

SPECIAL ADVISER PUBLIC REPORT ON THE GOVERNMENT OF ISRAEL'S RESPONSE TO THE IDF ATTACK ON WORLD CENTRAL KITCHEN AID WORKERS IN GAZA ON MONDAY 1 APRIL 2024

INTRODUCTION

On 1 April 2024, Ms Zomi Frankcom, an Australian national, was killed by an Israel Defense Forces (IDF) strike in Gaza while supporting a World Central Kitchen (WCK) aid delivery. Also killed were her WCK colleagues: Jacob Flickinger, an American-Canadian dual national; Damian Soból from Poland; Saifeddin Issam Ayad Abutaha, a Palestinian; and three British nationals employed by Solace Global who provided close personal security for the WCK team: John Chapman, James Kirby and James (Jim) Henderson.

On 2 April, Prime Minister Netanyahu quickly accepted Israeli forces' responsibility for the incident, stating 'this happens in war' and that Israel would conduct a thorough enquiry.

In response, WCK stated that this was a direct attack on them. WCK highlighted their vehicles were clearly marked on the roof with the WCK logo and their 'movements were known by everybody at the IDF'. WCK sought an impartial international investigation.

The IDF accepted responsibility for the strike and directed a Fact-Finding and Assessment Mechanism (FFAM) investigation into the incident. The findings of this FFAM initial investigation were presented to officials from the affected nations and WCK on 4 April and summarised in a public statement released on 5 April. The FFAM initial investigation found that the incident should not have occurred; the IDF did not deliberately or knowingly attack WCK employees, instead the IDF thought they were targeting Hamas operatives; and, the strikes were a grave mistake stemming from a serious failure due to mistaken identification, errors in decision making and violation of IDF Rules of Engagement (RoE) and Standard Operating Procedures (SOP). The FFAM initial report was presented to the IDF Chief of General Staff (CGS) and Military Advocate General (MAG) on 4 April 2024. As a result, the IDF CGS decided to take the immediate action of dismissing two IDF officers from their positions and formally reprimanding three senior officers. The MAG is considering the report and any potential follow-on actions.

On 8 April 2024, the Minister for Foreign Affairs, Senator the Hon Penny Wong, appointed me as the Special Adviser to the Australian Government on Israel's response to the IDF strikes on WCK. The objective of this appointment was to advise on the sufficiency and appropriateness of measures taken by Israel to transparently investigate, report and respond to the events leading to the deaths of Ms Frankcom and her colleagues, including holding those responsible to account.

SPECIAL ADVISER ENGAGEMENT

As Special Adviser, it should be noted that I had no investigative powers. As such, all engagements, meetings and conversations were voluntary for those involved. That being said, all parties engaged constructively with my questions and provided the information I required. I am comfortable with the accuracy of all information collected during this task and the associated observations and assessments. However, it should be noted that Israel's ultimate conclusions may differ given its justice system will need to collect and weigh evidence in accordance with their own processes.

Engagement for this task was broad and included: World Central Kitchen; Solace Global; the Israel Defense Forces; defence, foreign affairs, legal and intelligence officials from Australia; and representatives from the United Kingdom, United States, Canada, and Poland.

My team and I visited Israel during the period 5-13 May and had access to all areas within the IDF that we had requested, including the Head of the FFAM (Head FFAM) and Chief of General Staff. All requests were supported,

including viewing the 90-minute un-edited Uncrewed Aerial Vehicle (UAV) footage (without audio) of the WCK convoy and subsequent strikes.

WCK ACTIVITIES IN GAZA

In executing their aim to provide humanitarian support in Gaza, the main focus of WCK and Solace Global was the safety of their personnel, with one of the highest risks being misidentification by the IDF. To minimise the risk to their international personnel they placed WCK logos on their vehicles, preferred not to travel at night and, to further ensure no misidentification by IDF forces, security personnel were never armed – either openly or discreetly. International WCK personnel wore body armour and helmets when travelling and two of the WCK vehicles involved on 1 April 2024 were ‘up-armoured’ for greater protection.

WCK use locally-contracted trucks to transport aid to WCK warehouses for preparation and distribution. In order to minimise looting, the aid trucks have no visible markings identifying them as WCK, but do have locally-contracted unarmed security organised by WCK to protect the trucks. WCK warehouse security personnel are also unarmed in order to minimise the risk of misidentification by the IDF.

Coordination of all international civilian activities in Gaza is through the Coordinator of Government Activities in the Territories (COGAT), which is a unit of the Israel Ministry of Defense. Within COGAT is the Coordination and Liaison Administration for Gaza (CLA) section, which is the point for daily coordination of aid activities within Gaza.

WCK, Solace Global and COGAT all reported a strong working relationship and WCK had a broadly positive reputation in Israel. This had been strengthened through the coordination process to construct the jetty leading to the first maritime delivery of aid two weeks before the 1 April incident. In fact, CLA acknowledged that WCK was a model for other NGOs.

Coordination requests from WCK to CLA were extremely detailed using an agreed template and included the organisation, task, specific vehicles to be used, personnel (with photos) and a detailed planned route. CLA facilitated, translated, and then distributed the approved coordination details to Southern Command to ensure deconfliction from IDF operations. Movements south of the Netzarim Corridor were less restrictive than to the north; however, a move to or from the jetty itself required specific real-time ‘green light’ approval from the IDF via CLA in order to ensure deconfliction from known IDF or Hamas activity. WCK reported that this could often take some time to achieve, was frustrating and led to operations, including the first delivery, taking much longer than planned and, as a result, sometimes completing deliveries in darkness.

THE 1 APRIL 2024 WCK INCIDENT

On 1 April 2024, WCK was scheduled to receive the second shipment of food aid delivered by sea. It planned to move this aid to its warehouse in Deir el-Balah. The operation involved approximately eight locally contracted trucks, the WCK vehicles and a vehicle belonging to the locally-contracted security provider. This plan was closely coordinated with COGAT/CLA in the days leading up to the delivery. This particular event was widely known within Israel and had a senior IDF commander and COGAT representative present at the jetty during the day.

The WCK food delivery to, and at, the jetty had a dedicated IDF Operations Order; however, this was reported to have been focused mainly on the activities around the jetty itself. Specific movements of the aid truck convoy and WCK escort vehicles before and after departing the jetty were in a detailed Annex that was distributed separately within Southern Command a number of hours after the initial Operations Order.

Eight contracted aid trucks and two of the WCK escort vehicles with WCK personnel completed loading at the jetty at approximately 2030 local time; however, WCK was delayed in receiving approval from the IDF to move south due to communications difficulties with CLA and possibly an unrelated IDF operation in the vicinity. Movement approval was eventually facilitated by the local IDF commanders and the convoy commenced movement, initially to the WCK Welcome Centre.

IDF UAV coverage did not appear to be on station to cover the WCK convoy as it departed the jetty; however, after monitoring a separate aid convoy on a route approximately 4 km to the east, two UAVs moved their surveillance to provide oversight of the WCK convoy. This UAV surveillance commenced as the convoy was enroute to the WCK Welcome Centre.

At the WCK Welcome Centre, locally-contracted security personnel got on and into the trucks and the convoy continued the journey to the warehouse. As the trucks moved away from the Welcome Centre, one locally-contracted security person on top of the trailer of the third truck fired his weapon into the air. This was clearly visible in the UAV video, observed by the UAV operator and assessed by the Brigade Fire Support Commander to be consistent with Hamas hijacking the aid convoy.

During the aid convoy transit to the warehouse the Brigade Attack Cell contacted CLA with concerns there were armed individuals on the convoy. CLA attempted through various means to contact WCK, first directly to the convoy, then to international WCK contacts. CLA eventually made contact with the WCK Headquarters in the United States who, after multiple attempts, made text message contact via WhatsApp with a WCK member who had gone ahead of the convoy to the warehouse. They replied that the locally-contracted security personnel had 'fake guns'. WCK Headquarters replied to CLA that they had made contact with WCK in Gaza and would address the gun issue when WCK completed the task. It was difficult to tie down the exact timing of this extended set of communications; however, they appear to have continued after the WCK vehicles had already been attacked, indicating a lack of awareness by CLA of real-time events.

Once at the warehouse, the aid trucks entered and the WCK vehicles joined up and parked outside along with the locally-contracted security vehicle. At this point the UAV operator identified the original gunman dismounting from the truck and joining with another individual identified as a gunman. Over the next ten minutes approximately 15-20 people, including two to four gunmen, moved around the escort vehicles. During this period, the gunmen were classified by the Brigade Fire Support Commander and Brigade Chief of Staff as Hamas. Permission was requested from higher command to engage the escort vehicles outside the warehouse; however, this approval was denied due to the vehicles being too near the humanitarian aid convoy. Regardless, the Fire Support Commander continued to closely monitor the escorting vehicles and people around them. As personnel started entering the escort vehicles to depart, a UAV operator (mistakenly) identified one of the WCK drivers putting a 'gun' into a WCK vehicle (driver's side front).

The WCK vehicles departed together west towards the coast. Concurrently, the vehicle containing the locally-contracted security personnel, including the previously identified gunmen, drove north.

One UAV tracked the locally-contracted security vehicle heading north for approximately three minutes until it arrived at another warehouse where up to four gunmen were identified exiting the vehicle and entering the building. A decision was made to discontinue targeting them due to the time available before they entered the northern warehouse.

The WCK vehicles proceeded west to the coast. Due to the time delays encountered, rather than return to the WCK Welcome Centre as planned, a decision was made to return directly to the accommodation in Rafah. After turning south onto the coast road, the three WCK vehicles were struck in relatively quick succession, each strike being approximately two minutes apart. There were two survivors from the strike on the first (up-armoured) vehicle who quickly moved to the second vehicle, then two survivors from the second (up-armoured) vehicle who moved to the third vehicle. There were no survivors from the third (soft-skinned) vehicle. Over the four-minute period 2309-2313, the seven WCK workers were killed – likely one in the first vehicle, two in the second and four in the last.

The IDF stated that they became aware of the mistake almost immediately; however, discussions with IDF personnel indicated that it was discovered via social media and took approximately an hour.

ISRAEL DEFENCE FORCE OPERATIONAL LEGAL FRAMEWORK

The precise legal characterisation of the conflict in Gaza is subject to debate. Some authorities refer to the conflict as an International Armed Conflict (IAC), others as a Non-International Armed Conflict (NIAC). However, for the purposes of my task, the key is that Israel agrees that regardless of conflict characterisation it is the same targeting law (the IAC targeting rules) that applies. In my discussions, the IDF specified that it made its initial assessments about the legal rules attending the strike on the WCK vehicles on this basis.

Consequently, the IDF's view of the material issues in respect of targeting law relevant to this incident – particularly precautions in attack, including identification criteria and classification of people in terms of liability to lethal targeting – are the same as the Australian Defence Force (ADF) would likewise be concerned with in such a situation. Similarly, the IDF's view of the role of Rules of Engagement and Standard Operating Procedures in respect of where delegations to engage are held, also appears similar to that of the ADF. The IDF's view on which targeting rules and control mechanisms are relevant and applicable to this incident is similar to what Australia's would be in a like situation.

ISRAEL DEFENCE FORCE INVESTIGATION FRAMEWORK

In respect of post-incident investigation, the IDF system is similar to the Australian system. Where an incident is quickly identified as sensitive (as was the case with respect to the WCK strikes), the independent Fact-Finding and Assessment Mechanism (FFAM) is activated. Cooperation with the FFAM is mandatory for all IDF personnel as the aim of the FFAM is to quickly identify what went wrong in a systemic sense and to recommend measures in response. This is very similar to the formal ADF administrative inquiry process under the Defence (Inquiry) Regulations. The FFAM's independence rests in IDF Directives, its position separate from the chain of command, and its connection with and leverage of the MAG's own statutory independence.

The FFAM reports its findings to the IDF CGS and to the MAG.

FACT FINDING AND ASSESSMENT MECHANISM (FFAM) INVESTIGATION

The FFAM investigation commenced on 2 April 2024 and was conducted by a small team led by an experienced retired IDF Major General. The investigation was completed on 4 April and briefed late that night to representatives of nations who lost citizens as a result of the strike. A debrief was also provided to WCK. The IDF released a public statement early on 5 April. A copy of this statement – 'Conclusion of the Investigation of the General Staff Fact Finding and Assessment Mechanism into the incident in which seven employees of the World Central Kitchen were killed during a humanitarian operation in the Gaza Strip' – is at Annex A.

In the closed debrief, Head FFAM used a short clip (approx. five min) of UAV footage, without audio, that had been edited to show significant events that led up to the WCK strike. The actual strikes themselves were not shown. This video was reported as 'grainy' and difficult to assess by those present. Unfortunately, the poor quality of the video created difficulty and confusion identifying the finer details being described and raised questions about how decisions to strike were made and, subsequently, how the FFAM investigation came to its initial conclusions.

In my meeting with Head FFAM and his team, he reiterated the same points that were presented during the formal debrief on 4 April. Similar video (reported as possibly a slightly longer version) was shown and discussed in detail. Having had extensive experience looking at full motion video from UAVs and strike aircraft, it was apparent that the degradation in the video was likely due to the editing and transmission process and likely not deliberate. Importantly, this was not the fidelity of video being used by the UAV operators and the Brigade for real-time decision making. This was confirmed when I was able to view the un-edited UAV video at a later time.

The FFAM investigation determined that:

- The IDF had not deliberately or knowingly targeted WCK personnel.
- Notwithstanding good pre-coordination between WCK and COGAT, specific details about the pre-coordinated WCK aid mission had not been passed down from higher levels of Southern Command to the Brigade and UAV operator.
- While WCK had identification stickers on the roof of their vehicles, these were not visible to the UAV operators at night, adding to the misidentification and misclassification.
- Noting Hamas modus operandi had been to hijack trucks and vehicles, the Brigade decision makers determined the armed operatives were Hamas.
- The identification of the armed individuals on the convoy and near/in the WCK vehicles had not been done in a professional manner. The mindset involved in the decision making was wrong.

- The identification of the WCK member putting a weapon into the WCK vehicle was a mistake and was acknowledged as such the next morning after studying the video post incident.
- The continued firing on the second and third WCK vehicles after the first had been hit was a violation of IDF Standard Operating Procedures and Rules of Engagement (RoE).

During my meeting with Head FFAM, a number of additional points were discussed.

- After the arrival of the truck convoy at the warehouse and the initial request to strike the escorting vehicles, the Division Commander directed that 'no more strikes around humanitarian convoys were to occur that night'. It was not stated how this direction was given and whether it was deemed a formal order. However, it was confirmed that the Brigade Commander did pass this order onto his Chief of Staff (CoS).
- The decision to strike after the 'white vehicles' left the warehouse was due to an operational assessment at the Brigade staff level that the situation had now changed and therefore they had now become targetable. This was cited as an incorrect interpretation of the Commander's direction and poor decision making.
- In the UK media on 11 April 2024, the senior Brigade-level officer involved in the WCK strikes had been noted as being one of the 130 signatories of a 20 January 2024 letter to the IDF CGS calling for the flow of aid to Gaza to be restricted. I discussed this with Head FFAM and assess that this will be an issue for the MAG to address during her consideration.
- It was inferred a number of times that not only had the gunmen associated with the WCK aid convoy exhibited tactics similar to Hamas, but that in fact 'they were Hamas'.
- Head FFAM confirmed that only the video feed being used by the UAV operators was used to identify the gunmen as Hamas.
- The actual route taken by the WCK aid convoy was not the route pre-coordinated with CLA; however, Head FFAM stated that this was not discovered until later in the investigation and, as such, it did not play a factor in the 1 April incident.
- The strike occurred in a 'humanitarian fire control zone' and needed Division Commander approval prior to engaging.
- Finally, the WCK vehicles did not return to the Welcome Centre as planned, instead turning south on the coastal road towards Rafah. As the decision to engage the vehicles had already been made prior to this turn, I assess that this played no factor in the decision to strike.

The FFAM investigation took less than 72 hours to complete. After receipt of the report, the IDF provided a public statement. This statement was consistent with the closed debrief to the national representatives; however, it lacked some detail that may have provided more context on the incident and why action had been taken. In particular, it:

- did not mention the breakdown in processes that led to detailed coordination information not being fully disseminated;
- did not mention the associated vehicle (locally-contracted security) that had up to four gunmen that had driven north at the end of the convoy;
- did not mention that the WCK vehicle identification markings on the roof were not visible due to it being night time; and
- did not delineate that the strike on the first vehicle was due to misidentification and the continued firing on the second and third WCK vehicles was the violation of IDF Standard Operating Procedures.

Although identified in the FFAM investigation, these points only became public in subsequent interviews with IDF spokespersons. Unfortunately, this initial lack of detail did not sufficiently explain how an aid convoy that had been well coordinated with the IDF had been targeted by mistake due to a process breakdown.

POST FFAM INVESTIGATION ACTIONS

Immediately on receipt of the FFAM investigation report, the IDF CGS took the following initial actions:

- The Brigade Fire Support Commander, at the rank of Major, who guided the strikes, was dismissed from his position.
- The Brigade Chief of Staff, a Reserve Colonel, was dismissed from his position.
- The Brigade Commander, a Colonel, was formally reprimanded.
- The Division Commander, a Brigadier General, was formally reprimanded.
- The IDF Southern Command Commander, a Major General, was formally reprimanded.

A formal reprimand is an administrative censure given for the failure to comply with rules or regulations and, in the military, is a significant matter likely to affect career and future service. A reprimand does not prohibit the taking of further additional actions into the future.

The CGS used the FFAM initial findings as the basis for his dismissal from position of two officers and reprimanding of three other very senior officers (as noted above). However, the FFAM investigation is not yet complete as the MAG has asked Head FFAM to gather additional material so that she can then make a more informed decision as to the next steps.

The independence of the MAG in making her next series of decisions is based in five mechanisms: Statutory independence via the Military Law Act; ministerial appointment; immunity from the chain of command on all professional matters; a legal obligation that requires IDF commanders to follow the MAG and her MAG Corps officers' legal advice; and civil supervision of the MAG by the Attorney General and the Supreme Court of Israel.

The next step options available to the MAG include: take no further action, based on actions to date being sufficient; refer the matter to the IDF chain of command with a recommendation for further disciplinary or command measures (including up to dismissal from the IDF); or refer the matter to the Military Police Criminal Investigation Division (who report to the MAG) for investigation with a view to criminal prosecution in the Courts Martial (which are also statutorily independent). The fact that some command sanctions have already been applied by CGS as an immediate initial response does not preclude the taking of further criminal, disciplinary, or command measures. However, the fact that some sanctions have already been applied is a factor that the MAG considers in determining the type and scale of next steps in respect of the affected IDF members. The MAG indicated that there are several reasons this is necessary to the process, including that: it is a component relevant to the 'reasonableness' of her decision-making, which can be reviewed by the Attorney-General and the Supreme Court of Israel; and so as to reduce the potential – if an IDF member is charged with a criminal offence – for a defence counsel to argue that the prosecution is unfair as the accused has already suffered disciplinary or command consequences.

Should the MAG decide to pursue a Criminal Investigation Division investigation, and should this result in a decision to prosecute, it is important to note that the offences charged may not be 'war crimes' as commonly understood. This is for two reasons. First, Israel does not have generally applicable 'war crimes' legislation similar to Division 268 of the Commonwealth Criminal Code Act. Rather, battlefield conduct is prosecuted via offences set out in 'regular' criminal law and the Military Justice Law. Second, depending on the nature and content of the admissible evidence, the offences charged may relate to non-compliance with orders – such as RoE – as opposed to an offence tied to an underlying rule such as unlawful killing. This may be the case where, for example, the evidence available to the investigators and prosecutors indicates a culpable mistake causing death, for which the perpetrator should be held responsible, as opposed to the criminal offence of murder or manslaughter. Again, this is not dissimilar to situations that other Western militaries have faced, such as in relation to the Kunduz hospital attack in Afghanistan, which killed many civilians and destroyed a hospital, but where the underlying conduct – while culpable – was not assessed as meeting the requirements for a charge of unlawful killing. In this case the sanctions applied were administrative and disciplinary including suspension and removal from command, letters of reprimand and formal counselling.

OPERATIONAL CHANGES POST WCK STRIKE

The IDF briefed me on some changes it has implemented as a result of the 1 April WCK incident.

The first is an adjustment to strike approvals in the CGS Order.

The second (which is not linked only to the WCK incident but is relevant to it) is that forces deployed (and deploying) into the area of operation receive briefings in-person from the CGS and other senior officers on the need to adhere to the rules and procedures. As part of this, lessons identified by the IDF Joint Operations Lessons Learned process are briefed to all commanders from the level of Platoon leader upwards as part of their pre-deployment briefing.

The third is to tighten up the CLA coordination process with both the NGOs and Southern Command. This includes establishment of a CLA/Southern Command Joint Coordination Cell (JCC). The JCC is not an operations coordination centre but is focused on daily and weekly meetings intended to better coordinate NGO activities in Gaza. Primary NGOs are invited to participate as well as having the ability to self-invite. Clearly still in its infancy when I visited, it is obvious the JCC has a way to go to be embedded in NGO and IDF operations.

ASSESSMENT OF THE WCK INCIDENT

On 1 April, during the WCK aid convoy, it appears that there was a significant break down in situational awareness due to a number of factors – primarily the presence of armed gunmen associated with the WCK aid convoy and a failure within the IDF to fully disseminate and/or read the detailed movement plan approved for the convoy.

The CLA stated that having armed guards on humanitarian aid convoys that are fully coordinated with the IDF is unusual and, in this case, if requested by WCK, would have been denied. Acknowledging the significant focus that WCK and Solace Global placed on not carrying weapons and WCK's previous experience contracting local security, it may never be possible to determine how the locally-contracted security for this aid convoy ended up having armed individuals involved. Further, noting the view held by Head FFAM and some IDF members, with the information available, I cannot rule out that WCK inadvertently contracted security for the aid convoy with an entity that had links to Hamas.

The failure to fully disseminate and/or fully read the IDF Operations Order and associated detailed movement and coordination Annex within Southern Command appears to have also significantly contributed to the breakdown of situational awareness and confusion within Southern Command when the first gunman was identified. It appears that those who had full knowledge of the coordination details viewed what was happening through a different lens to those at the Brigade level who, as detailed in the FFAM investigation, were unaware of the full details and certain that the 'white pick-ups' were Hamas vehicles. Further compounding the breakdown in situational awareness on 1 April was the lack of real-time communications between CLA and the WCK 'on ground' aid workers. Had this been available, it is likely the confusion could have been quickly averted and the pre-conditions that led to the strikes occurring being corrected.

While the presence of armed gunmen with the WCK aid convoy did contribute to the breakdown of situational awareness, ultimately, that is why professional and disciplined militaries, such as the IDF, have multiple controls in place to mitigate the associated risks. In this incident, it appears that the IDF controls failed, leading to errors in decision making and a misidentification, likely compounded by a level of confirmation bias. As a result, it is likely that a failure to comply with the intent of senior command direction and a misidentification led to one WCK aid worker being killed in the first strike; and that a violation of IDF Standard Operating Procedures and RoE led to the deaths of the remaining six WCK aid workers and Solace Global personnel in the subsequent strikes. The specific violation cited by the IDF was that the Brigade Attack Cell did not carry out a new identification process in relation to the second and third WCK vehicle strikes.

ASSESSMENT OF ISRAEL'S RESPONSE SO FAR

It is my assessment that Israel's acceptance of accountability for the 1 April WCK incident, and investigation, reporting and responding has, to this point, been timely, appropriate and, with some exceptions, sufficient.

The IDF has taken full accountability for the 1 April WCK incident. On 3 April, a day prior to the FFAM debrief, the CGS made a public statement taking responsibility, apologising for the strike and stating that it should not have occurred. This position was reiterated as a part of the FFAM debrief and associated public statements. Similarly, Government officials have also acknowledged responsibility for the strike, albeit it appears to be to a lesser degree.

Given the significance of the WCK strike on 1 April and the timeframe given to Head FFAM by CGS, and noting he had not spoken with WCK or Solace Global, I assess his initial investigation identified most of the major issues leading up to and during the strike. This detail allowed the CGS and MAG the opportunity to make informed decisions on how to proceed.

As a result of the FFAM investigation the CGS acted quickly to hold those responsible to account. His actions in dismissing two officers from their positions and reprimanding three others was timely and appears appropriate to the situation. Of note, while the outcomes may be similar to what could occur in Australia, these command measures were taken very quickly. The command power in Australia can also support quick decisions regarding removal from post in operational situations, but the natural justice requirements around notices to show cause and minimum times for responses likely mean that the ADF could not have imposed equivalent reprimands as quickly as the IDF CGS was able to.

Any further actions against individuals will now depend on a MAG decision as to whether or not to proceed further. This decision should be made one-to-two months after receiving the completed FFAM report. Should she decide to refer the matter to the Military Police Criminal Investigation Division (CID) for investigation with a view to criminal prosecution in the Courts Martial, this could take another 12 months to complete. Of note, as is also the case for Australia, if any conduct is referred to the CID for investigation, the Military Police must collect all the necessary evidence afresh and in compliance with criminal law procedures; they cannot use the FFAM report as evidence. Consequently, such a time period is not dissimilar to what would be likely in other Western militaries in a like situation. In my meeting with the MAG, I discussed the importance of providing a level of public transparency in her future decisions, not only 'what' she may decide in regard to each individual, but also an appropriate discussion as to 'why'. Given the challenges that would attend an attempt by an external party such as me to comment on the appropriateness of such MAG decisions without full access to the evidence and privileged legal advice that stand behind decisions of this type, a public statement by the MAG as to the 'what' and the 'why' would be an important indicator of Israel's commitment to ongoing transparency in relation to this incident.

With regard to timeliness, the FFAM investigation took less than 72 hours. It would be difficult for Western militaries, including the Australian Defence Force to be any quicker. It appears to have identified the critical issues in order for the CGS and MAG to consider further action; however, this initial report lacked detail in some areas by not having engaged with WCK or Solace Global. The MAG has now addressed this by directing Head FFAM to engage with WCK prior to completing the report.

The IDF has been broadly transparent in this process and the associated reporting; however, the Head FFAM debrief with national representatives appears to have created a level of confusion and speculation due to the constrained time and quality of the edited UAV video and subsequent questions from those present. After discussions with a number of attendees at the debrief, it appears that most of the known information was presented, and much of what couldn't be answered was not in the purview of Head FFAM to respond – in particular future decisions of CGS and the MAG.

When assessing the sufficiency of the IDF reporting, as mentioned previously, it is notable that the IDF public statement released on 5 April lacked specific detail included in the closed debrief that could have helped reduce confusion and speculation. This information was only made public during interviews or through other sources in the following days and, as such, it would have been beneficial for it to have been made available much earlier. Finally, regarding operational aspects and the failure of controls within the IDF Southern Command, while I was briefed that internal procedures had been improved, except for the establishment of the JCC, other specific improvements were not provided in detail and therefore, difficult to assess.

FUTURE ACTIONS

On 29 April 2024, WCK resumed operations in Gaza. At the time, they stated that there was no confirmation that changes had been made, but the risk of people starving outweighed the risks to WCK aid workers. While WCK operations have recommenced, they are yet to redeploy international workers back into Gaza. Solace Global have reported that coordination with CLA is better since the 1 April WCK incident; however, this and any improved coordination within the IDF is yet to be tested.

When discussing the 1 April WCK incident with WCK and Solace Global, it was emphasised to me the importance of an apology being made to the families of those who had been killed. While acknowledgement of Israel's responsibility for the deaths has been made at many levels within the Israel Government and a public apology has been given by the IDF CGS and IDF spokespersons, the families do not consider this to be a proper apology at the appropriate level. Nor do they feel reassured that lessons have truly been taken from the incident and measures been put in place to reduce the chance of it happening again.

Noting the significance of the 1 April WCK incident that led to the deaths of seven WCK and Solace Global personnel, I would assess that an apology is an important consideration for the Government of Israel to make. As a part of such an apology, there would also be an opportunity for Israel to offer compensation to the families of those who were killed.

Operationally, there are always areas of improvement available. Of importance to coordinating NGO operations on the ground in Gaza, the continued focus on improved deconfliction measures that are trusted by the NGOs should remain at the forefront. In addition to the changes in NGO/CLA/Southern Command (both internal and external) processes and the approval mechanism for strikes around humanitarian convoys that have already been implemented, other measures should include seeking assured real-time communications between NGOs and CLA; better identification measures such as day and night visual markers; and the availability of NGO GPS positional data to the IDF. I acknowledge that these would require a high degree of trust and cooperation between NGOs and the IDF.

There is also benefit to be gained from using the lessons identified from this conflict and more broadly developing improved protocols between militaries and NGOs that could be used in future conflicts of this nature.

RECOMMENDATIONS

In response to the IDF strike on WCK aid workers in Gaza on 1 April 2024, I recommend:

1. the Australian Government requests regular updates on the progress of the MAG's consideration of the FFAM investigation into the 1 April 2024 incident and any subsequent actions;
2. the Government advocates for public disclosure of the MAG's decision and reasoning;
3. I brief the family of Ms Frankcom, and other relevant parties on my assessments, at an appropriate level;
4. the Government continues to advocate, as appropriate, for any requests Ms Frankcom's family has of the Government of Israel;
5. in conjunction with like-mindeds and the UN Senior Humanitarian and Reconstruction Coordinator of Gaza, the Government maintains calls on Israel to evolve and improve coordination – both internal within the IDF and external with NGOs – and deconfliction measures in Gaza, particularly in relation to the assurance of delivery of humanitarian aid to Palestinian civilians;
6. the Government continues to emphasise to Israel the importance of adherence to the Law of Armed Conflict; and transparency when acting on and investigating any incidents or breaches; and
7. an unclassified version of this Report is made public.

CONCLUSION

Based on the information available to me, it is my assessment that the IDF strike on the WCK aid workers was not knowingly or deliberately directed against the WCK.

It is likely that (1) the presence of armed locally-contracted security on the WCK aid convoy, not notified or approved in the detailed WCK-CLA coordination process, which gave the appearance of the presence of Hamas; (2) the failure within the IDF to ensure proper dissemination of the coordination details of the WCK movements associated with the convoy to all levels within Southern Command; compounded by (3) the inability for real-time communications between the WCK personnel in Gaza and CLA, all led to a significant break down in situational awareness, predominantly in the lower levels of the IDF's command and control decision making.

While this loss in situational awareness was significant, ultimately, it appears that the failure of IDF 'controls', notably the apparent failure to comply with the intent of senior command direction not to continue with strikes around humanitarian aid convoys on the night of 1 April 2024, errors in decision making and a mistaken identification of a weapon being placed in a WCK vehicle, have likely led to the death of one WCK aid worker; and a violation of IDF Standard Operating Procedures and Rules of Engagement appears to have led to the deaths of the remaining six WCK and Global Solace members.

In response, the IDF acted in a timely manner to conduct an initial investigation, make those findings public and hold those responsible to account. However, while timely in their response, the brevity of the public statement made after the FFAM Investigation lacked the full detail surrounding the incident and led to confusion and speculation over what had actually happened and why. The transparency and detailed discussions available to me during my visit have helped clarify this confusion.

In response to the incident, the IDF has taken some measures to better coordinate NGO activities in Gaza and to increase the oversight of strikes around humanitarian aid activities. However, more can be done to prioritise the safety of aid workers operating in Gaza. I note that while better internal and external coordination and decision making procedures will reduce the risk of mistakes, the complexity of the environment in Gaza for IDF operations and concurrent NGO activities means there can be no guarantee a similar incident won't occur in the future.

Consideration of future action against those already being held to account will depend on the Military Advocate General's consideration of the FFAM completed report. A decision on further action was foreshadowed by her to take about one-to-two months. Should she then decide to refer the matter to the Military Police Criminal Investigation Division for investigation with a view to criminal prosecution in the Courts Martial, this may take another 12 months to complete.

Finally, noting the significance of the 1 April WCK incident that led to the deaths of Ms Zomi Frankcom and six of her WCK and Solace Global colleagues, it is important to all the families that an appropriate apology be provided to them by the Government of Israel.

Air Chief Marshal Mark Binskin AC

Special Adviser

2 August 2024