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Operation Protective Edge: Examinations and Investigation

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The IDF Chief of General Staff, Lieutenant General Benjamin (Benny) Gantz, has ordered that a General Staff Mechanism for Fact-Finding Assessments (the 'FFA Mechanism') will examine Exceptional Incidents that occurred during Operation 'Protective Edge'. The FFA Mechanism, headed by a Major General, was activated soon after the commencement of Operation 'Protective Edge', in the midst of the ongoing hostilities.

The FFA Mechanism was established as a permanent mechanism, as part of the process of implementation of the recommendations outlined by the Public Commission chaired by Supreme Court Justice (ret.) Jacob Turkel (the 'Turkel Commission'). The Commission had assessed the compliance of Israel's mechanisms of examining and investigating complaints and claims of violations of the law of armed conflict, with the requirements of international law. In its report, the Turkel Commission found that the examination and investigation mechanisms in Israel generally comply with the obligations of the State of Israel under the rules of international law, and also made a number of specific recommendations designed to further strengthen these mechanisms.

The establishment of the FFA Mechanism was fully coordinated with the Attorney General. It was also endorsed by Dr. Joseph Ciechanover who heads the inter-agency committee appointed by the Government of Israel in January 2014 in order to study the report and examine the implementation of the Turkel Commission recommendations.

The FFA Mechanism is currently headed by Major

General Noam Tibon and is comprised of a number of fact-finding assessment teams. Each team is led by a senior IDF officer (in active service or in the IDF reserves), with a rank ranging from Colonel to Major General. The teams are comprised primarily of high-ranking IDF reservist officers, possessing operational expertise in a range of military areas (such as artillery, intelligence and aerial operations), as well as members possessing both legal qualifications and professional experience in the field of investigations. Each team is also provided with ongoing legal advice from legal officers in the IDF Military Advocate General's Corps, who have particular expertise and experience in international law. An additional senior officer from the IDF reserves, with expertise in international law, has also been appointed to assist the head of the FFA Mechanism. None of the fact-finding assessment teams' members served in the chain of command during Operation 'Protective Edge'.

The task of the FFA Mechanism is to collate information and relevant materials in order to determine the facts with respect to Exceptional Incidents that occurred during the Operation. These efforts are intended to provide the Military Advocate General (the 'MAG') with as much factual information as possible in order to enable the MAG to reach decisions regarding whether or not to open a criminal investigation, as well as for the purpose of a 'lessons-learned' process and the issuance of operational recommendations that will assist in preventing exceptional incidents in the future. Exceptional Incidents examined by the FFA Mechanism are those incidents where the MAG has decided that additional information is required in order to determine whether there exists reasonable grounds for suspicion of a violation of the law which would justify a criminal investigation. All information and materials collated by the fact-finding assessment teams, as well as their findings, will be provided to the MAG, who will decide, in a reasoned decision, on the appropriate action – whether to close the case, to recommend disciplinary measures or to order the opening of a criminal investigation to be conducted by the Military Police Criminal Investigation Division. Where necessary, the MAG may also order the fact-finding assessment teams to collate additional information in order to compile a fuller factual understanding of a particular incident.

The substance of the MAG's decisions will be publicized, subject to restrictions under the law and limits pertaining to the security of classified information. The MAG's decisions may be challenged before the Attorney General, and, as with all other decisions by state authorities, are subject to judicial review by the Supreme Court of Israel sitting as the High Court of Justice.

The fact-finding assessment teams were instructed to complete their assignments within a short timeframe in order to ensure prompt and effective examinations. To this end, and to ensure the thoroughness of the assessments, the teams have been provided with the requisite resources. Further, the teams have been invested with broad ranging powers to acquire the provision of materials from all branches of the IDF, and to collate materials from external persons, including civilian witness testimony. All IDF soldiers are required by law to cooperate with the fact-finding assessment teams, and to provide any relevant information they may possess. Statements provided to the fact-finding assessment teams, as well as any materials these teams may produce, are privileged under the law.

Thus far, 44 Exceptional Incidents have been referred to the FFA Mechanism for assessment, and over 50 additional incidents have so far been identified for referral to the FFA Mechanism in the near future. These incidents occurred both during aerial operations as well as during the ground operation. Such incidents include events allegedly resulting in significant and unanticipated civilian harm and events where military activity allegedly resulted in damage to medical or UN facilities. The FFA Mechanism has completed its work with regard to 12 incidents, which have been referred back to the MAG for decision. Following the MAG's examination of the information and materials collected by the FFA Mechanism, as well as its findings, the MAG decided to close the case with regard to seven of these incidents, and has ordered criminal investigations with regard to two of the incidents. The remaining incidents are pending decision.

Allegations, which *prima facie*, and without the need for additional examination, raise a reasonable suspicion of

a violation of the law, are generally transferred upon the decision of the MAG directly for a criminal investigation, and are not examined by the FAA mechanism. As of the date of this release, the MAG has ordered the immediate opening of criminal investigations (without prior examination by the FFA Mechanism) with regard to three incidents.

Where individual complaints have been filed, updates regarding the MAG's decisions will be sent to the relevant persons. In addition, in order to ensure transparency, updates regarding the MAG's decisions will be publicized periodically.

The quick establishment of the FFA Mechanism, including its activation in the midst of the Operation 'Protective Edge' and the allocation to it of the requisite resources, attests to the IDF's continued commitment to the rule of law and to its commitment to international law obligations.

