNICEF organization also issued a statement regarding the attacks, which reads as follows:

"NEW YORK, 18 March 2025 – 'Reports and images emerging from the Gaza Strip following today's attacks are beyond horrifying. Hundreds of people have reportedly been killed, including more than 130 children, representing one of the largest single-day child death toll in the last year.

'Some of the strikes reportedly hit makeshift shelters with sleeping children and families, another deadly reminder that nowhere is safe in Gaza.'"

We do not have the ability to examine the reliability of the number of fatalities reported by the Ministry of Health in Gaza. However, past experience shows that there are no significant differences between the number of fatalities according to the Gaza Ministry of Health and the numbers according to the IDF, even if there is no consensus regarding the number of Hamas fighters among the fatalities. In all events, the main point is that even if the Ministry of Health in Gaza's numbers are not accurate, according to media reports, a reasonable suspicion arises that hundreds of people were killed in the attacks, the vast majority of whom were civilians, including many children.

c. The Targets

In the IDF spokesperson's statement quoted above, it was stated that the targets of the attacks were "terror targets and Hamas militants throughout the Gaza Strip, including mid-level commanders and senior officials in Hamas's political wing." No details were provided about the nature of the "terror targets" that were, according to the IDF spokesperson, targets for attack or were destroyed during the attacks. In the absence of such details, it can be assumed that Hamas militants and "senior officials in Hamas's political wing" were the actual or main targets of the attacks. In the IDF spokesperson's statement, which was presented above, they mention the names of four individuals who, according to the statement, belonged to the political wing of Hamas. It was not stated about any of these individuals that they themselves were militants or that they took part in combat operations. In later statements from the IDF spokesperson, the names of three additional Hamas operatives who were killed were added.

2. Legal Framework

a. War Crimes

The meaning of the term "war crime" was clarified by the Turkel Commission, which was established by the Israeli government following the Turkish flotilla incident. The Commission concluded that "serious violations" of international humanitarian law are "war crimes," with no significant difference today between the situation in international armed conflict and non-international armed conflict. (The Public Commission to Examine the Maritime Incident of 31 May 2010 – Second Report, the Turkel Commission, paragraph 42).

For a detailed definition of war crimes, today one can refer to the definition of offenses listed in Article 8 of the Rome Statute of the International Criminal Court. For our purposes, we focus on one offense:

Article 8 (2)(b)(iv): Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects ...which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.

b. The Suspicion in Our Case: Clear Deviation from the Proportionality Test

According to the principle of distinction that applies in the laws of war, there is an obligation to distinguish between combatants and civilians. The definition of a combatant when dealing with a terrorist organization that also functions as the de facto government in a certain area is not simple. There is doubt whether the political position holders of the Hamas government in Gaza fall under the definition of "combatants" who can be targeted according to the laws of war. Targeting a civilian who directly participates in hostilities, or a member of an armed organization who fulfills a combat function within it, is permitted according to the laws of war. For the purpose of discussing the suspicion that a crime was committed as defined in Article 8(2)(b)(iv), we assume that in all the attacks, the target of the attack was a legitimate military target: a person who belonged to Hamas's armed force or who took a direct part in the hostilities. We will assume, therefore, despite the doubt regarding the status of political officials, that it was permissible to direct an attack against the head of Hamas's government, or the Interior Minister and Justice Minister of Hamas, or that the attacks were also directed against people who were part Hamas's armed force.

The question that arises in light of this assumption is whether those who gave the order to carry out the attacks, or took part in them, knew that the attack would cause harm to civilians that is clearly excessive in relation to the concrete, direct, and overall military advantage anticipated from the attack.

Implementation of the principle of "proportionality" that is expressed in Article 8(2)(b)(iv) is not simple, and there may be differences of opinion whether it was violated in a given case. It should also be emphasized that, unlike the principle of proportionality defined in Article 51(5)(b) of the First Additional Protocol to the Geneva Conventions, which applies to any party to an armed conflict, **criminal responsibility** for violation of the principle of proportionality arises only if the

suspect knew that the damage to civilians would be **clearly** excessive in relation to the **overall** military advantage anticipated from the attack. Even when taking into account the more stringent requirements of the criminal offense, it is difficult to view our case as a borderline case where it could be considered that the damage to civilians would not be excessive in relation to the anticipated military advantage expected from the attacks. According to media reports, the attacks were directed against permanent and temporary residential locations in the early morning hours when it was clear that entire families were in buildings or temporary shelters. We are not experts in military matters, but it is hard to believe that in the difficult battle that has been waged with Hamas since October 7, 2023, the killing of ten Hamas operatives would give Israel a significant military advantage. Even if we assume that it was anticipated that the killing of each of the Hamas members who were killed would give the IDF a certain military advantage in the war against Hamas, can it be said that the collateral damage of about 60 civilian fatalities and about 80 wounded civilians for each Hamas member killed was not clearly excessive? Even if at the time of the attacks the decision-makers could not know what the final number of children killed would be, isn't the killing of a large number of children clearly excessive? It is worth recalling in this context the conclusions of the Investigative Committee that examined the killing of Salah Shehadeh. Shehadeh was one of the senior Hamas militants who was responsible for the deaths of many Israelis and who apparently posed an immediate danger to the state's citizens. It follows, therefore, that according to the rules established in HCJ 769/02 (the Targeted Killings case), attacking him was considered a legal action. However, along with him, 13 civilians were killed. The Investigative Committee (the Strasberg-Cohen Commission) found that despite Shehadeh's status, the harm to civilians "was revealed in retrospect to be disproportionate under the circumstances of the case". The Committee determined that there was no place to charge those responsible for the attack, but this conclusion was not based on the fact that the harm met the requirement of proportionality, but from the fact that due to an intelligence failure, the decision-makers were not aware of the number of civilians who were in the house with Shehadeh.

If the Strasberg-Cohen Commission found that the killing of 13 civilians was an excessive in relation to the clear military advantage that resulted from the killing of a very senior militant, what can be said when dealing with the killing of 60 civilians for each of the killed militants, when there is even serious doubt whether any of them was of Shehadeh's status? In the circumstances of the case and the involvement of the most senior officials in the decision to attack, it is difficult to assume that there was an intelligence failure here too, and that the decision-makers did not know that many families with their children would be harmed in the attacks.

The words of President Barak in HCJ 769/02 mentioned above are appropriate in this context:

"The assessment of [proportionality] is difficult. Here too, a case-by-case approach is required, while narrowing the area of disagreement. The weighing is complex. A typical case of a fighter or terrorist combatant shooting at soldiers or civilians from his porch will be proportionate if they shoot back at him, even if as a result, a civilian passing by who lives nearby or innocently passing by the house is harmed. This is not the case if the house is bombed from the air and dozens of its residents and passersby are harmed." (para 46).

3. The Duty to Investigate

The existence of the duty to investigate a suspicion of war crimes is discussed at length in the Turkel Commission report mentioned above. The Commission examined several sources for this duty – international humanitarian law, international criminal law, human rights law, and the law of state responsibility – and reached the unequivocal conclusion that when a reasonable suspicion arises that a war crime has been committed, there is a duty to conduct an investigation into the matter.

These are the words of the commission:

"The Commission's approach is that the threshold required for initiating an investigation is where a credible accusation is made or where a reasonable suspicion arises that a war crime has been committed" (Turkel Commission, Part B, p. 91).

The Commission clarified that there is no limitation on the source of the complaint or allegation – it can be a private person, non-governmental organizations, and more (ibid). It seems to us that reports in several newspapers, including leading world newspapers, such as the New York Times, can serve as a source for **suspicions** regarding the commission of a war crime.

In this matter, it should be clarified that the Turkel Commission drew a distinction between an examination and an investigation. When there is a suspicion that a soldier violated army orders, it is sufficient to conduct an examination in the matter, whereas when the suspicion is that a war crime was committed, an examination is not sufficient; there is an obligation to conduct an investigation. It follows, therefore, that the statement of the IDF spokesperson following the publication in Haaretz that "allegations of harm to civilians on a large scale are being examined in the relevant mechanisms" (Hasson and Majadli, above, p. 18) does not meet the requirements for an investigation following the raising of a reasonable suspicion that a war crime was committed.

The Turkel Commission also emphasized that an investigation into a war crime must be an **effective** investigation. For an investigation to be effective, it must meet four principles: independence, impartiality, effectiveness and thoroughness, and promptness. The commission also found that according to human rights law, the principle of transparency should also be added (Turkel Commission, ibid, p. 102). The Turkel Commission elaborated on the meaning of each of these principles, and there is no need to repeat the details here.

Summary:

In light of the reports on the large number of civilians who were killed and injured in IDF attacks in Gaza in the early morning hours of 18.3.2025, a reasonable suspicion arises that in these attacks there were several violations of the laws of war that may amount to war crimes. Under these circumstances, the authorities in Israel have a duty to conduct an effective investigation that will meet all the requirements detailed in the Turkel Commission report. We appeal to you to order the investigation required by law.

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