

# One Year After Gaza Massacre, UN Exposes “Likely” War Crimes

By [Prof. Marjorie Cohn](#)

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*One year ago, on July 7, 2014, Israel launched “Operation Protective Edge,” a massive assault on the Gaza Strip. For 51 days, Israel bombarded Gaza with more than 6,000 airstrikes. Many of them hit residential buildings. Tawfik Abu Jama, a father of eight, told UN investigators, “I was sitting with my family at the table ready to break the fast. Suddenly we were sucked into the ground. Later that evening, I woke up in the hospital and was told my wife and children had died.”*

The UN Human Rights Council subsequently convened an independent, international commission of inquiry to investigate violations of international law in the Occupied Palestinian Territory, particularly the Gaza Strip. The commission finally issued its report on the investigation on June 24, 2015, which included the quote from Abu Jama.

The commission concluded that Israel, and to a lesser extent, Palestinian armed groups, had likely committed violations of international humanitarian law and international human rights law, some constituting war crimes. “The scale of the devastation was unprecedented” in Gaza, according to the commission.



People inspect damage around the fallen minaret of the Al-Sousi mosque that was destroyed in an Israeli attack at the Shati refugee camp in the northern Gaza Strip, July 30, 2014. At least 20 people were killed elsewhere on Wednesday by what witnesses and United Nations officials said was artillery fire on a UN-run school in the Jabaliya camp. (Photo: Wissam Nassar/The New York Times)

It documented the deaths of 2,251 Palestinians, including 1,462 civilians (299 women and 551 children), and the injuring of 11,231 Palestinians, including 3,540 women and 3,436 children. Ten percent of the children suffered a permanent disability as a result. More than 1,500 Gazan children were orphaned. On the Israeli side, six civilians and 67 soldiers were killed, and up to 1,600 were injured.

## Collective Punishment

“According to official Israeli sources, rockets and mortars hit civilian buildings and infrastructure, including schools and houses, causing direct damage to civilian property amounting to almost \$25 million,” the report stated. In addition, 18,000 housing units were totally or partially destroyed; much of the electrical, water and sanitation infrastructure was

incapacitated; and 73 medical facilities and several ambulances were damaged. Twenty-eight percent of the Palestinian population was displaced.

The UN commission documented probable violations of international humanitarian law.

The commission determined, “The impact of the hostilities in Gaza cannot be assessed separately from the blockade imposed by Israel.” That blockade and the military operation “have led to a protection crisis and chronic, widespread and systematic violations of human rights, first and foremost the rights to life and to security, but also to health, housing, education and many others.” The commission quoted the UN secretary general’s characterization of Israel’s blockade of Gaza as “a continuing collective penalty against the population of Gaza.”

Indeed, the commission stated: “Closed into the Strip, with no possibility to exit at times, 44 percent of Gaza was either a no-go area or the object of evacuation warnings. These terrifying circumstances created a sense of entrapment, of having ‘no safe place’ to go.”

The commission examined 15 cases of strikes on residential buildings across Gaza, which killed 216 people, including 115 children and 50 women. Many of the attacks took place in the evening or at dawn when people were eating, or at night when they were asleep. “The timing of the attacks increased the likelihood that many people, often entire families, would be at home,” according to the commission. “Attacking residential buildings rendered women particularly vulnerable to death and injury.”

#### Probable Violations of International Law

The commission documented probable violations of three principles of international humanitarian law – distinction, proportionality and precautions – which may amount to war crimes.

*Distinction* forbids indiscriminate attacks against civilians. Only combatants may be targeted. The term “combatants,” the commission noted, “includes members of the armed forces and of organized armed groups with a continuous combat function.”

The commission said Israel had not explained why residential buildings, “which are *prima facie* civilian objects immune from attack, were considered to be legitimate military objectives.” If a strike directly and intentionally targets a house without a specific military objective, that would violate the principle of distinction. “It may also constitute a direct attack against civilian objects or civilians, a war crime under international law,” the commission stated.

“The rules of engagement for soldiers advancing on the ground were open fire, open fire everywhere.”

In addition, the indiscriminate use of rockets by the Palestinians and targeted mortar attacks against civilians would violate the principle of distinction, which may constitute a war crime, the commission determined. The commission also observed, “The questionable conduct of these armed groups does not, however, modify Israel’s own obligations to abide by international law.”

*Proportionality* requires the attack be proportionate to the anticipated military advantage. Since Israel did not provide information suggesting that “the civilian casualties and damage to the targeted and surrounding buildings were not excessive,” the commission found that the attacks could be disproportionate, and thus could amount to war crimes.

*Precautions* means that the attacker must take precautions to avoid or limit civilian casualties. “In many incidents, however,” the commission concluded, “the weapons used, the timing of the attacks, and the fact that the targets were located in densely populated areas indicate that the Israel Defense Forces [IDF] may not have done everything feasible to avoid or limit civilian casualties.” The commission determined that the IDF’s use of “roof-knock” warnings – warning strikes before the real strikes – were not effective warnings. Either the concerned persons didn’t understand their homes were being subjected to “roof-knocking” or the IDF provided insufficient time after the warning for people to evacuate.

Moreover, the commission criticized Israel for “inferring that anyone remaining in an area that has been the object of a warning is an enemy or a person engaging in ‘terrorist activity,’” adding, “those civilians choosing not to heed a warning do not lose the protection granted by their status. The only way in which civilians lose their protection from attack is by directly participating in the hostilities.”

Targeting civilians, the commission noted, may amount to a war crime and a violation of the right to life guaranteed by the International Covenant on Civil and Political Rights, which is part of international human rights law.

#### Testimonies From IDF Soldiers

The issuance of the UN commission’s report followed the release in early May of “This Is How We Fought in Gaza,” a document containing testimonies of more than 60 former and current IDF members, more than one-quarter of whom were officers up to the rank of major. Those chilling testimonies, compiled by the Israeli nongovernmental organization (NGO) Breaking the Silence, were among the data considered by the commission during its investigation.

Quoting the NGO document, the commission was alarmed by the lax rules of engagement under which the IDF soldiers operated: “[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.”

The document stated that during the “softening” stage, IDF forces conducted heavy shelling in neighborhoods with weapons that can reach up to hundreds of meters from the original target. Soldiers testified to unabated fire on “suspicious points,” and said, “almost every object or structure within the forces’ eyeshot had the potential to be considered suspicious and thus targeted.” Even movements in a window led to a strike on a house, in which soldiers shot to kill.

“I got the impression that every house we passed on our way got hit by a shell – and houses farther away too,” a first sergeant in an IDF engineering unit in Gaza City told Breaking the Silence. “It was methodical. There was no threat.”

An infantry soldier in Gaza City said, “The rules of engagement for soldiers advancing on the ground were open fire, open fire everywhere, first thing as you go in. The assumption being

that the moment we went in [to the Gaza Strip], anyone who dared poke his head out was a terrorist. And it pretty much stayed that way throughout the operation.”

“There were no rules of engagement. If you see anyone in that area, that person is a terrorist.”

There weren't really any rules of engagement, it was more protocols,” an infantry first sergeant in the northern Gaza Strip testified. “They told us, ‘There aren't supposed to be any civilians there. If you spot someone, shoot.’ Whether it posed a threat or not wasn't a question, and that makes sense to me. If you shoot someone in Gaza, it's cool, no big deal.

A first sergeant in an armored corps unit in Deir al-Balah observed, “It's simple: whoever feels like shooting more – shoots more. Most guys shot more. Dozens of shells [per day], throughout the operation. Multiply that by 11 tanks in the company.” The soldier said they were shooting at randomly chosen houses.

Anything still there is as good as dead. Anything you see moving in the neighborhoods you're in is not supposed to be there. The [Palestinian] civilians know they are not supposed to be there. Therefore whoever you see there, you kill,” according to a first sergeant in an armored corps unit in Deir al-Balah.

A first sergeant in an engineering unit in Gaza City reported, “The instructions are to shoot right away ... Be they armed or unarmed, no matter what.

“Each one basically chose his own target,” recalled a first sergeant in an armored corps unit in Deir al-Balah.

An infantry soldier in the southern Gaza Strip described an incident in which two unarmed young women walking in an orchard were “implicated” by a drone. After they were killed, the women “were listed as terrorists. They were fired at – so of course, they must have been terrorists.”

## No Rules of Engagement

There were no rules of engagement,” an infantry first sergeant in the northern Gaza Strip testified. “If you see anyone in that area, that person is a terrorist.” A captain concurred, saying, “The entire time, neither before the incursion nor during the incursion [into the Gaza Strip] were there any clearly defined rules of engagement ... The rules of engagement were more or less that we were entering a war.

After three weeks in Gaza, “during which you're shooting at anything that moves ... The good and the bad get a bit mixed up, and your morals get a bit lost and you sort of lose it,” a first sergeant in an armored corps unit in Deir al-Balah testified, “and it also becomes like a computer game, totally cool and real.”

It all looked like a science fiction movie,” a first sergeant in an engineering unit in Gaza City said, “with serious levels of destruction everywhere, levels we hadn't seen in [Operation] Cast Lead. No houses.”

I remember that the level of destruction looked insane to me,” an infantry first sergeant in the northern Gaza Strip testified. “It looked like a movie set, it didn’t look real.” A sergeant first class in an armored corps unit in Gaza City recalled, “It was total destruction ... I never saw anything like it, not even in Lebanon. There was destruction there, too - but never in my life did I see anything like this.

Some soldiers made no pretense of disguising their racism.

A first sergeant in an armored corps unit testified, “Running over a car is sort of the wet dream of every guy in a tank crew ... Going over [a Caterpillar truck] we felt so little that I suspected we might have missed it. It was pretty cool in the end. I didn’t feel any remorse or anything, that I had done something wrong.”

It was just for kicks - the sort of fun you have at a shooting range,” a first sergeant in an armored corps unit said.

The commission was alarmed by the “Hannibal directive,” that is, “minimum risk to our forces, even at the cost of harming innocent civilians,” which “predictably leads to violations of the principles of distinction and proportionality.” According to testimony from a first sergeant in an engineering unit in Gaza City, “The only emphasis regarding rules of engagement was to make sure you weren’t firing at IDF forces, but other than that, ‘Any person you see.’

An infantry first sergeant in the northern Gaza Strip remembered telling himself, “I really don’t give a fuck about [civilians]. They don’t deserve anything - and if they deserve something it’s either to be badly wounded or killed.” An infantry lieutenant in the northern Gaza Strip echoed those sentiments. “Civilian presence is not something that’s on your mind, so you don’t give it any attention in any consideration,” he testified.

“We expect a high level of harm to civilians,” an infantry lieutenant testified. He said targets would be approved if they were justified “or if there’s a good chance to hit it in a way that’ll look good to the Israeli audience, and look bad for the Palestinian audience.”

Some soldiers made no pretense of disguising their racism. A lieutenant in the Gaza Division unit described how civilians were called “uninvolved” rather than “civilians.” He spoke of “the desensitization to the surging number of dead on the Palestinian side ... The discourse is racist,” he said.

#### Reactions to the Commission’s Report

Israel refused to cooperate with the commission’s investigation, although the commission relied in part on official Israeli government sources. In anticipation of the issuance of the commission report, Israel released its own report, whitewashing IDF conduct during the Gaza massacre.

But in an article penned in Haaretz, former US President Jimmy Carter and Gro Harlem Brundtland, former Prime Minister of Norway, wrote that the commission’s findings echoed what they found on their own visit to Israel and Palestine two months prior. “That is why we welcome the commission of inquiry’s report as a potential milestone on the path to accountability,” they wrote. “The report is as objective and even-handed as circumstances

allowed, as is to be expected with the highly regarded US judge Mary McGowan Davis as commission chair.”

The commission was concerned “that impunity prevails across the board for violations of international humanitarian law and international human rights law allegedly committed by Israeli forces, whether it be in the context of active hostilities in Gaza or killings, torture and ill-treatment in the West Bank.”

All parties were urged by the commission to fully cooperate with the preliminary examination of the International Criminal Court (ICC). Carter and Brundtland called the ICC “one of the nearest institutions to objective neutrality that the community of nations possesses ... Regrettably neither Israel nor the US are parties to the court. In our view, they should be.” They noted with approval the Palestinian Authority’s decision to submit evidence to the ICC “on the Gaza war, illegal settlements in the West Bank and East Jerusalem, and the treatment of Palestinian prisoners.”

ICC prosecutor Fatou Bensouda, who is conducting a preliminary examination into the situation, has not decided whether to open an official investigation. If she does so, Bensouda said she could investigate low- and middle-rank Israeli soldiers for the purpose of “bringing stronger cases against those most responsible.”

The commission determined that the military tactics the IDF employed were “reflective of broader policy, approved at least tacitly by decision-makers at the highest level of Government of Israel.”

*Marjorie Cohn is a professor at Thomas Jefferson School of Law, former president of the National Lawyers Guild and deputy secretary general of the International Association of Democratic Lawyers. Her most recent book is Drones and Targeted Killing: Legal, Moral, and Geopolitical Issues.*

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