

THE 2014 GAZA CONFLICT

7 JULY – 26 AUGUST 2014

FACTUAL AND LEGAL ASPECTS

May 2015



STATE OF ISRAEL



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Israel and Gaza Strip

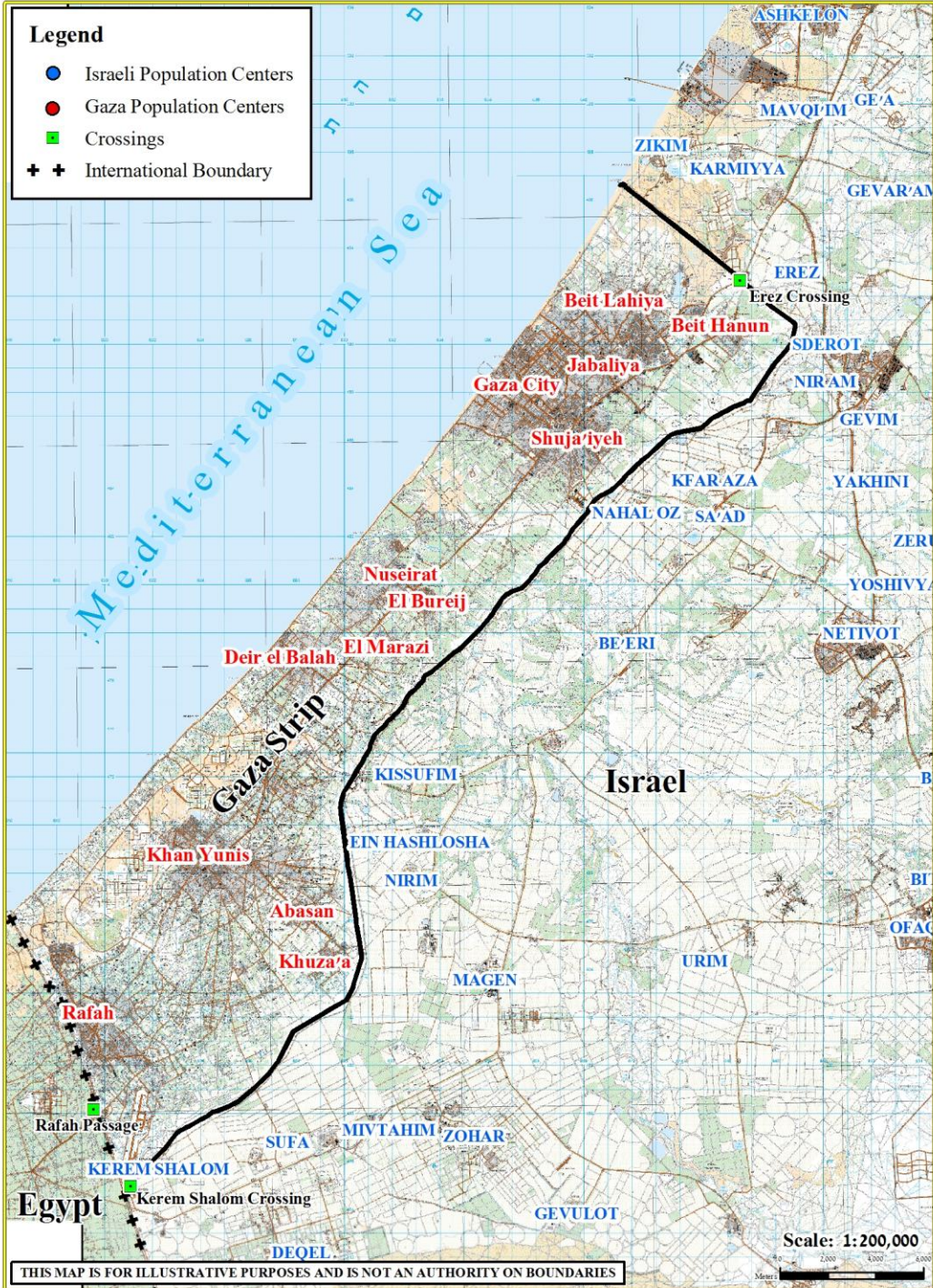




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THE 2014 GAZA CONFLICT: FACTUAL AND LEGAL ASPECTS

Executive Summary

May 2015

Introduction (Chapter I)

1. The following Report — The 2014 Gaza Conflict (7 July – 26 August 2014): Factual and Legal Aspects — presents detailed factual and legal information regarding the intensive hostilities that took place from July 7 to August 26, 2014 between the State of Israel and Hamas and other terrorist organisations operating in the Gaza Strip (“the 2014 Gaza Conflict”, also known as Operation “Protective Edge”).
2. This Report is intended to provide information so that others may reach an informed understanding of the reasons for the 2014 Gaza Conflict and the actions of the parties thereto. Although the Report does not purport to provide complete coverage of the 2014 Gaza Conflict, it constitutes an unprecedented effort to present factual and legal aspects concerning the Conflict.
3. The Report includes an assessment of the events leading up to the 2014 Gaza Conflict, describing the overall objectives for Israel and the rationale behind Israel’s strategic decisions. The Report presents Israel’s legal positions concerning the conduct of hostilities, examples of military targets and individuals targeted by the Israel Defense Forces (“IDF”) during the Conflict, statistics concerning the amount of humanitarian aid that entered the Gaza Strip with Israel’s facilitation, details regarding the costs borne by Israel’s civilian population as a result of the 2014 Gaza Conflict, and information revealing the unlawful activities of Hamas and other terrorist organisations. The Report also discusses Israel’s justice system, and its procedures for examining and investigating possible violations of the Law of Armed Conflict.
4. The 2014 Gaza Conflict was another peak of hostilities in the ongoing armed conflict that has been waged against Israel for well over a decade by terrorist organisations operating from the Gaza Strip. The nature of the hostilities between the IDF and these terrorist organisations in the summer of 2014 was characterised by the following two interrelated elements.



5. First, the conflict occurred primarily in an urban environment. Hamas combat manuals and training materials recovered by IDF forces in the Gaza Strip demonstrate that Hamas's strategy was to deliberately draw the hostilities into the urban terrain, and to use built-up areas and the presence of the civilian population for tactical advantage and political gain. This strategy was obvious during the 2014 Gaza Conflict in view of the sheer scope of military activity that Hamas and other terrorist organisations embedded within the urban environment.

6. Second, the conflict involved non-state actors who defy international law, including the Law of Armed Conflict applicable to the hostilities within the Gaza Strip. More than just drawing the fighting into the urban terrain, these organisations often unlawfully intertwined their military operations with the civilian environment. IDF airborne and ground forces faced militants disguised as civilians and as IDF soldiers, residential homes converted to military command centres, multi-story buildings used as pre-prepared surveillance positions, mosque minarets employed as sniping posts, schools utilized as weapons caches, civilian structures extensively booby-trapped, and tunnel openings and infrastructure hidden in and under civilian areas.

7. This exploitation of civilian surroundings — which often constituted war crimes and crimes against humanity — posed significant operational, legal and ethical challenges for the IDF. The IDF is committed to conducting all its operations in accordance with international law and makes efforts, including beyond its legal obligations, to mitigate the risk of harm to civilians when doing so. Despite the IDF's commitment to the rule of law and efforts to protect civilians, an unfortunate result of the complex realities described above is that during the 2014 Gaza Conflict numerous civilians were caught in the hostilities.

8. It is against this background that the harm to civilians and civilian objects in the Gaza Strip that resulted from the 2014 Gaza Conflict should be assessed. In all armed conflicts, the application of military force almost inevitably causes residual and incidental harm; this is even more so when the hostilities occur in the urban environment. The 2014 Gaza Conflict in particular involved high-intensity, protracted hostilities, including close-quarter combat and intensive urban warfare, exacerbating the risk of harm to civilians within the combat arena. Such harm was also the direct result of rockets and mortars that were launched towards Israel from within the Gaza Strip but that fell short. Furthermore, much of what may have appeared to external parties to be indiscriminate harm to civilians or purely civilian objects was in fact legitimate attacks against military targets that merely appear civilian but were actually part of the military operations of these terrorist organisations. Many allegedly "civilian" casualties were in fact militants. Harm to the civilian population also occurred as the result of unfortunate — yet lawful — incidental effects of legitimate military action in the vicinity of civilians and their surroundings, and as a result of the inescapable



constraint of commanders not being infallible, intelligence not being perfect and technological systems sometimes failing.

9. As stated repeatedly by the IDF and the Government of Israel's highest representatives, Israel did not intend, and deeply regrets, the harm caused to the Palestinian civilian population and surroundings during the 2014 Gaza Conflict.

Background to the 2014 Gaza Conflict (Chapter II)

10. Since its inception, Hamas has launched thousands of attacks designed to kill, injure and terrorise the Israeli population, destroy Israeli property, and thwart any attempt to reach a negotiated settlement between Israel and the Palestinians. Israel's citizens have suffered numerous suicide bombings by Hamas in the heart of Israeli cities, rocket and mortar fire on Israeli cities, and raids on Israeli soil through underground cross-border tunnels. Since 2000, terrorist attacks by Hamas and other terrorist organisations have killed at least 1,265 Israelis, wounded thousands more, and terrorised millions. In recent years, Hamas has expanded its terrorist arsenal with increasingly deadly weapons and a vast network of cross-border assault tunnels with concealed exits in Israeli territory.

11. Hamas has forced the Government of Israel to remain constantly vigilant in assessing and responding to the ongoing threat against Israeli civilians. In parallel to its violent campaign against Israel, Hamas has increased its efforts to overthrow the Palestinian Authority, expand its influence in the West Bank, and promote its jihadist ideology in the West Bank and the Gaza Strip, while also operating from other countries in the Middle East and Europe.

12. Hamas's ongoing armed conflict against Israel has been augmented by the actions of additional terrorist organisations operating from the Gaza Strip, including the Palestinian Islamic Jihad and the Al-Aqsa Martyrs Brigade. Despite variations in intensity, the armed conflict between these terrorist organisations and Israel has been ongoing for well over a decade, including since Israel's unilateral withdrawal of all military and civilian presence from the Gaza Strip in 2005. Israel, for its part, has taken steps to prevent escalation of the conflict by, *inter alia*, engaging with the international community and the United Nations ("U.N."), and imposing various security measures intended to stem the organisations' military capabilities. At times when the attacks on Israel reached a level of intensity such that diplomatic efforts or limited military action was insufficient to adequately protect Israel's civilian population, Israel undertook limited military operations in the Gaza Strip.



13. The threat to Israel reached such a critical point in the summer of 2014 when Hamas and other terrorist organisations intensified their rocket and mortar launches towards Israel, firing on an almost daily basis. In June and July 2014, Israel uncovered additional cross-border assault tunnels constructed by Hamas for the purpose of perpetrating terrorist attacks on Israeli soil.

14. These events coincided with Hamas's efforts to destabilise the West Bank by means of incitement to violence and increased terrorist activity, including the kidnapping and murder of three Israeli teenagers. While the IDF sought to locate the kidnapped teenagers and to reduce Hamas's military capabilities in the West Bank, Israel attempted to avoid escalation in the Gaza Strip.

15. In response to Hamas's attacks from the Gaza Strip, Israel engaged in extensive diplomatic efforts and also sought international intervention in an effort to prevent escalation, while limiting its military actions to pinpoint strikes in the Gaza Strip. However, the Hamas-led attacks from the Gaza Strip only intensified.

16. When Hamas and other terrorist organisations fired over 60 rockets at Israel from the Gaza Strip on July 7, the Government of Israel was left with no choice but to launch an aerial campaign, termed Operation "Protective Edge," which focused on reducing the ongoing and imminent threat of attacks, in order to protect its civilian population.

17. Under these circumstances, Israel was justified under international law in resorting to a broader military operation against Hamas and other terrorist organisations in the Gaza Strip, as part of the ongoing armed conflict being waged by these organisations.

Objectives and Phases of the 2014 Gaza Conflict (Chapter III)

18. The Operation began as a measured aerial campaign to disrupt and disable the launching of projectiles into Israel, during which Israel continued to make efforts to de-escalate the conflict, including by accepting numerous ceasefire initiatives put forward by international actors.

19. Despite these efforts, Hamas continued to intensify its attacks, rejected all ceasefire initiatives and, on July 17, conducted a major infiltration into Israeli territory through a cross-border assault tunnel. As a result, and in order to locate and neutralise additional cross-border assault tunnels, the Government of Israel ordered a limited ground operation into the Gaza Strip. This ground operation was confined to the outskirts of the Gaza Strip, where the multiple openings to each cross-border tunnel were embedded within the urban civilian environment.



20. The subterranean element of the 2014 Gaza Conflict was one of the conflict's defining features. Beginning in 2001, Hamas and other terrorist organisations in the Gaza Strip began to dig tunnels for purposes of direct military activity against Israel. Over the years, these tunnels became longer, deeper, more stable, more secure and more daring in purpose. Hamas has used these tunnels for cross-border attacks, smuggling, and as combat tunnels for internal military activity underneath the populated urban areas of the Gaza Strip. Cross-border assault tunnels are particularly conducive to kidnappings, a strategic goal of the terrorist organisations, as the tunnels allow a substantial number of armed militants to penetrate Israel at once, carry out attacks on IDF forces and Israeli civilians, and smuggle kidnapped Israelis — dead or alive — back into the Gaza Strip.

21. On August 5, having located and destroyed 32 cross-border assault tunnels (14 that actually penetrated Israeli territory, mostly with openings in the territory of Israeli residential communities, and 18 that were unfinished but approached the border with Israel), IDF ground troops withdrew from the Gaza Strip. They did so despite continued rocket and mortar attacks on Israeli civilians and the absence of a ceasefire. From August 5 through the ceasefire on August 26, Israel continued targeted airstrikes against military objectives in order to defend its civilian population, while at the same time attempting to reach a ceasefire.

22. Hamas and other terrorist organisations prolonged the hostilities, and repeatedly rejected ceasefires or accepted and then violated them. Had Hamas accepted the initial Egyptian-brokered ceasefire that the Arab League endorsed and Israel accepted on July 15 — which featured the same terms as the ceasefire offer to which Hamas ultimately adhered to on August 26 — approximately 90 percent of the casualties incurred during the 2014 Gaza Conflict could have been avoided.

23. In total, six civilians in Israel (five Israeli citizens and one Thai national) and 67 IDF soldiers lost their lives during the 2014 Gaza Conflict. In the Gaza Strip, approximately 2,125 Palestinians were killed. An analysis by IDF experts found that as of April 2015, at least 44 percent of the total Palestinian fatalities have been positively identified as Hamas militants or militants of other terrorist organisations in the Gaza Strip; this figure may ultimately prove to be even higher.

Violations of the Law of Armed Conflict, War Crimes, and Crimes Against Humanity Committed by Hamas and Other Terrorist Organisations During the 2014 Gaza Conflict (Chapter IV)

24. Throughout the 2014 Gaza Conflict, Hamas and other terrorist organisations in the Gaza Strip intentionally and systematically used strategies designed to maximise harm to civilian life and



property, both in Israel and in the Gaza Strip. These strategies gave rise to violations of the Law of Armed Conflict, war crimes and crimes against humanity.

25. Hamas and other terrorist organisations launched more than 4,500 rockets and mortars during the 2014 Gaza Conflict, approximately 4,000 of which were deliberately directed at Israel's civilian population. The intent to target Israel's civilians was clearly shown both by the sheer volume of projectiles aimed at civilian areas, as well as by official Hamas statements made during the 2014 Gaza Conflict, such as, "our rockets are aimed at the Hebrews, the murderers, the Israelis, the criminals...our missiles accurately target the homes of the Israelis and the Zionists." The rockets and mortars caused deaths and injuries, terrorised millions of Israeli civilians and caused damage to civilian property. The range of these rockets covered more than 70% of Israel's civilian population, bringing the hostilities to the entire country. Those in residential communities near the Gaza Strip had a mere 15 seconds or less to seek shelter. By deliberately targeting Israeli cities and the civilian population, as part of a widespread and systematic policy, Hamas and other terrorist organisations in the Gaza Strip violated customary norms of the Law of Armed Conflict and committed war crimes and crimes against humanity.

26. As noted above, Hamas and other terrorist organisations complemented their rocket and mortar barrage with ground infiltrations into Israel through cross-border assault tunnels designed to facilitate attacks and kidnapping of Israeli civilians and soldiers. On four different occasions in July, armed Hamas militants, in some cases disguised as IDF soldiers, emerged from cross-border assault tunnels into Israeli territory, leaving nearby residents in constant fear of sudden attack. A Hamas-run newspaper boasted that the tunnels "*terrorised millions of Israelis.*"

27. Hamas and other terrorist organisations embedded their military assets and operations within densely populated areas and civilian structures in the Gaza Strip as a matter of military strategy. By conducting hostilities from within civilian surroundings, Hamas and other terrorist organisations frequently turned civilian structures into military objectives, exposing them and surrounding civilians to risk of harm, in a manner which violated the Law of Armed Conflict and often constituted war crimes and crimes against humanity. Hamas and other terrorist organisations used U.N. facilities, schools, hospitals, mosques, residential buildings, and their immediate vicinity, for military purposes: as rocket-launch sites, weapons storage facilities, command-and-control centres, and covers for tunnel entrances. For example, some 550 rockets and mortars were identified by IDF systems as being launched from within or near "sensitive sites" such as schools, U.N. facilities, hospitals, and places of worship.



28. Hamas and other terrorist organisations actively ensured civilian presence in the areas from which they operated by directing civilians either to remain in, or to return to, sites or areas of impending IDF activity. These organisations directed civilian movement for the purpose of shielding both by verbal means — by waging an official campaign pressuring civilians to disregard Israel’s warnings prior to impending IDF military activity — and by explicit physical coercion. By directing the movement of the civilian population and of individual civilians for the purpose of shielding military operations from attack, Hamas and other terrorist organisations committed war crimes.

29. The militants of Hamas and other terrorist organisations frequently disguised themselves as civilians when carrying out attacks, a tactic that often directly violated customary international law. This tactic also gravely endangered the Gaza Strip’s civilian population by impeding the IDF’s ability to identify militants. Furthermore, this tactic also made it possible for Hamas to depict militant fatalities as civilian, which accorded with Hamas’s directions to intentionally inflate purported civilian casualties by characterizing militants killed as “innocent” civilians for propaganda purposes. Indeed, the Hamas-run Ministry of Interior in the Gaza Strip published guidelines for “social media activists,” encouraging the inflation of civilian fatality figures: *“Anyone killed or martyred is to be called a civilian from the Gaza Strip or Palestine, before we talk about his status in jihad or his military rank. Don’t forget to always add ‘innocent civilian’ or ‘innocent citizen’ in your description of those killed in Israeli attacks on the Gaza Strip.”*

30. Hamas and other terrorist organisations also rigged civilian property and residential areas with booby traps and improvised explosive devices. This was a systematic and deliberate Hamas combat strategy, as confirmed by a Hamas combat manual on explosives which was recovered by IDF forces operating in the Gaza Strip. This tactic, too, substantially increased damage to civilian life and property and, in some cases, violated norms of customary international law.

The Threat to Israel’s Civilian Population and Israel’s Civil Defence Measures (Chapter V)

31. Between 2001 and the outset of the 2014 Gaza Conflict, rocket and mortar attacks from the Gaza Strip killed dozens of Israeli civilians and injured thousands. During the same time period, Hamas and other terrorist organisations fired more than 15,200 rockets and mortars at Israel, more than 11,600 of which came after Israel’s full withdrawal from the Gaza Strip in 2005. During the 2014 Gaza Conflict, six civilians in Israel were killed directly by mortars and rockets from the Gaza Strip, and over 1,600 civilians were harmed. Seventeen percent of those evacuated to hospitals during the 2014 Gaza Conflict were children under the age of 18. The 2014 Gaza Conflict and the



period immediately preceding it represented the most intense period of rocket and mortar fire against Israel's civilian population in the nation's history.

32. Given the severity of the threat to Israel's civilian population posed by rocket and mortar fire from the Gaza Strip, Israel invested substantial resources over the years to develop civil defence systems, such as early warning systems and sirens, public safety guidance, policies and legislation for reinforcing homes and public infrastructure, the Iron Dome missile defence system and other measures in order to help defend its civilian population. These civil defence measures have helped to reduce the harm that otherwise would have resulted from these armed attacks.

33. Nevertheless, these measures are not infallible, and do not provide complete protection from rocket and mortar fire and other attacks. Rocket and mortar attacks from the Gaza Strip have caused extensive civilian harm, including deaths, injuries, and damage to public infrastructure, private property, and economic activity in Israel. The growing number of high-trajectory weapons arsenals situated in the Gaza Strip poses, therefore, a very real and increasingly dangerous, multi-layered threat to Israel's national security and Israel's ability to protect the civilian population. Furthermore, Hamas and other terrorist organisations are continuously developing methods and means to evade Israel's civil defence systems in order to carry out their terrorist attacks. This requires ongoing investment, improvement and development of the defence systems in order to protect Israel's civilian population, as well as military action in order to reduce the threat of attack.

34. Apart from the deaths and injuries caused to Israel's civilian population as a result of rocket and mortar attacks, both the short- and long-term psychological effects of the rocket and mortar attacks from the last 14 years have been devastating, and there are strong indications that the effects from the 2014 Gaza Conflict are severe. According to the Ministry of Education, as of February 2015, 38% of children in the immediate area surrounding the Gaza Strip (known as "Otef Aza") were diagnosed as suffering from full or partial symptoms of post-traumatic stress disorder. The 2014 Gaza Conflict was particularly difficult for elderly and disabled persons, who struggled to seek shelter in the short time periods available to take cover from incoming rocket and mortar attacks.

35. In addition to the barrage of rocket and mortar attacks, assaults through cross-border tunnels have terrorised residents of the Israeli communities near the border with the Gaza Strip. While most residents of the Otef Aza area remained in their home communities, an estimated 10,000 Israeli civilians evacuated their homes during the 2014 Gaza Conflict.

36. The intense rocket and mortar attacks against Israel's civilian population also caused significant damage to Israel's economy. Many businesses, shops and restaurants around the country,



especially in the south, closed, as persons remained home with their families near shelters. The Bank of Israel estimates that the loss of GDP deriving from the 2014 Gaza Conflict is around 3.5 billion NIS. In addition, the tourism sector suffered extensive damages and past experience indicates that the effects of the 2014 Gaza Conflict on the tourism sector could last for years. The Israel Tax Authority estimates that the total compensation for direct damages for civilians will reach approximately 150 million NIS (over 39 million USD) and approximately 1.7 billion NIS (approximately 443 million USD) for indirect damages.

IDF Conduct of Operations During the 2014 Gaza Conflict (Chapter VI)

37. As noted above, the vast majority of the combat during the 2014 Gaza Conflict took place in an urban environment. Carrying out operations in urban terrain is particularly challenging for two main reasons: (1) the existence of dense physical infrastructure and (2) the dynamic presence of the civilian population. Military missions in environments where these two factors are present inevitably involve significant risk of harm to the civilian population and the physical infrastructure.

38. These challenges — relevant to any context of urban warfare — were even greater for the IDF during the 2014 Gaza Conflict. Hamas and other terrorist organisations in the Gaza Strip are acutely aware of the operational and strategic advantages offered by dense physical infrastructure and the presence of a civilian population. The longer Hamas has controlled the Gaza Strip, the more it has invested in embedding its military operations within and under the urban terrain. Hamas training and doctrinal materials found by IDF forces during the Operation attest to Hamas's intentional efforts to draw the IDF into combat in densely populated areas and to actively use the civilian population in order to obstruct the IDF's military operations.

39. On top of the distinct dangers inherent in urban warfare is the natural fog of war. Inevitable uncertainties exist in combat. Despite the best efforts of military forces, there is always the possibility that as events unfold in real-time forces may not be fully aware of the operational picture, technology may suffer malfunctions, and the employment of force may result in unintended consequences.

40. When combat is confined to an urban environment — and particularly, in a densely populated area — harm to civilians and civilian structures may be unavoidable. Yet no matter the context in which Israel conducts its military operations, the IDF respects its obligations under international law, including the Law of Armed Conflict. During the 2014 Gaza Conflict the IDF



specifically directed that all its operations accord with the Law of Armed Conflict, including the fundamental rules of distinction, proportionality, and precautions.

41. Israel has developed strict procedures and oversight for compliance with the Law of Armed Conflict. Thus, IDF forces receive training in the Law of Armed Conflict, and IDF directives and procedures are enacted on the basis of legal advice. The IDF's primary operational order for the Operation required compliance with the Law of Armed Conflict at all times, including an explicit statement that all attacks shall be "*strictly limited to military objectives... with strict adherence to the rules of distinction and proportionality.*" The IDF regularly develops, reviews, and revises its operational directives as part of an ongoing lessons-learned process that helps prepare for future potential conflicts, in conjunction with ongoing legal advice. Moreover, the IDF's highly regulated targeting process — which requires input from intelligence sources, operational planners and other relevant professionals before an attack may be approved — is designed to ensure compliance with the Law of Armed Conflict. During this process, IDF lawyers review and provide a binding opinion for all pre-planned attacks regarding the legality of an attack, including any stipulations for its execution.

42. IDF lawyers are available at different command levels to provide advice before, during and after operations. These lawyers are not subordinate to the commanders they advise, but rather are subject only to the Military Advocate General ("MAG"), who himself has an independent status outside the military hierarchy in relation to all legal issues. The legal opinions provided by IDF lawyers are binding on the commanders to whom they are provided, including those regarding the legality of individual attacks. The MAG Corps' legal advice is subject to civilian oversight — the MAG is guided on professional matters by Israel's Attorney General, who may also review the MAG's decisions and policies. The MAG's legal advice is also subject to scrutiny by the civilian judicial system, and many military activities and policies have been brought for consideration before Israel's Supreme Court for review.

43. Despite the serious challenges posed by the conduct of Hamas and other terrorist organisations in the Gaza Strip, and despite the complex nature of urban warfare, the IDF remains committed to the Law of Armed Conflict. Accordingly, in the complex circumstances of the 2014 Gaza Conflict, Israel undertook to attack objects only when there was reasonable certainty — based on reliable intelligence — that they constituted military objectives in accordance with the Law of Armed Conflict. Likewise, the IDF directed attacks on individuals only when there was reasonable certainty that such persons were members of organised armed groups or civilians directly participating in hostilities.



44. Unfortunately, some of these attacks resulted in damage to residential buildings, schools, mosques, and even medical and U.N. facilities. Damage occurred mostly when these sites became lawful military targets due to Hamas's and other terrorist organisation's use of such sites for military purposes; when Hamas and other militants located themselves during the hostilities within such structures; or as unintended incidental harm resulting from IDF attacks against these organisations' military operations in the immediate vicinity of such sites. Israel *did not* intentionally target civilians or civilian objects.

45. In this complex environment, the IDF took various steps to mitigate the risk of harm to civilian objects and the civilian population, including measures not required by the Law of Armed Conflict. Precautionary measures included a multi-layered system of effective advance warnings, sophisticated verification procedures, and the careful choice of means and methods of warfare (including munitions, timing and angle of attack).

46. The IDF's attacks were mandated to accord with the principle of proportionality, which prohibits attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. When assessing the expected collateral damage in this context, the adherence of civilians to prior general or specific warnings provided by the IDF was not presumed, and any lack of adherence to such warnings did not on its own alter the proportionality assessment required.

47. The IDF also aborted or suspended attacks whenever it became apparent — for example, due to real-time intelligence — that the target was not a military objective, that the target was subject to special protection, or that the expected damage to civilians and civilian property was excessive in relation to the anticipated military advantage. Attacks were also aborted or suspended for reasons of policy, even when they were expected to be within the parameters of the rule of proportionality.

48. In addition, Israel requires that any means of warfare used during its military operations accord with Israel's obligations under international law. Thus, for example, high-explosive artillery was required by IDF directives to be used in accordance with the rules of the Law of Armed Conflict. Beyond these requirements, the IDF puts great efforts and resources into minimising the possibility of harm to civilians that results from the use of such weaponry — for instance, by imposing stringent limitations on the use of certain weapons (including high-explosive artillery) in populated areas.

49. Despite the IDF's efforts to mitigate the risk of incidental harm, civilian casualties and damage to civilian objects regrettably resulted from Israeli attacks against military objectives.



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Without ignoring the unfortunate nature of such consequences, they must be assessed in light of the Law of Armed Conflict and the reality of hostilities in a complex and rapidly changing urban terrain against an adversary that deliberately seeks to cause harm to its own civilian population. For example, the principle of proportionality requires consideration of a commander's assessment of the expected collateral damage from an attack. The test is based on the expected collateral damage a "reasonable commander" would have assessed at the time of attack — and not the damage that in actuality occurred as a result of the attack — and whether there is a significant imbalance between that expected damage and the anticipated military advantage.

50. During the 2014 Gaza Conflict, the IDF also captured individuals on the battlefield, such as those suspected of being involved in terror activity. The vast majority of such persons were released shortly after capture. All captured persons were detained pursuant to — and in conditions often exceeding — Israel's legal obligations under Israeli law and the Law of Armed Conflict.

51. Before, during and after the 2014 Gaza Conflict, the IDF made extensive efforts to facilitate humanitarian aid to the civilian population in the Gaza Strip. The IDF did so even though Israel's obligation towards the Gaza Strip under the Law of Armed Conflict was limited generally to allowing — or at most facilitating — humanitarian aid to persons in need where hostilities are taking place. These efforts included providing medical treatment to wounded persons (including militants); facilitating the transfer of food, clothing, medicine and additional supplies into the Gaza Strip; facilitating the repair of power lines, water supply, and other infrastructure (oftentimes, while under fire); coordinating evacuations of wounded and sick persons within the Gaza Strip and also into Israel, the West Bank, and overseas; and unilaterally suspending military operations on multiple occasions to facilitate humanitarian assistance.

52. Hamas and other terrorist organisations frequently impeded Israel's humanitarian efforts by attacking crossings and restricting the movement of persons and supplies. In addition, Hamas consistently rejected proposed ceasefires, violated coordinated ceasefires, and exploited unilateral IDF ceasefires to attack IDF forces and Israeli civilians. In the wake of the 2014 Gaza Conflict, Hamas has continued to undermine humanitarian relief, *inter alia* by diverting for military purposes goods and supplies that were intended for the civilian population, and imposing taxes on donated materials, and has already invested considerable resources in rebuilding its military capabilities.



Israel's Investigation of Alleged Violations of the Law of Armed Conflict (Chapter VII)

53. Israel is aware of allegations that certain IDF actions during the 2014 Gaza Conflict violated international law. Israel reviews complaints and other information it receives suggesting IDF misconduct, regardless of the source, and is committed to investigating fully any credible accusation or reasonable suspicion of a serious violation of the Law of Armed Conflict.

54. Israel maintains a multi-layered investigations system, with numerous checks and balances to ensure impartiality before investigative, administrative, and judicial authorities. Israel's military justice system, and its procedures for investigating possible violations of the Law of Armed Conflict, are continually reviewed and updated. The three main components of the military justice system are the Military Advocate General's Corps ("MAG Corps"), the Military Police Criminal Investigation Division ("MPCID"), and the independent Military Courts. Moreover, Israel's military justice system is subject to civilian oversight by the Attorney General of Israel, and subject to judicial review by Israel's Supreme Court, which has adopted doctrines of standing and justiciability that readily allow for petitions regarding IDF activity.

55. In 2010, the Government of Israel created an independent public commission of inquiry headed by a former Justice of Israel's Supreme Court and that included distinguished international legal observers (the "Turkel Commission"). Following a comprehensive review, the Turkel Commission concluded in 2013 that Israel's mechanisms for examining and investigating complaints and claims of violations of the Law of Armed Conflict generally comply with its obligations under international law, and made a number of recommendations to improve these mechanisms further. The Turkel Commission also found that Israel's system compares favourably with the investigative mechanisms of other democratic countries, including Australia, Canada, Germany, the Netherlands, the United Kingdom and the United States.

56. At the beginning of the 2014 Gaza Conflict, in accordance with one of the recommendations of the Turkel Commission, the IDF Chief of the General Staff ordered the establishment of a permanent new General Staff Mechanism for Fact-Finding Assessment ("FFA Mechanism") to examine exceptional incidents that allegedly occurred during the ongoing conflict. The examination conducted by the FFA Mechanism is intended to provide the MAG with as much information as possible so that the MAG may decide whether to open a criminal investigation. The FFA Mechanism relies on high-ranking IDF reserve and active-duty officers with military operational, legal, and investigative experience outside the chain of command of the operational activity under examination. These examinations may also help to inform the IDF's "lessons-learned" process, so



that steps may be considered in an effort to minimise the risk of such incidents recurring in the future. In some cases, where credible allegations *prima facie* give rise to a reasonable suspicion of criminal wrongdoing, the MAG may open a criminal investigation without requiring an FFA examination.

57. When investigating alleged misconduct that occurred during intensive hostilities, it is important that actions be assessed in accordance with the governing legal framework — the Law of Armed Conflict. Violations of the Law of Armed Conflict cannot be inferred solely from the outcome of a particular incident — even when the outcome may involve considerable harm to civilians or civilian objects. Rather, the legality of particular conduct must be assessed from the perspective of a “reasonable commander,” based on the information that was known (or should have been known) to the commander at the time of the decision at issue, and avoid the bias of hindsight or the convenience of effects-based condemnations.

58. Any investigation of alleged violations of the Law of Armed Conflict inevitably is complicated by numerous challenges, especially in the context of an intensive conflict with a non-state actor like Hamas that embeds its military operations in urban terrain. These (often overlapping) challenges include, for example, the scene of the alleged violation under hostile control; the lack of eyewitnesses to certain military activity, such as an aerial bombing or covert ground operations; the complex, dynamic nature of certain large-scale military operations; the inadvertent destruction of evidence during intense fighting; the failure of potential witnesses to come forward, because they fear retribution for cooperating with the IDF’s investigation or for reporting on terrorist activity; and the concealing of evidence or planting of false evidence by Hamas and other terrorist organisations.

59. As a result of these various challenges, investigations can take significant time and even where an indication of criminal misconduct exists, they can still fail to obtain evidence sufficient to warrant prosecution. Notwithstanding these numerous practical challenges involved in examining and investigating alleged violations of the Law of Armed Conflict in the context of the 2014 Gaza Conflict, Israel is committed to investigating alleged misconduct and holding wrongdoers accountable, through criminal prosecutions or disciplinary action, as may be appropriate in each case, and it takes extensive steps to ensure that investigations are as effective as possible.

60. As of the date of this Report, the IDF is reviewing hundreds of complaints from different sources (such as the U.N., NGO’s and private Palestinian complainants) regarding its conduct of operations during the 2014 Gaza Conflict. The MAG periodically publishes his decisions regarding these examinations. As of March 22, 2015, the following information has been released: The IDF’s new FFA Mechanism has examined, and continues to examine, allegations relating to over 120



incidents that took place during the 2014 Gaza Conflict. The MAG thus far has opened 13 criminal investigations without a prior examination by the FFA Mechanism, based on reasonable suspicion of criminal misconduct. One of these investigations has led to indictments filed against three IDF soldiers. In addition, the MAG has ordered criminal investigations into six incidents that were examined by the FFA Mechanism. The MAG has closed 17 cases after reviewing the findings and material collected by the FFA Mechanism and concluding that the IDF's actions did not raise reasonable grounds for suspicion of criminal behaviour. The Report provides detailed information about several cases closed by the MAG. The examination and investigation process is ongoing, and the MAG is committed to providing further updates on decisions concerning specific incidents.

Conclusion

61. The following Report, “The 2014 Gaza Conflict (July 7 – August 26, 2014): Factual and Legal Aspects” provides detailed information about the conflict, including illustrative examples and previously unreleased information that was declassified for the purposes of this Report. Israel intends to continue to publish updated information regarding the 2014 Gaza Conflict as additional information is obtained or released and as the examination and investigation process continues. Updated and additional information on the factual and legal aspects of the 2014 Gaza Conflict can be found at www.protectiveedge.gov.il.



I. Introduction

1. This Report discusses factual and legal issues relating to the intensive hostilities between the State of Israel and Hamas and other terrorist organisations in the Gaza Strip during July and August of 2014 (also known as “Operation Protective Edge” or the “2014 Gaza Conflict”).

2. The 2014 Gaza Conflict occurred as part of a wider armed conflict being waged against Israel for well over a decade by terrorist organisations in the Gaza Strip. This ongoing conflict is being led by Hamas, an internationally recognised terrorist organisation in control of the Gaza Strip since 2007, together with other terrorist organisations such as the Palestinian Islamic Jihad. Hamas’s fundamental Islamic ideology rejects Israel’s right to exist and openly seeks its destruction.

3. This conflict has varied in nature — involving suicide bombings within Israeli population centers, cross-border attacks above ground and through subterranean tunnels leading into Israel from the Gaza Strip, rockets and mortars launched against Israel’s civilian population, seaborne infiltrations, and attempts to carry out airborne attacks. At times when the attacks on Israel reached a level of intensity such that diplomatic efforts or limited military action was insufficient to adequately protect Israel’s civilian population, Israel undertook limited military operations in the Gaza Strip.

4. The spring and summer of 2014 saw another rise in the intensity of attacks, leading to the necessity of a broader military operation. Israel responded to months of increasing rocket and mortar fire directed at its civilian population — attacks which constitute clear war crimes and crimes against humanity — with limited military strikes, and made numerous efforts to de-escalate the mounting tension. The barrage from the Gaza Strip escalated steeply, however, when Hamas and other terrorist organisations fired approximately 300 rockets and mortars into Israel between June 12 and July 7. The constant wail of sirens calling civilians to shelters, the extensive physical damage (to homes, infrastructure and agriculture), the economic harm, the psychological trauma, all took an enormous toll on Israel’s population. Israel’s civil defence measures are not infallible, and even with Israel’s civil defence measures, such as Iron Dome, which attempts to intercept rockets and mortars, Hamas’s attacks caused death and injuries and had a disastrous effect on daily life in Israel.

5. On July 5, the Israel Defense Forces (the “IDF”) conducted an aerial strike against a cross-border assault tunnel near the Kerem Shalom crossing, in order to prevent a planned infiltration by Hamas into Israel through the tunnel. On July 7, 2014, after more than 60 rockets and mortars were



fired into Israel from the Gaza Strip on a single day, the Government of Israel was left with no choice but to initiate a concerted aerial operation against Hamas and other terrorist organisations in order adequately to defend Israel's civilian population.

6. Israel's initial aerial operation in the Gaza Strip continued for ten days. In an effort to curb escalation, Israel engaged in diplomatic efforts and sought international intervention. However, these efforts did not bear fruit. Hamas rejected numerous ceasefire initiatives put forward by different states and international organisations, including an Egyptian-brokered ceasefire initiative put forward on July 15 and endorsed by the Arab League — an initiative which Israel accepted. Instead, Hamas and other terrorist organisations chose to intensify their attacks against Israel, by air, land, and sea.

7. On July 17, Hamas militants conducted a major infiltration through a cross-border assault tunnel into Israeli territory, emerging in the vicinity of residential communities in southern Israel. This infiltration and Hamas's rejection of the Egyptian-brokered ceasefire two days earlier made it clear that IDF airstrikes had not neutralised the threat posed by Hamas and other terrorist organisations, and underscored the serious danger of further ground incursions into Israel through the vast cross-border assault tunnel network.

8. As a result, on July 17 the Government of Israel ordered the IDF to commence a ground operation in order to neutralise the cross-border assault tunnel infrastructure. IDF ground forces subsequently operated in the outskirts of the Gaza Strip for three weeks, searching for and neutralising tunnels whose entrances were inside densely populated urban areas. During this time, IDF forces faced intensive attacks from Hamas and other terrorist organisations, and engaged in intensive close-quarter combat. Despite continued rocket and mortar attacks into Israel, after locating and neutralising 32 cross-border assault tunnels, IDF ground forces withdrew from the Gaza Strip on August 5.

9. In response to the sustained rocket and mortar attacks, the IDF continued to carry out an aerial campaign until a ceasefire was reached on August 26, 51 days after the 2014 Gaza Conflict broke out. By the end of the 2014 Gaza Conflict, six civilians in Israel had been killed and 67 IDF soldiers lost their lives. Of the approximately 2,125 Palestinian fatalities in the Gaza Strip, 936 (44%) have been positively identified so far by the IDF as militants of Hamas or other terrorist organisations in the Gaza Strip, while 761 (36%) have been assessed or reasonably assumed to be civilians. The status of the remaining fatalities is still unknown, though past experience suggests that new information demonstrating that some of these individuals were involved in combat against Israel



will likely surface. Had Hamas accepted the Egyptian-brokered ceasefire initiative towards the beginning of the hostilities — a ceasefire that offered the same terms to which Hamas ultimately assented on August 26 — approximately 90 percent of the casualties during the 2014 Gaza Conflict could have been avoided.

A. The Nature of the 2014 Gaza Conflict

10. The 2014 Gaza Conflict can be characterized by two interrelated elements.

11. First, the hostilities occurred primarily in an urban environment. This was the direct result of the strategy of Hamas and the other terrorist organisations to draw the IDF into the Gaza Strip's urban terrain; Hamas combat manuals and training materials recovered by IDF forces in the Gaza Strip describe the advantages of using built-up areas for military operations, the benefits of fighting from within civilian surroundings, and the difficulties the presence of the civilian population create for the IDF. This strategy is also obvious in view of the sheer scope of military activity that the terrorist organisations embedded within an urban environment. IDF airborne and ground forces faced residential homes containing military command centers, multi-story buildings housing pre-prepared surveillance positions, mosque minarets used as sniping posts, schools holding weapons caches, civilian structures extensively booby-trapped, and tunnel openings and infrastructure hidden in and under civilian areas. Indeed, these organisations not only used existing civilian infrastructure for their military purposes, but even built new structures that appeared to be civilian in nature, such as structures that appeared to be residential homes but were in fact used only to conceal tunnel openings. Seven years after wresting complete control over the Gaza Strip, Hamas had purposefully and heavily embedded most of its military operations within civilian surroundings. In doing so, Hamas disregarded the safety of the civilian population in the Gaza Strip, deliberately endangering civilians so that their presence could be exploited for political and military gain.

12. Second, the 2014 Gaza Conflict involved non-state actors who consistently contravened international law, both in their attacks on Israel's civilian population and in their method of conducting hostilities within the Gaza Strip. More so, Hamas and other terrorist organisations operating in the Gaza Strip seek to exploit Israel's commitment to that law for their own advantage. The conduct of hostilities in urban terrain is amplified by the deliberate blurring of military activities with the characteristics of the civilian surroundings — Hamas disguised militants as civilians, concealed military equipment in civilian structures, and used the presence and movement of the



civilian population in the Gaza Strip to shield military operations and exploit any incidental resulting harm in violation of international law.

13. An unfortunate result of these interrelated elements that characterized the 2014 Gaza Conflict — a non-state actor that flouts international law and deliberately draws hostilities to an urban environment — is that numerous civilians were caught in the hostilities.

B. Israel's Conduct During the 2014 Gaza Conflict

14. When conducting military activities, the IDF strives to mitigate the risk of harm to civilians, and, as the military of a democratic state committed to the rule of law, seeks to ensure that all of its operations accord with Israeli and international law, including the Law of Armed Conflict. The IDF maintains binding policies, procedures and directives that implement Israel's legal obligations. The IDF also ensures that its forces receive adequate training on these obligations. In addition, the IDF is subject to civilian oversight, by both the executive and judicial branches.

15. During the 2014 Gaza Conflict, the IDF sought to achieve the goals set by the Government of Israel while adhering to the Law of Armed Conflict — and in certain respects, the IDF went beyond its legal obligations. Israel's goals were limited: first, to protect Israel's population by disrupting and degrading the adversary's military capabilities, including rocket and mortar launching capabilities; and second, once Hamas started conducting cross-border attacks through its assault tunnels, to protect Israel's civilian population by locating and neutralising the cross-border tunnel infrastructure.

16. Achievement of these goals became increasingly vital for Israel as the 2014 Gaza Conflict wore on. Thousands of rockets and mortars were fired from the Gaza Strip into southern Israel, with almost no time for warning residents to seek shelter. Cross-border assault tunnels opened within or in close proximity to residential communities in southern Israel, where Israelis lived in fear that at any moment armed militants could emerge from concealed passages beneath them. Longer-range rockets had the capacity to reach almost all of Israel's surface area, bringing the conflict to all of Israel's main population centers. Thus, the 2014 Gaza Conflict was one that affected all of Israel's civilians, and not just the IDF forces operating against the terrorist organisations.

17. While seeking to achieve the goals set for it, the IDF endeavoured to reduce the impact of its activities on the civilian population in the Gaza Strip. The IDF employed a multi-faceted system of advance warnings, employed additional precautions such as selecting the timing, angle and means of



attacks, and unilaterally declared humanitarian pauses in its operations. The IDF also strove to implement operational “lessons learned,” even while the hostilities were ongoing. Furthermore, Israel endeavoured to assist the movement of international organisations within the Gaza Strip and facilitate the provision of humanitarian aid into the Gaza Strip. In addition, Israel initiated and accepted various ceasefires initiatives.

18. Nevertheless, the 2014 Gaza Conflict resulted in the death and injury of many civilians. Despite Israel’s substantial efforts to avoid civilian casualties and mitigate the risk of harm to the civilian surroundings, many Palestinian civilians in the Gaza Strip were killed or injured, and private property, as well as some of Gaza Strip’s public infrastructure, was damaged.

19. The battle of Shuja’iyeh on July 19-20 is an example of the challenges Israel confronted during the 2014 Gaza Conflict. Several cross-border assault tunnel entrances originated from the heart of this densely urban and strategically important Hamas stronghold, from which hundreds of rockets were fired at Israel. For three full days before IDF ground forces entered the neighbourhood, the IDF warned the local population to evacuate in an effort to minimise their exposure to the risk of harm, and then delayed the ground operation for another 24 hours in order to allow for further evacuation. The IDF took these steps despite the serious operational cost due to the loss of the element of surprise. When IDF forces entered the neighbourhood and established positions in order to undertake the lengthy and complicated task of dismantling the cross-border assault tunnels, they encountered intensive fire from militants, who had taken advantage of the IDF’s warnings to strengthen their positions, prepared ambushes and explosives, and directed the presence and movement of the civilian population for tactical advantage. Indeed, a Hamas training manual recovered in Shuja’iyeh urged militants to take advantage of the presence of civilians and civilian buildings to impede IDF actions. The intensive hostilities that ensued, and the military actions that the IDF carried out in order to protect its forces and achieve its objectives, had a significant effect on the neighbourhood.

C. Assessing the Consequences of the 2014 Gaza Conflict

20. Any assessment of the consequences of the 2014 Gaza Conflict on the civilian population must take the following into account. First, as in all military conflicts, military force almost inevitably causes residual and incidental harm. Attacks on militants operating within a residential neighbourhood, for example, will necessarily involve damage to the buildings in which the militants embed themselves. This damage may, unfortunately, be compounded by the fact that commanders



are not infallible, especially in a high-intensity combat situation, and that intelligence may not be perfect and technological systems may fail.

21. Second, the 2014 Gaza Conflict lasted 51 days, and involved high-intensity combat, including a three-week ground operation that was characterised by close-quarter combat and intensive urban warfare. The scope, intensity and length of the 2014 Gaza Conflict substantially added to the risk of harm to the civilian population. In this context, Israel's precautionary efforts were generally effective — indeed, the overwhelming majority of Israel's over 6,000 airstrikes during the 2014 Gaza Conflict resulted in no civilian fatalities. The IDF's efforts to limit harm during the presence of ground forces within the Gaza Strip were also generally effective: a significant portion of the damage to physical structures was limited to those areas where forces were in static positions for protracted periods — both in order to operate on and neutralise the cross-border tunnel infrastructure as well as to provide security for these forces — and as a result came under constant fire and were engaged in high-intensity combat. Other areas, where ground forces were not present for such purposes, did not suffer the same scope of damage.

22. Third, Palestinian civilians and property in the Gaza Strip were directly harmed by the hundreds of rockets and mortars that fell short after being launched by Hamas and other terrorist organisations towards Israeli civilians as well as towards IDF forces operating in the Gaza Strip.

23. Fourth, although any civilian casualties are unfortunate, the extent of civilian casualties has been substantially overstated in certain reports about the 2014 Gaza Conflict. Many of the purported civilian casualties claimed were not, in fact, civilians. In addition to deliberately blurring the distinction between their militants and civilians, Hamas leaders encouraged the characterization of every fatality as an “innocent civilian,” as part of a deliberate strategy to inflate the number of Palestinian civilian casualties. The IDF's careful analysis of fatalities indicates so far that at least 44% of the Palestinians killed in the 2014 Gaza Conflict were actually militants. Likewise, what may appear to have been damage to ostensibly civilian structures in the Gaza Strip was in fact often the result of IDF strikes on legitimate military targets inside structures appearing civilian in nature, or the result of the detonation of booby-trapped structures or improvised explosive devices placed within civilian areas.

24. Sadly, in a complex, crowded, and constantly changing urban battlefield — and with Hamas and other terrorist organisations actively seeking to blend in with civilians to conceal their military activities — even extensive precautions could not entirely ensure the safety of all civilians and



civilian property. Civilians located in the vicinity of legitimate military targets may be unintentionally harmed, and civilian objects may suffer incidental damage as a result of attacks on military objectives or militants in their vicinity, or even as a result of the destruction of assault tunnel infrastructure running under civilian areas. Israel sees each civilian death or injury as deeply unfortunate. As stated repeatedly by the IDF and the Government of Israel's highest representatives, Israel regrets the harm suffered by civilians in the Gaza Strip. Had it been possible to protect the civilian population of Israel from Hamas's attacks without civilian casualties in the Gaza Strip, Israel would have done so.

25. In the context of hostilities, incidents of harm to civilians and civilian objects do not automatically indicate misconduct by the IDF. Neither the aggregate number of casualties occurring in the 2014 Gaza Conflict, nor the overall scope of damage, can alone determine the legality of military action. Nevertheless, where specific claims of misconduct by IDF forces have arisen, Israel has launched formal examinations and investigations of these claims. Further, the IDF is constantly implementing "lessons learned" in an attempt to reduce the risk of harm to civilians in the future.

D. Purpose of the Report

26. This Report — a joint effort by numerous governmental agencies — aims to provide information regarding the factual and legal aspects of the 2014 Gaza Conflict, so that others may reach an informed understanding of the reasons for the Conflict and the actions of the parties thereto.

27. This Report does not purport to provide complete coverage of the 2014 Gaza Conflict. Information about Israel's military operations cannot always be provided for reasons of national security. Exposing detailed information that relates to certain targets may compromise classified information or confidential sources, which would negatively impact future efforts against the terrorist activities of Hamas and the other terrorist organisations. Moreover, providing information that pertains to classified operational directives may inform Israel's adversaries of its methods and means of operation. Indeed, the 2014 Gaza Conflict did not mark the end of Hamas's armed conflict against Israel; since the ceasefire, sporadic rocket and mortar fire has again been launched towards Israel, and Hamas has incited attacks against Israel's civilian population and undertaken significant efforts to rebuild its military capabilities and adapt its strategy in preparation for future hostilities.

28. Furthermore, some information is provisional insofar as it relates to incidents still under examination or investigation. Some information may be revised or updated, either on the basis of the



examination and investigation process or on the basis of other information that has not yet been published. Information about examinations and investigations is published regularly by the Military Advocate General when the relevant decisions are reached. Lastly, considering the widespread, intensive and complex nature of the military operations during the 2014 Gaza Conflict, it is sometimes impossible to determine exactly what happened during specific incidents. This is an inevitable consequence of hostilities, compounded by Hamas's efforts to conceal the extent of its use of the civilian environment for military operations.

29. Nevertheless, this Report constitutes an unprecedented effort to present the factual and legal aspects concerning the 2014 Gaza Conflict. The Report includes many of Israel's legal positions concerning the conduct of hostilities, details regarding the costs borne by Israel's civilian population as a result of the Conflict, examples of military targets and persons targeted by the IDF during the Conflict, statistics concerning the amount of humanitarian aid that entered the Gaza Strip with Israel's facilitation, and information revealing the unlawful activities of Hamas and other terrorist organisations. In this regard, it is far more comprehensive than reports issued by other organisations, including international organisations and non-governmental organisations, and is also unparalleled in its access to information from Israel, including information regarding the conduct of the terrorist organisations and the reasoning and details behind Israel's conduct.

30. Israel intends to continue to publish updated information regarding the 2014 Gaza Conflict as additional information is obtained or released and as the examination and investigation process continues. Updated and additional information on the factual and legal aspects of the 2014 Gaza Conflict can be found at www.protectiveedge.gov.il.



II. The Background to the 2014 Gaza Conflict

31. Since its inception in 1988, Hamas — a radical Islamist organisation dedicated to the destruction of the State of Israel and the creation of an Islamic state — has launched thousands of attacks designed to kill, harm and terrorise the Israeli people, destroy Israeli property, and thwart any attempt at a negotiated settlement between Israel and the Palestinians. These Hamas terrorist attacks have been augmented by the acts of other terrorist organisations operating out of the Gaza Strip, such as Palestinian Islamic Jihad, Al-Aqsa Martyrs Brigades, and other *jihadi* organisations.¹ Israel's citizens have suffered numerous suicide bombings by Hamas in the heart of Israeli cities, rocket and mortar fire on Israeli cities, towns and residential communities, and raids on Israeli soil through underground cross-border assault tunnels. Since 2000, terrorist attacks by Hamas and other terrorist organisations have killed at least 1,265 Israelis, wounded thousands more, and terrorised millions.² In recent years, Hamas has expanded its terrorist arsenal with increasingly deadly weapons and a vast network of cross-border assault tunnels with exits in Israeli territory. Since 2009, Hamas and other terrorist organisations have fired more than 8,000 rockets as well as mortars into Israel, with increasing range and accuracy, threatening Israel's major cities.³

32. Hamas has forced the Government of Israel to remain constantly vigilant in assessing and responding to the ongoing threat against Israeli citizens. In parallel to its violent campaign against Israel, Hamas has increased its efforts to overthrow the more moderate Palestinian Authority, expand its influence in the West Bank, and promote its *jihadist* ideology in the West Bank and the Gaza Strip, while also operating from other countries in the Middle East and Europe.

33. The threat to Israel again reached a critical point in the summer of 2014 when, starting in June, Hamas and other terrorist organisations intensified their rocket launches towards Israel, firing on an almost daily basis. In June and July 2014, Israeli security services uncovered additional cross-

¹ The Palestinian Islamic Jihad (“PIJ”) is a fundamentalist organisation that developed out of the Islamic Jihad in Egypt, a radical branch of the Muslim Brotherhood, which strives to create an Islamic caliphate through *jihad*. The Al-Aqsa Martyrs Brigades is a coalition of armed cells that formed during the second *intifada* (“uprising”), which began in September 2000, and has maintained ties with Fatah, as well as terrorist organisations such as Hezbollah in Lebanon. For more details on terrorist organisations operating out of the Gaza Strip, see *Terror Data and Trends: Organization Glossary*, Israel Security Agency, available at <http://www.shabak.gov.il/English/EnTerrorData/Organization/Pages/default.aspx>.

² *Victims of Palestinian Violence and Terrorism since September 2000*, Israel Ministry of Foreign Affairs, (Dec. 25 2014), available at <http://www.mfa.gov.il/mfa/foreignpolicy/terrorism/palestinian/pages/victims%20of%20palestinian%20violence%20and%20terrorism%20sinc.aspx>.

³ *Rocket Attacks on Israel from the Gaza Strip*, IDF, available at <http://www.idfblog.com/facts-figures/rocket-attacks-toward-israel/>.



border tunnels constructed by Hamas for the purpose of perpetrating terrorist attacks on Israeli soil.⁴ Moreover, these events coincided with Hamas's efforts to destabilise the West Bank by means of incitement to violence and increased terrorist activity, including the kidnapping and murder of three Israeli teenagers.⁵

34. While the IDF sought to locate the kidnapped teenagers and to reduce Hamas's military capabilities in the West Bank, Israel tried to avoid escalation in the Gaza Strip. In response to Hamas's attacks, Israel engaged in extensive diplomatic efforts and even sought United Nations intervention in an effort to curb escalation, while limiting its military actions to pinpoint strikes in the Gaza Strip. However, the Hamas-led attacks from the Gaza Strip only intensified.

35. When Hamas and other terrorist organisations fired over 60 rockets at Israel from the Gaza Strip on July 7, Israel was left with no choice but to launch a measured aerial campaign called Operation Protective Edge (hereinafter: "Operation Protective Edge," "the Operation," or "the 2014 Gaza Conflict") focused on neutralising the ongoing and imminent threat of attacks, in order to protect its civilian population. No government would have failed to respond to such an unceasing barrage of attacks on its citizens.

A. The Threat Posed by Hamas and Other Terrorist Organisations in the Gaza Strip

36. The threat that Hamas has posed to Israel and to the possibility of reaching a negotiated settlement to the Israeli-Palestinian conflict has been both overt and extreme. Since 1988, the Hamas Charter has called for a single Islamic state between the Mediterranean Sea and the Jordan River, to be established by means of an armed struggle.⁶ The Charter proclaims that "[i]nitiatives, and so-called peaceful solutions and international conferences, are in contradiction to the principles of the Islamic Resistance Movement."⁷ Indeed, the Hamas Charter not only denies Israel's right to exist, but also espouses a militantly racist worldview, stating that "[t]here is no war going on anywhere, without [the Jews'] finger in it."⁸ The Charter, moreover, casts Western nations as neo-imperialists

⁴ Saud Abu Ramadan, *Five Hamas members die as Gaza tunnel collapses*, Haaretz (June 19, 2014), available at <http://www.haaretz.com/news/diplomacy-defense/1.599950>; *IDF Strikes Hamas Tunnel while Terrorists Plan Attack*, IDF (July 7, 2014), available at <http://www.idfblog.com/blog/2014/07/07/idf-strikes-hamas-tunnel-terrorists-plan-attack/>.

⁵ See *infra* note 78.

⁶ See The Covenant of the Islamic Resistance Movement, August 18, 1988 (the "Hamas Charter"), arts. 6, 11, available at http://avalon.law.yale.edu/20th_century/hamas.asp.

⁷ *Id.* art. 13.

⁸ *Id.* art. 22.



and crusaders, to be treated as the enemy.⁹ Although some Hamas members have recently attempted to downplay Hamas's founding document, the organisation's leaders continue to embrace its hatred of Israel, Jews, and the West.¹⁰

37. Since its establishment, Hamas has consistently incited the murder of Israeli civilians. Hamas wages this incitement campaign through inflammatory speeches by spokesmen and religious leaders, on official Hamas television channels, via social media, and in schools and summer camps, among other places.¹¹ In the summer of 2014, Hamas repeatedly called for the murder of Israeli civilians — for example, a Hamas spokesperson declared that “Anyone who has a knife, a club, a weapon, or a car, yet does not use it to run over a Jew or a settler, and does not use it to kill dozens of Zionists, does not belong to Palestine.”¹²

38. Throughout its history and to the present, Hamas has practiced what it preaches. From its very inception, Hamas has orchestrated terrorist attacks against Israel. Beginning in the 1990s, suicide bombings became its hallmark. Hamas has carried out more than 90 such bombings,

⁹ *Id.* arts. 22, 25, 35.

¹⁰ For example, in a September 2014 speech, Mahmoud al-Zahar, a senior Hamas official, spouted the following virulently anti-Semitic rhetoric: “The only reason Hitler killed them [the Jews] was because they had betrayed their country.” In a speech later that month before Hamas-affiliated security forces, al-Zahar called the Jews “the historical center of evil hated by the entire world.” See also *Following the Fatah-Hamas reconciliation, Hamas may maneuver between adherence to its fundamental positions and its desire to benefit from the agreement which may serve its internal political and media purposes*, The Meir Amit Intelligence and Terrorism Information Center (“ITIC”) ¶ 3 (Apr. 27, 2014), available at http://www.terrorism-info.org.il/Data/articles/Art_20641/E_063_14_1011823983.pdf; Yiftah Curiel, *The Hamas charter is alive and kicking – and Israeli civilians are dying*, The Guardian (Nov. 20, 2014), available at <http://www.theguardian.com/commentisfree/2014/nov/20/hamas-charter-israeli-civilians-dying-ahmed-yousef>; *Jews are a Cancerous Lump*, Official Palestinian Authority TV (Apr. 20, 2007), available at Palestinian Media Watch, <http://palwatch.org/main.aspx?fi=760>.

¹¹ For example, on July 10, 2014, Hamas-run Al-Aqsa TV broadcasted a music video with the lyrics “Attack! Carry out bombings! Shock them! Annihilate all the Zionists!...Rock Israel's security, and expose it to flames and volcanoes...banish all the Zionists!” set to images of militants carrying rockets through tunnels, militants displaying rockets in preparation for launch, rockets being fired, and Israeli civilians running for shelter. See *Video Clip: Hamas TV Song in Hebrew: Annihilate all the Zionists, Exterminate the Cockroaches' Nest*, Middle East Media Research Institute (“MEMRI”), available at <http://www.memri.org/clip/en/0/0/0/0/0/4341.htm>. For additional videos of Hamas militants inciting violence and threatening the Israeli public during the 2014 Gaza Conflict, as well as generally, see Palestinian Media Watch at http://www.palwatch.org/main.aspx?fi=157&doc_id=12029; http://www.palwatch.org/main.aspx?fi=157&doc_id=11970; http://www.palwatch.org/main.aspx?fi=157&doc_id=809. See also *This year, as in years past, summer camps in the Gaza Strip were exploited by Hamas for radical Islamic indoctrination and semi-military training*, ITIC (July 7, 2014), available at <http://www.terrorism-info.org.il/en/article/20664>.

¹² *Hamas Spokesman Fawzi Barhoum Calls to Carry Out Terror Attacks in Israel and the West Bank* (Hamas-run Al Aqsa TV report), MEMRI (July 30, 2014), available at http://www.memri.org/clip_transcript/en/4408.htm.



targeting malls, cafés, discotheques, buses, and other civilian locales in a concerted effort to kill as many civilians as possible and to paralyze civilian life throughout Israel.¹³

39. Hamas has collaborated with and received support from other terrorist organisations. In the Gaza Strip, for example, Hamas often coordinates its military activity with other radical *jihadi* organisations, including the Palestinian Islamic Jihad, an organisation whose leaders have joined Gazan delegations in ceasefire negotiations in Cairo. Hamas also maintains close ties with Hezbollah and state sponsors of terrorism such as Iran and Syria. In this vein, Hezbollah's Secretary General has remarked that Iran and Syria, along with his organisation in Lebanon, have over many decades provided the "Palestinian resistance" with money, weapons, and other forms of "unconditional support."¹⁴ Indeed, in the past year, Hamas and Iran have strengthened their relationship. To that end, a Hamas delegation recently arrived in Iran for talks.¹⁵ Moreover, an Iranian official boasted that many of Hamas's weapons originate in Iran,¹⁶ while another official affirmed that Iranian technology has enabled Hamas to manufacture and launch rockets of its own.¹⁷ Until the outbreak of the recent civil war in Syria, Hamas maintained close connections with the Assad regime there.¹⁸ Furthermore, Hamas has forged links in Sinai with Ansar Beit al-Maqdis ("ABM"), which recently proclaimed itself a branch of ISIS¹⁹ and whose members Egyptian prosecutors have charged with terrorism.²⁰

¹³ See *Spotlight on Hamas – Ideology and Involvement in Terror*, Israel Security Agency, available at <http://www.shabak.gov.il/ENGLISH/ENTERRORDATA/REVIEWS/Pages/Hamas%E2%80%93sum.aspx> (noting that Hamas has been responsible for 59% of suicide attacks carried out against Israeli targets). See also *Timeline: The evolution of Hamas*, CNN (Dec. 30, 2008), available at <http://edition.cnn.com/2008/WORLD/meast/12/30/hamas.profile/>.

¹⁴ *Iranian support for the Palestinian terrorist organizations*, ITIC, at 8-9 (Jan. 20 2013), available at http://www.terrorism-info.org.il/Data/articles/Art_20459/E_267_12_1055464410.pdf.

¹⁵ Harriet Sherwood, *Hamas and Iran rebuild ties three years after falling out over Syria*, *The Guardian* (Jan. 9, 2014), available at <http://www.theguardian.com/world/2014/jan/09/hamas-iran-rebuild-ties-falling-out-syria>.

¹⁶ See *Iranian Reactions To The War In Gaza: Israel's Destruction Imminent; Israel Attacks Due To Arab World's Silence, We Have Supplied Gaza Resistance With Drones And Fajr 5 Missiles*, MEMRI (July 20, 2014), available at <http://www.memri.org/report/en/0/0/0/0/0/8083.htm>.

¹⁷ See *Iran supplies Palestinians with rocket technology: Ex-IRGC commander*, *Alalam* (Aug. 5, 2014), available at <http://en.alalam.ir/news/1620231>.

¹⁸ See J. M. Sharp, Cong. Research Serv., RL33487, *Syria: Issues for the 112th Congress and Background on U.S. Sanctions*, at 12 (2011), available at <http://fpc.state.gov/documents/organization/162748.pdf>.

¹⁹ Ahmed Eleiba, *Its War in Sinai*, *Al-Ahram* (Oct. 30, 2014), available at

<http://weekly.ahram.org.eg/News/7616/17/It%E2%80%99s-war-in-Sinai.aspx>.

²⁰ El-Sayed Gamal El-Din, *200 suspected Ansar Beit Al-Maqdis members charged with terror offences*, *Al-Ahram*, (May 10, 2014), available at <http://english.ahram.org.eg/NewsContent/1/64/100903/Egypt/Politics/-/suspected-Ansar-Beit-AlMaqdis-members-charged-wit.aspx>.



40. Hamas's actions, including its attacks on Israeli and Palestinian civilians, have led the United States,²¹ the European Union,²² Canada,²³ Australia,²⁴ New Zealand²⁵ and Japan²⁶ to officially designate Hamas or its military wing as a terrorist organisation. In addition, Jordan is one of many countries to officially ban Hamas operations.²⁷

41. Hamas's implacable radicalism underscores the dangers the organisation poses. Much like ISIS and al-Qaeda, Hamas seeks to impose an extreme version of Sharia law. In the Gaza Strip, Hamas has oppressed women,²⁸ tried to ban public displays of Christian symbols and religious practices,²⁹ and called for the execution of homosexuals.³⁰ Hamas has also harassed journalists (including during the 2014 Gaza Conflict),³¹ persecuted political opponents (including through

²¹ United States Department of State, List of Foreign Terrorist Organizations, available at <http://www.state.gov/j/ct/rls/other/des/123085.htm>.

²² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2012/765/CFSP, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013D0395&from=EN>.

²³ See Government of Canada, Department of Public Safety Canada, Currently Listed Terrorist Entities, available at <http://www.publicsafety.gc.ca/cnt/ntnl-scrnt/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-eng.aspx>.

²⁴ See Australian Government, Australian National Security, Listed Terrorist organizations, Hamas's Izz al-Din al-Qassam Brigades, available at <http://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/HamassIzzal-Dinal-QassamBrigades.aspx>.

²⁵ See New Zealand Police, Designated terrorist entities, available at <http://www.police.govt.nz/service/counterterrorism/designated-terrorists.html>.

²⁶ The designation was made in accordance with Japan's *Foreign Exchange and Foreign Trade Act* (Act No. 228 of December 1, 1949; Final revision: Act No. 102 of October 21, 2005), available at

<http://www.mofa.go.jp/announce/announce/2002/7/0705.html> and <http://www.mofa.go.jp/announce/press/2003/9/0930.html>.

²⁷ See, e.g., David Hirst, *Jordan curbs Hamas*, *The Guardian* (Nov. 22, 1999), available at <http://www.theguardian.com/world/1999/nov/22/israel>.

²⁸ See United States Department of State, *2013 Human Rights Report: Israel and the Occupied Territories* at 80-81, available at <http://www.state.gov/documents/organization/220568.pdf>; see also Diaa Hadid, *Hamas tries to detain woman walking with man*, *The Guardian* (July 8, 2009), available at <http://www.theguardian.com/world/feedarticle/8597375?FORM=ZZNR8>.

²⁹ See United States Department of State, *2013 International Religious Freedom Report: Israel and the Occupied Territories* at 32-33, available at <http://www.state.gov/documents/organization/222505.pdf>.

³⁰ *Seven Years Later: Gaza's Reality Under Hamas*, IDF (Jan. 25, 2013), available at <http://www.idfblog.com/hamas/2013/01/25/seven-years-later-gazas-reality-under-hamas/>; Human Rights Watch, *World Report 2011: Israel / Occupied Palestinian Territories*, available at <http://www.hrw.org/world-report-2011/israel-occupied-palestinian-territories>.

³¹ See, e.g. Foreign Press Association Statement 2014 (Aug. 15, 2014), available at <http://www.fpa.org.il/?categoryId=73840>; Joshua Levitt, *Journalist Describes Interrogation at Hamas Headquarters Next to Emergency Room at Gaza's Al Shifa Hospital*, *The Algemeiner* (July 24, 2014), available at <http://www.algemeiner.com/2014/07/24/french-journalist-describes-interrogation-at-hamas-headquarters-next-to-emergency-room-at-gazas-al-shifa-hospital/>; Alan A., *Hamas Expel Russia Today's Harry Fear from Gaza for Tweeting about Hamas Rocket Fire from Civilian Area*, *Harry's Place* (July 30, 2014), available at <http://hurryupharry.org/2014/07/30/hamas-expel-russia-todays-harry-fear-from-gaza-for-tweeting-about-hamas-rocket-fire-from-civilian-area/>.



torture and summary executions),³² and has extensively used Palestinian civilians in the Gaza Strip to shield its military assets and infrastructure from attack.³³

42. Hamas's activities are not confined merely to the Gaza Strip and the West Bank. Hamas plans terrorist attacks out of Turkey and Qatar and has close contacts with the leadership of those countries.³⁴ Moreover, from its headquarters in Qatar, Hamas directs a large-scale network that spans the European continent. As fronts for its operations in Europe, Hamas uses a variety of non-governmental organisations, including the European Campaign to End the Siege on Gaza (ECESG), the Palestinian Return Centre (PRC), and the Council for European-Palestinian Relations (CEPR). These organisations raise millions of Euros for Hamas terrorist activities and serve as platforms to radicalise students and recruit militants. Hamas increasingly views Europe as a crucial arena for its *jihadist* movement.³⁵

B. The Ongoing Armed Conflict with Hamas and Other Terrorist Organisations

43. For decades, Hamas and other terrorist organisations in the Gaza Strip have carried out terrorist attacks against Israel, seeking not only to harm Israeli civilians but also to foil the Israeli-Palestinian peace process. The intensity of these attacks and the exchange of hostilities with Israel that they have provoked confirm the existence of an ongoing armed conflict between Israel and these terrorist organisations. Israel's armed conflict with Hamas and other Palestinian terrorist organisations started in the fall of 2000 with a massive outbreak of terrorism and armed violence, which the Palestinians call the *Al Aqsa Intifada*.³⁶ During this period, Hamas intensified its suicide bombings of civilian targets. The targets included, for example, a nightclub in Tel Aviv, killing 21 in

³² *Gaza: Hamas must end Summary Executions as 'Informers' Face Firing Squad*, Amnesty International (Aug. 22, 2014), available at <http://www.amnesty.org/en/news/hamas-must-end-summary-executions-informers-face-firing-squad-2014-08-22>; *Hamas Kills 21 Suspected Informers*, The Guardian (Aug. 22, 2014), available at <http://www.theguardian.com/world/2014/aug/22/hamas-executes-suspected-informers-gaza>.

³³ See Chapter IV (Hamas's War Crimes).

³⁴ For years, Qatar has openly financed Hamas. See e.g., *Remarks of Under-Secretary for Terrorism and Financial Intelligence David Cohen before the Center for a New American Security on "Confronting New Threats in Terrorist Financing,"* United States Department of the Treasury (March 4, 2014), available at <http://www.treasury.gov/press-center/press-releases/pages/jl2308.aspx>; David Andrew Weinberg, *Qatar and Terror Finance Part I: Negligence*, Foundation for Defence of Democracies (Dec. 10, 2014), available at <http://defenddemocracy.org/media-hit/qatar-and-terror-finance-part-1>; *Return of Palestinian terrorist operatives released in the Gilad Shalit prisoner exchange deal to terrorist activities*, ITIC (June 24, 2014) available at http://www.terrorism-info.org.il/Data/articles/Art_20662/E_100_14_63710732.pdf.

³⁵ See Chaim Levinson, *Defense Minister Ya'alon outlaws NGO representing Hamas in Europe*, Haaretz (Dec. 31, 2013), available at <http://www.haaretz.com/news/diplomacy-defense/.premium-1.566342>.

³⁶ See *Sharm el-Sheikh Fact-Finding Committee-First Statement of the Government of Israel* (Dec. 28, 2000), available at <http://mfa.gov.il/MFA/MFA-Archive/2000/Pages/Sharm%20el-Sheikh%20Fact-Finding%20Committee%20-%20First%20Sta.aspx>.



June 2001, and a Passover Seder (festive holiday feast) at a hotel in Netanya, killing 30 in March 2002.³⁷ Between 2000 and 2008, Hamas suicide bombings killed 457 Israelis and wounded 3,008.³⁸

44. While the armed conflict with Hamas and other terrorist organisations operating out of the Gaza Strip has varied in intensity over the years, between 2001 and the outbreak of the 2014 Gaza Conflict, Hamas and other terrorist organisations fired over 15,200 rockets and mortars at Israel, mostly at civilian objects.³⁹ These rocket attacks have killed and maimed civilians, caused extensive property damage, and inflicted widespread psychological trauma and economic harm. Studies show that large percentages of Israeli citizens in the range of Hamas fire suffer from long-term symptoms of post-traumatic stress disorder and other impairments to personal, social, and occupational functioning, including intense anxiety, flashbacks, feelings of powerlessness, and hypervigilance.⁴⁰

³⁷ *Spotlight on Hamas – Ideology and Involvement in Terror*, Israel Security Agency (Jan. 15, 2009), available at <http://www.shabak.gov.il/SiteCollectionImages/%D7%A1%D7%A7%D7%99%D7%A8%D7%95%D7%AA%20%D7%95%D7%A4%D7%A8%D7%A1%D7%95%D7%9E%D7%99%D7%9D/terror-portal/docs/english/hamas-sum-en.pdf>; *Analysis: Palestinian suicide attacks*, BBC News (Jan. 29, 2007), available at http://news.bbc.co.uk/2/hi/middle_east/3256858.stm; *Terrorist Attack against the Park Hotel in Netanya*, Israel Security Agency (2002), available at <http://www.shabak.gov.il/English/History/Affairs/Pages/theParkHotelinNetanya.aspx>; Jamal Halaby, *Bomber went to West Bank for a better life*, *The Guardian* (June 4, 2001), available at <http://www.theguardian.com/world/2001/jun/04/israel1>.

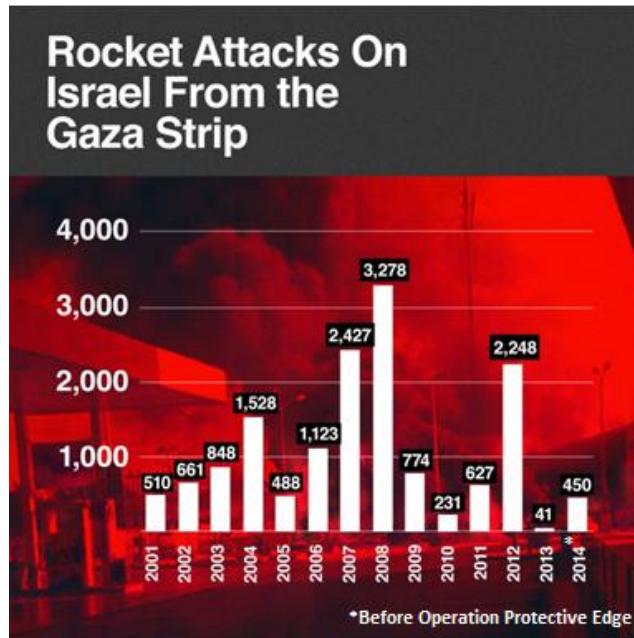
³⁸ *See Review of Hamas: Ideology and Involvement in Terror*, Israel Security Agency (Jan. 15, 2009), available at <http://www.shabak.gov.il/SiteCollectionImages/%D7%A1%D7%A7%D7%99%D7%A8%D7%95%D7%AA%20%D7%95%D7%A4%D7%A8%D7%A1%D7%95%D7%9E%D7%99%D7%9D/hamas-summary-15-1-09.pdf> (in Hebrew).

³⁹ *See Rocket Attacks on Israel from the Gaza Strip*, IDF, *supra* note 3.

⁴⁰ *See* Chapter V (The Threat to Israel's Civilian Population).



State of Israel



Above: Between 2001 and the outbreak of Operation Protective Edge in the summer of 2014, more than 15,200 rockets and mortars, an average of over three attacks every single day, targeted Israel. (Source: IDF)



Above: Children taking shelter in Moshav Gia, a small town in the centre of Israel (photo by Shiri Levi).



45. Despite ongoing attacks and a fervent debate within Israeli society, in August 2005 Israel unilaterally withdrew from the Gaza Strip, completely removing all settlements and military presence there. Since August 2005, Israel has not exercised effective control of the Gaza Strip,⁴¹ and for the past eight years Hamas has acted in the Gaza Strip as an embedded, de-facto authority, controlling most aspects of life in the Gaza Strip. This includes control of the local economy, social services, education, police and other security forces, as well as the Gaza Strip side of land crossings with Israel and Egypt.⁴²

46. Israel's strategic decision to withdraw from the Gaza Strip was made with full recognition of the inherent risk related to the removal of security forces from the Gaza Strip. Yet despite this demonstration of good-faith commitment to peace, Hamas attacks only increased and intensified following the Israeli 2005 withdrawal. In 2006, Hamas and other terrorist organisations fired over 1,100 rockets at Israel from the Gaza Strip, more than double the total from 2005.⁴³ Also in 2006, Hamas terrorists crossed the Gaza Strip's southern border through a cross-border assault tunnel and attacked an army post on Israeli soil, killing two IDF soldiers and abducting a third.⁴⁴

47. Following Hamas's electoral victory in 2006, the international community offered the organisation an opportunity to assume the role of a responsible political actor. The Quartet on the Middle East (United States, Russia, United Nations and the European Union) called for Hamas to

⁴¹ This fact has even been acknowledged by Hamas senior officials themselves. For example, on September, 18 2012, Hamas senior official Mahmoud Al-Zahar declared that "Gaza is free of occupation and contiguity is easier as visitors from all over the world visited the coastal enclave." *Zahhar: Gaza more secure than West Bank*, Ma'an News Agency (Sept. 18, 2012), available at <http://www.maannews.net/eng/Print.aspx?ID=520228>.

⁴² Indeed, Israel would not be able to exercise governmental functions in the Gaza Strip without a massive military campaign to regain such control. Perhaps the clearest indication of Israel's inability to exercise effective control over the Gaza Strip is Hamas's military capacities, including its ongoing military operations against Israel and continuous military buildup. As seen during the 2014 Gaza Conflict, Israel was required to exert significant military efforts in order to reach and neutralise the openings of cross-border tunnels at the outskirts of the Gaza Strip. The conclusion that Israel no longer maintains effective control over the Gaza Strip, and thus cannot be considered as occupying the Gaza Strip, is supported by leading international law scholars. See Adam Roberts, *The Termination of Military Occupants, in Expert Meeting: Occupation and Other Forms of Administration of Foreign Territory* 48, International Committee of the Red Cross (Tristan Ferraro ed., 2012); Eyal Benvenisti, *THE INTERNATIONAL LAW OF OCCUPATION* 211-212 (2d ed. 2012); Yuval Shany, *Faraway, So Close: The Legal Status of Gaza after Israel's Disengagement* 8 Y. B. INT'L. HUMANITARIAN L. 369 (2005). The Israeli High Court of Justice and the Turkel Commission have also concluded that Israel does not exercise effective control and thus does not occupy the Gaza Strip. See *Jaber al-Bassiouni Ahmad et al. v. The Prime Minister and the Minister of Defense*, H CJ 9132/07 ¶ 12 (2008) available at http://elyon1.court.gov.il/Files_ENG/07/320/091/n25/07091320.n25.pdf; The Turkel Commission, Report – Part One, January 2010, p. 50-53 available at www.turkel-commission.gov.il/files/wordocs/8808report-eng.pdf.

⁴³ *Rocket Attacks on Israel from the Gaza Strip*, IDF, *supra* note 3.

⁴⁴ *Two soldiers killed, one missing in Kerem Shalom terror attack*, Israel Ministry of Foreign Affairs (June 25, 2006), available at <http://www.mfa.gov.il/mfa/pressroom/2006/pages/two%20soldiers%20killed%20one%20missing%20in%20kerem%20shalom%20terror%20attack%2025-jun-2006.aspx>.



commit to nonviolence, recognise Israel, and accept previous agreements.⁴⁵ The United Nations Security Council endorsed these principles.⁴⁶ Hamas, however, rejected them.⁴⁷

48. In June 2007 Hamas militants launched a violent campaign to rid the Gaza Strip of political opponents, particularly those associated with the more moderate PLO-affiliated Fatah faction (in one instance throwing an officer of the Palestinian Presidential Guard off the top of the Gaza Strip's tallest building).⁴⁸ Since 2007, Hamas has controlled the Gaza Strip not through a democratic process, but through continuing repression of the Palestinian people, using tactics that contravene the most basic principles of international human rights law: Hamas has restricted freedom of the press, conditioned humanitarian aid on political support, and even tortured and summarily executed Palestinian dissidents.⁴⁹ This repression and disregard for human rights is consistent with Hamas's systematic exploitation of Gazan civilians and civilian property to shield its military objectives from attacks. Following Hamas's takeover of the Gaza Strip (where the IDF no longer maintained a presence), Hamas increased the frequency and intensity of rocket and mortar attacks on Israel, and developed its military infrastructure and capabilities. In 2008 alone, Hamas and other terrorist organisations in the Gaza Strip fired more than 3,000 rockets and mortars at Israel.⁵⁰ By the end of that year Hamas's rocket fire reached some of Israel's largest cities, including Ashkelon (with a population of over 120,000) and Ashdod (with a population of over 215,000), as well as Israeli strategic installations, such as key electricity and gas storage facilities. Confronted with daily attacks on their homes, schools, kindergartens, shops, clinics, factories, and other civilian infrastructure, Israeli civilians were forced to flee to bomb shelters, often several times a day, and lived in constant fear of the next rocket and mortar attack.

49. When extensive diplomatic efforts and anti-smuggling operations failed to stop the barrage of rockets and mortars, Israel, as a last resort, launched air and later ground operations against Hamas in December 2008 and January 2009 (hereinafter: "the Gaza Operation 2008-2009," also known as

⁴⁵ J.M. Shart & C.M. Blanchard, Cong. Research Serv., RS22370, *U.S. Foreign Aid to the Palestinians*, at 1 (June 27, 2006), available at <http://fpc.state.gov/documents/organization/68794.pdf>.

⁴⁶ United Nations Security Council Resolution 1850 (adopted Dec. 16, 2008), available at <http://unispal.un.org/UNISPAL.NSF/0/7F7430A137000C4E85257523004CCADF>.

⁴⁷ See, e.g., *Hamas won't recognize Israel, accept Quartet terms*, Ma'an News Agency (updated May 7, 2014), available at <http://www.maannews.net/eng/ViewDetails.aspx?ID=694995>.

⁴⁸ See *Palestinian Gunmen Target Haniyeh's Home in Gaza*, Associated Press (June 10, 2007), available at <http://www.haaretz.com/news/palestinian-gunmen-target-haniyeh-s-home-in-gaza-1.222703>; see also Conal Urquhart et al., *Hamas Takes Control of Gaza*, *The Guardian* (June 15, 2007), available at <http://www.theguardian.com/world/2007/jun/15/israel4>.

⁴⁹ For a discussion of Hamas's suppression of political opposition and the media, see United States Department of State, *2013 International Religious Freedom Report: Israel and the Occupied Territories*, *supra* note 29.

⁵⁰ *Summary of rocket fire and mortar shelling in 2008*, ITIC (Jan. 1, 2009), available at http://www.terrorism-info.org.il/data/pdf/PDF_19045_2.pdf.



Operation “Cast Lead”).⁵¹ In the midst of this operation, in order to interdict the illicit smuggling of weapons into the Gaza Strip, Israel imposed, in accordance with customary international law, a maritime blockade, which a U.N. Secretary-General’s Panel of Inquiry affirmed as a “legitimate security measure in order to prevent weapons from entering the Gaza Strip by sea.”⁵² While maintaining a ban on importation of ammunition to the Gaza Strip and requiring permits for importation of certain dual-use materials, since 2010 Israel has allowed entry of all civilian goods (which can enter through the Gaza Strip’s border with Egypt as well) and has facilitated the entry of humanitarian aid to the Gaza Strip via land crossings.⁵³

50. Following the Gaza Operation 2008-2009, Israel experienced three years of reduced attacks, but Hamas and other terrorist organisations in the Gaza Strip still continued to fire rockets and mortars at Israeli civilian sites. For instance, in the fall of 2010, just as direct negotiations between the Israelis and Palestinians were resuming, Hamas launched a series of attacks that included rocket and mortar fire towards Israel and drive-by shootings at Israeli civilians in the West Bank.⁵⁴ In a particularly reprehensible strike in 2011, an advanced laser-guided Kornet missile from the Gaza Strip hit a yellow school bus near Kibbutz Sa’ad in southern Israel, killing a 16-year-old boy.⁵⁵

51. In 2012, Hamas and other terrorist organisations further escalated their rocket and mortar attacks on Israel.⁵⁶ While in 2008 Hamas and other terrorist organisations possessed approximately 1,000 rockets and mortars in the Gaza Strip, by November 2012 they had stockpiled over 7,000

⁵¹ See generally *The Operation in Gaza - Factual and Legal Aspects*, Israel Ministry of Foreign Affairs (July 29, 2009), available at http://www.mfa.gov.il/mfa/foreignpolicy/terrorism/palestinian/pages/operation_in_gaza-factual_and_legal_aspects.aspx.

⁵² Sir Geoffrey Palmer et al., *Report of the Secretary-General’s Panel of Inquiry on the 31 May 2010 Flotilla Incident*, at 4, United Nations (Sept. 2011), available at http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf.

⁵³ *The Civil Policy Towards the Gaza Strip 2012-2013*, Coordinator of Government Activities in the Territories, Israel Ministry of Defense (Sept., 2013), available at http://www.cogat.idf.il/Sip_Storage/FILES/7/4207.pdf; *New Government policy brings more goods to Gaza*, Israel Ministry of Foreign Affairs (Jan. 15, 2012), available at http://www.mfa.gov.il/mfa/foreignpolicy/peace/humanitarian/pages/new_government_policy_brings_more_goods_to_gaza_june_2010.aspx.

⁵⁴ See, e.g., Janine Zacharia, *Hamas retains deadly reach in West Bank*, Washington Post Foreign Service (Sept. 4, 2010), available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/03/AR2010090305869.html>. For background on the negotiations, see *The resumption of direct talks between Israel and the Palestinians*, Israel Ministry of Foreign Affairs (Sept. 2, 2010), available at http://mfa.gov.il/MFA/AboutIsrael/History/Pages/Special_update_Resumption_talks_Israel_Palestinians_2-Sep-2010.aspx.

⁵⁵ *Israeli boy Daniel Viflic dies after rocket hits bus*, BBC (Apr. 18, 2011), available at <http://www.bbc.co.uk/news/world-middle-east-13115127>.

⁵⁶ *Hamas – the increase of terrorism against Israel and the ongoing strengthening*, Israel Security Agency, available at <http://www.shabak.gov.il/English/EnTerrorData/Reviews/Pages/Hamas%E2%80%93theincreaseofterrorism.aspx>.



rockets and mortars, including 2,000 long-range missiles with 25- to 75-km range capabilities.⁵⁷ In the twelve months leading up to November 2012, Hamas and other terrorist organisations in the Gaza Strip fired approximately 900 rockets at Israel. Then, in a particularly intense and violent four-day period in November 2012, Hamas and other terrorist organisations in the Gaza Strip fired 120 rockets at Israel. To protect Israeli citizens from this bombardment, the IDF initiated an aerial operation (hereinafter: “the Gaza Operation 2012,” also known as Operation “Pillar of Defense”) on November 14, 2012.⁵⁸ During the eight-day operation, as the IDF sought to reduce the arsenals and military capabilities of Hamas and other terrorist organisations operating from the Gaza Strip, these groups continued their constant attacks, firing approximately 1,500 rockets and mortars at Israel, killing five Israeli civilians and injuring 240.⁵⁹ The Gaza Operation 2012 ended on November 21, 2012, in a ceasefire and understandings brokered by the United States and Egypt.⁶⁰



Above: On November 16, 2012 children run for shelter in Kiryat Malachi after a siren warning of an impending rocket strike. Two days earlier, three civilians were killed by a rocket that fell in the same city. (Source: IDF)

⁵⁷ *Special Report: The Deadly Rocket Arsenal of Hamas*, IDF (July 10, 2014), available at <http://www.idfblog.com/blog/2014/07/10/6-million-lives-in-danger-the-deadly-rocket-arsenal-of-hamas/>.

⁵⁸ *Behind the Headlines: Operation Pillar of Defense*, Israel Ministry of Foreign Affairs (Nov. 14, 2012), available at http://www.mfa.gov.il/mfa/foreignpolicy/issues/pages/bth_operation_pillar_of_defense_14-nov-2012.aspx. See also *Legal Aspects of IDF Operation in Gaza - “Pillar of Defense,”* IDF, Military Advocate General’s Corps (last updated Dec. 19, 2012) (“IDF Pillar of Defense Report”), available at <http://www.law.idf.il/879-en/Patzar.aspx> (detailing the events that led to Operation Pillar of Defense and related operational and legal aspects concerning the Operation).

⁵⁹ IDF Pillar of Defense Report, *supra* note 58, at 4; see also *2012 Operation Pillar of Defense*, IDF, available at <http://www.idfblog.com/about-the-idf/history-of-the-idf/2012-operation-pillar-of-defense/>.

⁶⁰ See IDF Pillar of Defense Report, *supra* note 58; *Behind the Headlines: Ceasefire ends Operation Pillar of Defense*, Israel Ministry of Foreign Affairs (Nov. 21, 2012), available at http://www.mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/BTH_Ceasefire_Pillar_of_Defense_21-Nov-2012.aspx.

C. Military Buildup in the Gaza Strip and Events Leading to the 2014 Gaza Conflict

52. The lull in violence after the November 2012 ceasefire was short-lived. In direct contravention of the mutual understandings reached after the ceasefire, Hamas, along with other terrorist organisations, fired 41 rockets and mortars at Israel from the Gaza Strip in 2013. In 2014, the attacks intensified, with more than 80 rockets and mortars fired at Israel in March 2014 alone.⁶¹ Israel's air-defence system was able to intercept many, but not all, of these rockets. Many still hit Israeli population centres such as Sderot and Netivot.⁶² Moreover, even when rocket defence systems succeeded, these attacks inflicted immense psychological harm⁶³ and caused serious economic damage.⁶⁴



Above: Rocket hits the town of Ashdod. (Photo by Kobi Gideon; source: Israel MFA)

⁶¹ See *Rocket fire from Gaza and Palestinian ceasefire violations after Operation Cast Lead*, Israel Ministry of Foreign Affairs (Jan. 2009), available at http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Pages/Palestinian_ceasefire_violations_since_end_Operation_Cast_Lead.aspx.

⁶² See, e.g., Adiv Sterman, *Gaza terrorists bombard southern Israel in massive rocket attack*, Times of Israel (Mar. 12, 2014), available at <http://www.timesofisrael.com/gazans-pelt-southern-israel-with-massive-rocket-barrage/#ixzz3KzIAMfiC>; see also Chapter V (The Threat to Israel's Civilian Population), Section C.4.

⁶³ Chapter V (The Threat to Israel's Civilian Population), Section C.5.

⁶⁴ See *id.*



53. During 2013 and 2014, Israel responded with targeted efforts to prevent future attacks and, at the same time, engaged in nine months of U.S.-led peace negotiations with the leaders of the Palestinian Authority. The peace talks broke down, however, when the Palestinian Authority rejected the framework proposed by the United States and instead sought to form a coalition with Hamas, which was seeking to increase its influence in the West Bank. Reconciliation efforts with the historically more moderate Palestinian Authority failed to temper Hamas's extremism. Hamas leaders reaffirmed their opposition to diplomacy and their abiding refusal to recognise Israel's right to exist.⁶⁵ Meanwhile, the challenges of a unity government created new tensions between Hamas and the Palestinian Authority, as the organisations clashed over who would pay public-sector salaries in the Gaza Strip and who would collect excise duties on cross-border trade.⁶⁶ Indeed, Israeli intelligence discovered that Hamas militants in Turkey were plotting to overthrow Palestinian Authority President Mahmoud Abbas, take control of the West Bank, and redouble terrorist attacks against Israel.⁶⁷

54. Hamas's efforts at political expansion coincided with its procurement and manufacturing of increasingly lethal and effective weapons, often obtained at the expense of the needs of the local civilian population. By the summer of 2014, Hamas and other terrorist organisations (such as Palestinian Islamic Jihad) had acquired more than 10,000 rockets and mortars.⁶⁸ These included 160-km range R-160 rockets, 75-km range Iranian Fajr-5 missiles, 80-km range J-80 rockets, 75-km range M-75 rockets, and 60-km range Sajeel rockets — capable of reaching central and northern Israel, including the major Israeli cities of Jerusalem, Tel Aviv, and Haifa. Long-range rockets were smuggled through Egypt and Sudan, as evidenced by Israel's interdiction of a ship carrying such weapons.⁶⁹ The arsenals of Hamas and other terrorist organisations also included thousands of locally made rockets with ranges of up to 40 kilometres, as well as mortars with ranges of between

⁶⁵ *Following the Fatah-Hamas reconciliation*, ITIC, *supra* note 10 ¶ 3; see also *Hamas Official Fatah recognizes Israel "on the political level" but not an organizational level; its real position is "very close to Hamas's position,"* Official PA daily, Al-Hayat Al-Jadida (June 5, 2014), available at Palestinian Media Watch, <http://www.palwatch.org/main.aspx?fi=695>; Al-Ayyam (Feb. 16, 2014), *PA chief negotiator: "No one asked Hamas to recognize Israel"*, Al-Falstina TV (Aug. 9, 2009) available at Palestinian Media Watch, <http://www.palwatch.org/main.aspx?fi=694&all=1>.

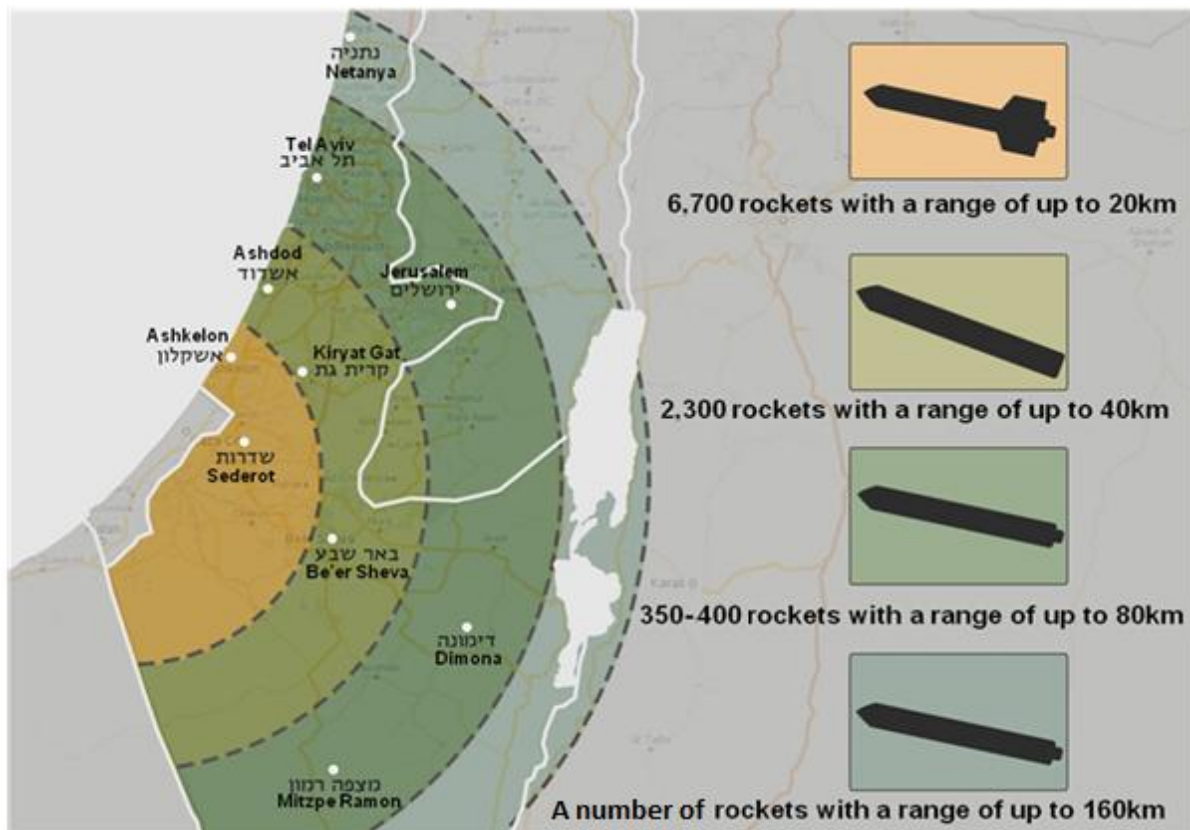
⁶⁶ See *Gaza public servants strike over pay dispute*, Al Jazeera (June 27, 2014), available at <http://www.aljazeera.com/news/middleeast/2014/06/gaza-public-servants-strike-over-pay-dispute-2014626162613667541.html>; Khaled Abu Toameh, *Fatah, Hamas attempt to solve wage-payment issue*, Jerusalem Post (June 11, 2014), available at <http://www.jpost.com/Diplomacy-and-Politics/Fatah-Hamas-attempt-to-solve-wage-payment-issue-355924>; Hazem Balousha, *Despite reconciliation deal, Hamas controls Gaza* (June 23, 2014), available at <http://www.al-monitor.com/pulse/originals/2014/06/gaza-hamas-still-in-control-unity-government.html>.

⁶⁷ See *Exposure of Judea and Samaria-Based Hamas Military Terror Infrastructures; Prevention of Suicide Bombing in Jerusalem*, Israel Security Agency (Sept. 2011), available at <http://www.shabak.gov.il/SiteCollectionImages/english/TerrorInfo/reports/shotef070911-en.pdf>.

⁶⁸ *Special Report: The Deadly Rocket Arsenal of Hamas*, IDF, *supra* note 57.

⁶⁹ *Israel halts 'weapons shipment from Iran,'* BBC News (Mar. 5, 2014), available at <http://www.bbc.com/news/world-middle-east-26451421>.

three and 10 kilometres.⁷⁰ Hamas stored many of these lethal weapons in medical facilities, schools, mosques, and administrative offices, as well as other civilian buildings in densely populated areas of the Gaza Strip.⁷¹ In addition, Hamas used these structures for other military activities such as command and control centres, military communications and surveillance capabilities.



Above: Rockets in the Gaza Strip for use against Israel, as of 2014. (Source: IDF)

55. Hamas expanded its ability to threaten Israel militarily in other ways as well. Hamas has amassed 16,000 militants in its military wing, the Izz al-Din al-Qassam Brigades. Hamas also has 15,000 persons in its internal security apparatuses; according to the IDF's intelligence assessments, there are specific entities within these apparatuses which carry military responsibilities and perform significant military functions during hostilities with Israel.⁷² Moreover, Hamas assembled thousands of Improvised Explosive Devices (“IEDs”) in the Gaza Strip’s urban areas, developed a naval

⁷⁰ *Special Report: The Deadly Rocket Arsenal of Hamas*, IDF, *supra* note 57.

⁷¹ *See Hamas Fires Rockets from Everywhere in Gaza*, IDF (Aug. 8, 2014), available at <http://www.idfblog.com/blog/2014/08/04/hamas-fires-rockets-everywhere-gaza/>; *see also* Chapter IV (Hamas’s War Crimes), Section B.

⁷² *See* Chapter VI (IDF’s Conduct during the Conflict), Section D.1.a.



commando unit,⁷³ and established an elite commando unit trained to operate in Hamas's growing underground tunnel infrastructure.⁷⁴



Above left: Hamas equipment seized by IDF forces. Above right: Hamas naval commando units.

56. Hamas also increased the threat of terrorist infiltration into Israel by continuing to expand its extensive underground cross-border tunnel network. In January 2013, October 2013, and March 2014, Israel discovered new subterranean passageways that crossed the border from the Gaza Strip into Israel, including one that stretched approximately 1.7 kilometres from the Gazan city of Khan Yunis all the way to the Israeli border residential community of Kibbutz Ein HaShlosa.⁷⁵ These sophisticated tunnels — built with tens of millions of dollars in construction materials diverted from civilian projects⁷⁶ — provided Hamas with secret passages to enter Israeli border towns and residential communities, as well as with hiding places for weapons caches, bunkers, and command centres, located underneath densely populated areas in the Gaza Strip.⁷⁷ Israeli intelligence in early

⁷³ See *Captured Intel Reveals Hamas's Explosive Plans*, IDF (July 27, 2014), available at <http://www.idfblog.com/blog/2014/07/27/captured-intel-reveals-hamas-explosive-plans/>; *Rockets, naval commandos boost Hamas arsenal*, Ma'an News Agency (July 10, 2014), available at <http://www.maannews.net/eng/ViewDetails.aspx?ID=711780>.

⁷⁴ Adam Ciralsky, *Did Israel Avert a Hamas Massacre?*, Vanity Fair (Oct. 21, 2014), available at <http://www.vanityfair.com/politics/2014/10/gaza-tunnel-plot-israeli-intelligence#>.

⁷⁵ See *2013 Annual Summary*, Israel Security Agency, available at <http://www.shabak.gov.il/ENGLISH/ENTERRORDATA/REPORTS/Pages/2013AnnualSummary.aspx>. See also Saud Abu Ramadan, *Five Hamas members die as Gaza tunnel collapses*, *supra* note 4; Mitch Ginsburg, *How Hamas dug its Gaza 'terror tunnel,' and how the IDF found it*, Times of Israel (Oct. 16, 2013), available at <http://www.timesofisrael.com/how-the-tunnels-in-gaza-are-dug-and-detected/#ixzz3AvyHydei>.

⁷⁶ See *The Gaza Underground*, IDF, available at <http://www.idfblog.com/operationgaza2014#Tunnels>.

⁷⁷ *Terror Underground: How Hamas Is Digging Tunnels and Building Rockets in Gaza*, IDF (Feb. 3, 2014), available at <http://www.idfblog.com/blog/2014/02/03/terror-underground-hamas-digging-tunnels-building-rockets->

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2014 revealed that Hamas was planning a cross-border attack through a tunnel that opened near the Israeli residential community of Kerem Shalom, placing residents at grave risk.



Above: An opening of a Hamas tunnel. (Source: IDF)

57. Starting in early June 2014, terrorist organisations in the Gaza Strip increased their rocket attacks on Israel, in continued breach of the mutual understandings reached in November 2012. Israel responded with aerial precision-guided munitions against rocket launchers positioned in open spaces within the Gaza Strip, while working to de-escalate the conflict through diplomatic means.

58. On June 12, Hamas militants kidnapped and killed three Israeli youths in the West Bank, seeking through this and other forms of incitement to ignite a new *intifada* (“uprising”).⁷⁸ In response to this kidnapping, Israel launched Operation Brother’s Keeper to search for the kidnapped

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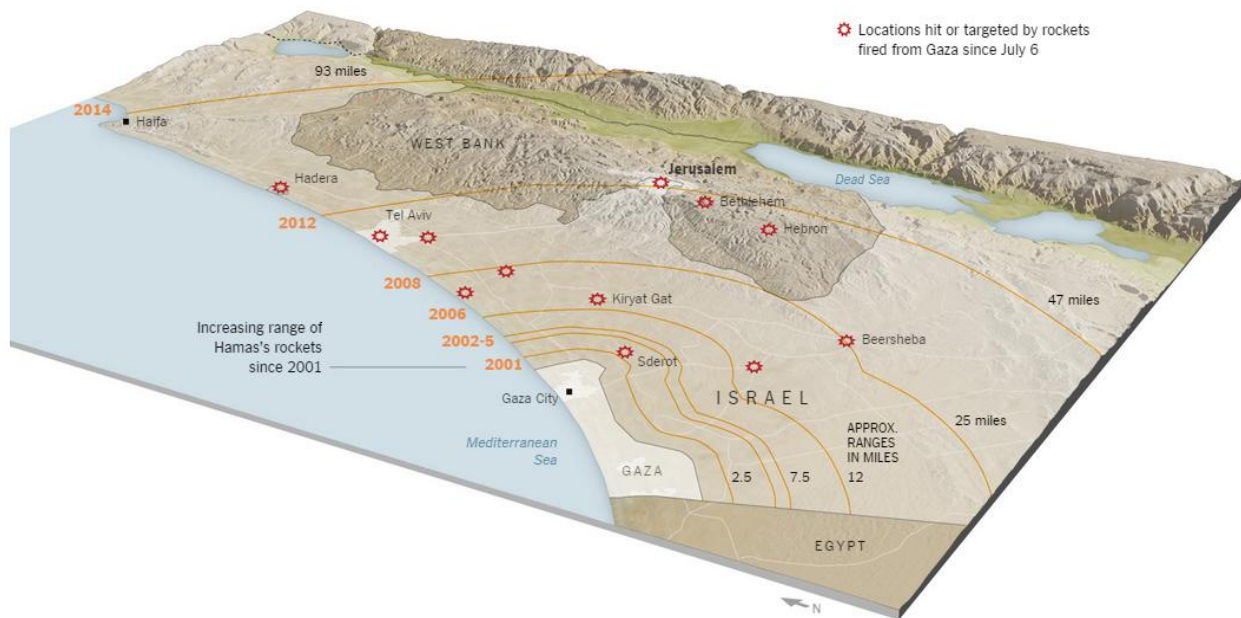
[gaza](http://www.idfblog.com/blog/2014/07/26/price-hamas-underground-terror-network/); *The Price of Hamas’s Underground Terror Network*, IDF (July 26, 2014), available at <http://www.idfblog.com/blog/2014/07/26/price-hamas-underground-terror-network/>; see also Chapter III (Objectives and Phases of the Operation), Section B.1.

⁷⁸ See *Terrorists responsible for abduction and murder of teens apprehended*, Israel Ministry of Foreign Affairs (Sept. 23, 2014), available at <http://mfa.gov.il/MFA/PressRoom/2014/Pages/Terrorists-responsible-for-abduction-and-murder-of-teens-apprehended-23-Sep-2014.aspx>. See also Yonah Jeremy Bob, *IDF court convicts Hussam Hassan Kawasme based on his own confession of planning and financing attack*, Jerusalem Post (Dec. 31, 2014), available at <http://www.jpost.com/Israel-News/Israel-convicts-Hamas-mastermind-in-June-kidnap-murder-of-three-Israeli-teens-386252>; Saleh al-Aroui, *Turkey-based senior Hamas operative who handles military-terrorist networks in Judea and Samaria, admitted that Hamas was behind the abduction and murder of the three Jewish youths from Gush Etzion*, ITIC (Aug. 24, 2014), available at <http://www.terrorism-info.org.il/en/article/20706>. In the month preceding the 2014 Gaza Conflict, Hamas repeatedly incited the murder of civilians. For example, on June 10, just two days before three Israeli civilian teenagers were kidnapped and murdered by Hamas militants, Hamas spokesman Hussam Badram posted the following message on his Facebook page: “We call on the men of resistance in the West Bank, primarily the Al-Qassam Brigades, to fulfill their duty...by targeting the occupation soldiers and its settlers.” See Elhanan Miller, *Hamas calls on armed wing to kill soldiers and settlers*, Times of Israel (June 10, 2014), available at <http://www.timesofisrael.com/hamas-calls-on-armed-wing-to-kill-soldiers-and-settlers/>.



teenagers (who were presumed alive at the time), as well as to reduce Hamas’s ability to carry out similar attacks in the West Bank.⁷⁹

59. Meanwhile, between June 12 and July 7, 2014, Hamas and other terrorist organisations in the Gaza Strip fired approximately 300 rockets and mortars at Israeli population centres. On June 28, for example, a rocket fired from the Gaza Strip set a factory ablaze in Sderot (a city in southern Israel).⁸⁰ The following week, on July 3, a children’s day-camp in Sderot suffered a direct hit; miraculously, no children were injured.⁸¹ During this period, rocket attacks from the Gaza Strip reached distances as far as 100 kilometres and placed over five million Israelis (out of a population of just over eight million) within the range of fire.⁸²



Above: Map showing the increasing range of Hamas rockets. (Source: New York Times, July 13, 2014)

⁷⁹ See *Operation Brother’s Keeper*, Israel Ministry of Foreign Affairs available at <http://mfa.gov.il/ProtectiveEdge/Pages/Additional-Legal-Resources.aspx>.

⁸⁰ Mattan Tzuri, *Gaza rocket hits Sderot factory, setting it ablaze*, Ynetnews (June 28, 2014), available at <http://www.ynetnews.com/articles/0,7340,L-4535501,00.html>.

⁸¹ *Sderot children’s miraculous escape from rocket*, Israel Today (July 3, 2014), available at www.israeltoday.co.il/NewsItem/tabid/178/nid/24715/Default.aspx?archive=article_title. See also *Testimony: Avi Adaf of Sderot describes rocket hit on a neighboring home used for child day care*, B’Tselem, available at http://www.btselem.org/testimonies/20140714_sderot_avi_adaf.

⁸² During the 2014 Gaza Conflict, Hamas and other terrorist organisations in the Gaza Strip began firing their longest-range rockets, increasing the number of Israelis under fire to approximately six million, almost 70% of the population. *Operation Protective Edge - Q&A*, Israel Ministry of Foreign Affairs (Aug. 14, 2014), available at <http://mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/Operation-Protective-Edge-QA.aspx>.



60. As detailed below,⁸³ the rocket and mortar attacks from the Gaza Strip caused widespread panic and disruption to daily life in Israel. Upon hearing a warning siren from the Israeli Home Front Command, civilians had anywhere from 15 to 90 seconds, depending on their proximity to the Gaza Strip, to find shelter. Nearly a million Israelis had less than a minute to reach shelter before a rocket would explode. Because of the need to have immediately available cover, schools and summer camps closed, public transportation (such as train services) was interrupted, countless outdoor events were cancelled, and innocent civilians suffered short- and long-term psychological effects. Thousands of citizens were afraid to leave their homes, while others fled their homes to safer places.⁸⁴

61. At the same time that Hamas and the other terrorist organisations in the Gaza Strip were escalating their rocket and mortar fire from the Gaza Strip, the threat from Hamas's underground military infrastructure was becoming all the more apparent. In June, a cross-border tunnel was discovered when it collapsed east of Gaza City, killing five Hamas militants.⁸⁵ On July 5, the IDF destroyed Hamas's cross-border assault tunnel near the Kerem Shalom border crossing where Hamas was planning an attack.⁸⁶ Because Israel's aerial defence systems could not protect against attacks from underground tunnels, Israelis in border towns and residential communities lived in fear that armed Hamas militants could emerge at any moment from a secret exit point beneath their feet.⁸⁷

62. In the face of increasing threats from rocket and mortar fire as well as tunnel infiltrations, Israel made clear to Hamas that it wanted to de-escalate the conflict. Israel repeatedly appealed to the U.N.⁸⁸ and also welcomed Egyptian and other actors' attempts to bring about a ceasefire.⁸⁹

⁸³ Chapter V (The Threat to Israel's Civilian Population), Sections B and C.

⁸⁴ *Israel Under Fire: Life Comes to Halt*, IDF (July 9, 2014), available at <http://www.idfblog.com/blog/2014/07/09/israel-fire-life-comes-halt/>.

⁸⁵ See Saud Abu Ramadan, *Five Hamas members die as Gaza tunnel collapses*, *supra* note 4.

⁸⁶ See Benny Avni, *Is This the Last Stand for Hamas?*, Newsweek (July 8, 2014), available at <http://www.newsweek.com/last-stand-hamas-257942>.

⁸⁷ See, e.g., Inna Lazareva, *Gaza conflict: Israelis living in fear of Palestinian tunnel attacks*, Telegraph (London) (July 21, 2014), available at www.telegraph.co.uk/news/worldnews/middleeast/israel/10979467/Gaza-conflict-Israelis-living-in-fear-of-Palestinian-tunnel-attacks.html; see also Chapter V (The Threat to Israel's Civilian Population), Section C.5.

⁸⁸ See e.g. Letters of 26 February 2013 (U.N. Doc. S/2013/114); 4 April 2013 (U.N. Doc. S/2013/214); 25 June 2013 (U.N. Doc. S/2013/373); 13 August 2013 (U.N. Doc. S/2013/484); 9 October 2013 (S/2013/600); 28 October 2013 (U.N. Doc. S/2013/632); 26 December 2013 (U.N. Doc. S/2013/771); 14 January 2014 (U.N. Doc. S/2014/23); 16 January 2014 (U.N. Doc. S/2014/28); 18 February 2014 (U.N. Doc. S/2014/107); 28 April 2014 (U.N. Doc. S/2014/301); 2 June 2014 (U.N. Doc. S/2014/385); 17 June 2014 (U.N. Doc. S/2014/416); 7 July 2014 (U.N. Doc. S/2014/474); 15 July 2014 (U.N. Doc. S/2014/494).

⁸⁹ *Behind the Headlines: Israel accepts ceasefire, Hamas rejects*, Israel Ministry of Foreign Affairs (July 15, 2014), available at <http://mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/Behind-the-headlines-Israel-accepts-ceasefire-15-Jul-2014.aspx>.



63. Despite Israel's restraint and efforts at de-escalation, the Hamas-led attacks only intensified, with over 60 rocket launches from the Gaza Strip in a single day on July 7. The number, frequency, and intensity of these attacks left the Government of Israel with no choice but to launch a broader military operation in order to protect Israel's civilian population and degrade Hamas military capabilities. No government would have failed in such circumstances to defend its citizens from continued attack.

64. While Operation Protective Edge was initially intended by Israel to be a limited aerial campaign, with Israeli leadership stressing on numerous occasions that "quiet [from Hamas and other terrorist organisations] will be answered with quiet,"⁹⁰ persistent attacks from the Gaza Strip by Hamas and other terrorist organisations (despite continued ceasefire initiatives) necessitated an expansion of the operation, including a ground campaign to neutralise the vast underground network of cross-border assault tunnels threatening Israeli civilians. The limited scope of this ground operation was demonstrated by Israel's withdrawal of its forces from the Gaza Strip as soon as Hamas's cross-border tunnel infrastructure had been sufficiently degraded. Even after this ground campaign concluded, Hamas continued to fire rockets into Israel, forcing Israel to continue an air campaign for three more weeks.⁹¹

D. The International Legal Basis for Israel's Actions to Protect its Citizens

65. In these circumstances, Israel was justified under international law in using force against Hamas and the other terrorist organisations in the Gaza Strip. Indeed, leading members of the international community including Canada,⁹² the U.S.,⁹³ the E.U.,⁹⁴ and Australia⁹⁵ have acknowledged Israel's right to use force in this context.

66. Israel's military actions during the 2014 Gaza Conflict were part of an ongoing armed conflict involving attacks against Israel by Hamas and other terrorist organisations in the Gaza Strip

⁹⁰ *Quiet will be Answered with Quiet, Fire with Fire*, Jerusalem Post (March 13, 2014), available at <http://www.jpost.com/Defense/Quiet-will-be-answered-with-quiet-fire-with-fire>.

⁹¹ Chapter III (Objectives and Phases of the Operation), Section B.3.

⁹² Statement by the Prime Minister of Canada in Response to the Situation in Gaza (July 13, 2014), available at <http://pm.gc.ca/eng/news/2014/07/13/statement-prime-minister-canada-response-situation-israel>.

⁹³ Daily Briefing by the Press Secretary, The White House (July 11, 2014) available at <http://www.whitehouse.gov/the-press-office/2014/07/11/daily-briefing-press-secretary-07112014>.

⁹⁴ *EU Council conclusions on the Middle East Peace Process* (July 22, 2014), available at http://www.europa.eu/articles/en/article_15300_en.htm.

⁹⁵ Jared Owens, *Abbott backs Israel's right to defend itself from Hamas rockets*, The Australian (July 31, 2014), available at <http://www.theaustralian.com.au/national-affairs/politics-news/abbott-backs-israels-right-to-defend-itself-from-hamas-rockets/story-fn59nqld-1227008551567?nk=c4c7979f1d75fa524115c745343acf5>.



for over 14 years. Based upon the intensity of Hamas’s violent attacks against Israel since 2000 (and especially since 2008) and the resulting exchanges of hostilities, the confrontation between Israel and these terrorist organisations in the Gaza Strip satisfies the definition of armed conflict under international law.⁹⁶ The 2014 Gaza Conflict was simply the latest in a series of armed confrontations, precipitated by the continuing attacks perpetrated by Hamas and other terrorist organisations against Israel. After previous periods of intense fighting (including in 2009 and 2012), Hamas agreed to ceasefires, each of which it later breached, leading to Israel’s resumption of responsive military action to defend its population from attacks.

67. Hamas’s attacks leading up to the 2014 Gaza Conflict were thus part of a larger, ongoing armed conflict. But even if one were not to consider the 2014 Gaza Conflict part of a continuous armed conflict justifying Israel’s use of force both previously and during this time, Hamas’s armed attacks against Israel in 2014 would independently qualify as an armed attack triggering Israel’s inherent right of self-defence. Under this rationale as well, Israel was justified in undertaking a military response to defend its citizens. Under customary international law, Israel had the clear right to use force in self defence in such circumstances⁹⁷ and did so in a manner that fully complies with international law, including the principles of necessity and proportionality.

68. **Necessity.** Israel’s use of military force against Hamas during the 2014 Gaza Conflict was necessary as the only feasible means to neutralise the ongoing armed attacks and the imminent threat of further escalating armed attacks from the Gaza Strip.⁹⁸ As described above, Israel’s repeated

⁹⁶ See *Prosecutor v Tadic*, Case No. IT-94-1-T, Decision on Defence Motion for Interlocutory Appeal on Jurisdiction, ICTY Appeals Chamber ¶ 70 (Oct. 2, 1995).

⁹⁷ Considering that the 2014 Gaza Conflict involved non-state actors (Hamas and other terrorist organisations in the Gaza Strip) and did not take place in the territory of another state (as no state currently exists in the Gaza Strip), the customary prohibition on the use of force against the territorial integrity or political independence of a state is not applicable in this context. Nevertheless, even if this prohibition applied, Israel’s actions were justified based on Israel’s inherent right of self-defence. See U.N. Charter, art. 51 (confirming “the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security”); see also Christopher Greenwood, *Terrorism: The Proper Law and the Proper Forum*, 79 INT’L L. STUD. 353, 355 (Fred L. Borch & Paul S. Wilson eds., 2003) (“Nothing in the text or the drafting history of the Charter suggests that ‘armed attack’ is confined to the acts of states Nor has state practice or the jurisprudence of international tribunals since the adoption of the Charter espoused a formalistic distinction between acts of states and acts of terrorist and other groups in determining what constitutes an armed attack.”); Thomas M. Franck, *Terrorism and the Right of Self-defense*, 95 AM. J. INT’L L. 839, 840 (2001) (“[I]t is inconceivable that actions the Security Council deems itself competent to take against a non-state actor . . . should be impermissible when taken against the same actor under Article 51 in exercise of a state’s ‘inherent’ right of self-defense. If the Council can act against Al Qaeda, so can an attacked state.”).

⁹⁸ See Michael N. Schmitt, *Counter-Terrorism and the Use of Force in International Law*, The Marshal Center Papers, No. 5, at 19 (2003) (“The principle of necessity requires that the resort to force occur only when no other reasonable options remain to frustrate continuation of the armed attack. Obviously, directly reacting with force to an armed attack that is underway would seldom be deemed unnecessary.”).



efforts to de-escalate the situation and stop the attacks using non-military means did not succeed in eliminating the threat.

69. **Proportionality.** Israel's use of force was also proportionate, given the need to repel the attacks and reduce the continuing threat posed by Hamas and other terrorist organisations operating out of the Gaza Strip.⁹⁹ Israel responded to rocket fire throughout the month of June 2014 and in early July 2014 with limited strikes using precision-guided munitions. However, when faced with an escalation of violence that culminated on July 7 with more than 60 rockets fired at Israel in a single day, the Government of Israel was compelled to expand its use of force. Hamas's continuation of rocket and mortar fire against Israel throughout the 2014 Gaza Conflict demonstrated the need for Israel's sustained military action. In this context it should be stressed that the number of civilian casualties of the adversary in the context of a military operation does not necessarily suggest that military action was disproportionate. Rather, under the Law of Armed Conflict,¹⁰⁰ the proportionality of force used in self-defence depends upon the amount of force required to repel attacks and eliminate the continuing threat.¹⁰¹ Figures regarding the number of casualties (either looked at as a whole or as compared to losses incurred on the other side), do not, in and of themselves, point to a disproportionate use of force. In responding to Hamas's attacks, Israel used no more force, for no longer a period than necessary to accomplish its objective: protecting Israel from incessant, illegal terrorist attacks.

70. Operation Protective Edge lasted from July 7 to August 26 and ended pursuant to a ceasefire adhered to by both Israel and Hamas. However, Hamas and other terrorist organisations in the Gaza

⁹⁹ See *id.* at 20 (“The proportionality principle simply requires that the response in self-defense be no more than necessary to defeat the armed attack and remove the threat of reasonably foreseeable future attacks.”); John Norton Moore, *Jus Ad Bellum Before the International Court of Justice*, 52 VA. J. INT’L L. 903, 915 (2012) (“[P]roportionality as a general proposition in *jus ad bellum* is best understood as a requirement that responding coercion must be limited in intensity and magnitude to what is reasonably necessary to promptly secure the permissible objectives of defense. Emphatically, proportionality in *jus ad bellum* is not simply tit-for-tat application of equivalent force, such as ten tanks to respond to an attack from ten tanks, or tit-for-tat measurement of damages.”).

¹⁰⁰ This Paper uses the term Law of Armed Conflict in its ordinary sense — describing the legal obligations of parties to an armed conflict in the course of their military operations. International Humanitarian Law is used by many commentators and countries as an interchangeable term, as is the laws of war.

¹⁰¹ In this regard it is also worth mentioning that the principle of proportionality, when viewed in the context of the IDF's actions *during* the 2014 Gaza Conflict itself (as opposed to the use of force at the initiation of the conflict), carries a different meaning: the requirement that a commander will not initiate an attack if the anticipated collateral damage is expected to be excessive in relation to the military advantage expected to be achieved. This assessment is made on a case-by-case basis. Therefore, here too, overall casualty statistics do not serve, on their own, as an indication as to the proportionality of attacks in the *in bello* context, as each attack must be assessed on its own. See Annex: *Palestinian Fatality Figures in the 2014 Gaza Conflict*, also available at <http://mfa.gov.il/ProtectiveEdge/Documents/PalestinianFatalities.pdf>.



Strip continue to incite violence¹⁰² and attack Israel,¹⁰³ while attempting to build up their military capacity.¹⁰⁴ The armed conflict that Hamas and other terrorist organisations initiated more than fourteen years ago is ongoing.

¹⁰² Since the conclusion of the 2014 Gaza Conflict, Hamas has endorsed a spate of terrorist attacks targeting and killing Israeli civilians. For example, following a roadside stabbing attack by a Palestinian terrorist on November 10, in which a 26-year old Israeli woman was killed and two others were injured, Hamas spokesman Sami Abu Zuhri announced that “Hamas welcomes the heroism operations in the streets of the homeland. . . The movement calls for continuing these acts of heroism.” *Hamas Praises Recent Terror Attacks In Israel, Calls For Escalation And Launch Of New Intifada, Threatens: ‘The Palestinian Volcano Will ... Erupt In Occupation’s Face,’* MEMRI (Nov. 19, 2014), available at http://www.memri.org/report/en/print8249.htm#_ednref9 (noting that the Palestinian Islamic Jihad also expressed its support). The Palestinian Islamic Jihad claimed responsibility for the attack. See Jeffrey Heller, *Israeli soldier and woman stabbed to death by Palestinians*, Reuters (Nov. 10, 2014), available at <http://www.reuters.com/article/2014/11/10/us-mideast-israel-violence-idUSKCN0IU0Z920141110>. Moreover, on November 16, Hamas described the stabbing of a 32-year-old Israeli civilian by a Palestinian terrorist as a “natural response to the crimes of Israel in Jerusalem and Al-Aqsa mosque.” *News of Terrorism and the Israeli-Palestinian Conflict: November 11-18, 2014*, ITIC, available at <http://www.terrorism-info.org.il/en/articleprint.aspx?id=20730>. On November 18, following the cleaver attack on Israeli civilians praying in a Jerusalem synagogue, in which four civilians were killed and eight were injured, Hamas spokesman Abu Zuhri said “Hamas calls for more operations like it,” and the Palestinian Islamic Jihad said it “salutes the operation in Jerusalem.” *Hamas and Islamic Jihad praise Jerusalem attack*, Times of Israel (Nov. 18, 2014), available at <http://www.timesofisrael.com/hamas-and-islamic-jihad-praise-jerusalem-attack/>. On January 21, 2015, after a terrorist stabbed multiple Israeli civilians on a bus in Tel Aviv, Hamas spokesperson Husam Badran praised the attack, which Izzat al-Rishq, a member of Hamas’s political bureau, called “heroic and brave.” Elhanan Miller, *Hamas leaders praise Tel Aviv stabbing as ‘heroic,’* Times of Israel (Jan. 21, 2015), available at <http://www.timesofisrael.com/hamas-leaders-praise-tel-aviv-stabbing-as-heroic/>.

¹⁰³ For example, on November 1, 2014, a rocket hit the western Negev; on November 27, 2014, shots were fired at an IDF vehicle patrolling the security fence with the Gaza Strip; on December 19, 2014, another rocket hit the western Negev; and on December 24, 2014, a sniper opened fire on an IDF patrol near the security fence with the Gaza Strip. On April 23, 2015, at the end of Independence Day, rockets were fired from the Gaza Strip into Israeli territory. On May 3, 2015, a rocket was fired from the Gaza Strip to attack Israel; it fell inside the Gaza Strip. And on May 26, 2015, a rocket again was fired at Israel from the Gaza Strip, the remains of which were found near Gan Yavne. See *Rocket fire from Gaza and Palestinian ceasefire violations after Operation Cast Lead*, Israel Ministry of Foreign Affairs, available at [http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Pages/Palestinian ceasefire violations since end Operation Cast Lead.aspx](http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Pages/Palestinian%20ceasefire%20violations%20since%20end%20Operation%20Cast%20Lead.aspx). Rocket fire continued on June 4, 2015, when two rockets were fired into Israel. See Gili Cohen, *IDF strikes Gaza after at least two rockets fired toward southern Israel*, Haaretz (June 4, 2015), available at <http://www.haaretz.com/news/diplomacy-defense/1.659534>.

¹⁰⁴ Yaakov Lapin, *Hamas conducts rocket tests, drawing the attention of the Israeli military*, Jerusalem Post (Dec. 22, 2014), available at <http://www.jpost.com/Breaking-News/Hamas-conducts-rocket-tests-drawing-the-attention-of-the-Israeli-military-385382>; *Rocket Testing and Tunnel Reconstruction*, IDF (Dec. 22, 2014), available at <http://www.idfblog.com/blog/2014/12/22/hamas-reconstructing-tunnels-southern-israel/>; Elior Levy, *Hamas reconstructing terror tunnels using Israeli materials*, Ynetnews (Dec. 19, 2014), available at <http://www.ynetnews.com/articles/0,7340,L-4605504,00.html>; *Hamas’s Construction Of Gaza Tunnels Continues*, MEMRI (Oct. 23, 2014), available at <http://www.memri.org/report/en/print8189.htm>.



III. Israel's Objectives and Phases of the 2014 Gaza Conflict

71. In the face of increasing rocket and mortar fire from the Gaza Strip during June and early July 2014, Israel repeatedly tried to avoid escalation, and attempted to stop the attacks, primarily by means of diplomacy and limited aerial strikes. Despite Israel's restraint and efforts at de-escalation, Hamas and other terrorist organisations in the Gaza Strip escalated the attacks against Israel, which increased in number, frequency, and intensity,¹⁰⁵ leaving the Government of Israel no choice but to launch a broader military operation in order to protect Israel's civilian population. On the evening of July 7, the Prime Minister of Israel announced the broader operation — termed “Operation Protective Edge” — which lasted for 51 days, until August 26, 2014.

72. During the initial phase of the Operation, which was limited primarily to an aerial campaign, Israel continued to make efforts to de-escalate the conflict. However, Hamas and other terrorist organisations in the Gaza Strip were unwilling to suspend their attacks against Israel, as they were not interested in restoring quiet. Hamas increased rocket and mortar fire, rejected Egypt's ceasefire plan and other ceasefire initiatives, and carried out attacks on Israeli territory by sea and through cross-border assault tunnels. Hamas's and other Palestinian terrorist organisations' capacity and intent to carry out additional, large-scale attacks against Israel, especially through the extensive network of cross-border assault tunnels they themselves built, became increasingly clear.

73. Following Hamas's rejection of all ceasefire initiatives and a major infiltration attempt by Hamas militants into Israel through a cross-border assault tunnel on July 17, Israel concluded that the imminent threat posed by Hamas infiltration into Israel required the immediate dismantling of these cross-border assault tunnels. Accordingly, the Government of Israel authorised the second phase of the Operation: the entry of ground troops into a limited area of the Gaza Strip, in order to identify and dismantle the cross-border tunnels, which originated from the outskirts of the urban areas of the Gaza Strip. On August 5, after locating and neutralising 32 cross-border assault tunnels, IDF ground forces withdrew from the Gaza Strip. The IDF initiated this withdrawal despite ongoing rocket and mortar attacks against Israel.

74. As a result of the ongoing rocket and mortar attacks, Israel continued conducting aerial strikes, in the third and final stage of the Operation, from August 5 until the end of the 2014 Gaza Conflict on August 26. The purpose of these strikes was to disrupt and degrade Hamas's attack

¹⁰⁵ During the month of June 2014, almost 80 rockets were fired towards Israel from the Gaza Strip. The rocket and mortar fire escalated in July. Between the beginning of July and the launch of the Operation on July 7, over 250 rockets and mortars were fired at Israel from the Gaza Strip. See graph in Section A, *infra*.



capabilities, in order to defend the Israeli civilian population from ongoing attacks, while at the same time attempt to reach a ceasefire.

75. In each phase of the 2014 Gaza Conflict, Hamas prolonged the conflict.¹⁰⁶ Hamas and other terrorist organisations in the Gaza Strip repeatedly rejected ceasefire proposals, or violated ceasefires by continuing to fire rockets and mortars towards Israel. Had Hamas accepted the initial Egyptian-brokered ceasefire that the Arab League endorsed and Israel accepted on July 15 — which featured the same terms as the ceasefire offer to which Hamas ultimately agreed in late August — 90 percent of the casualties incurred during the 2014 Gaza Conflict could have been avoided. Instead, Hamas and other terrorist organisations escalated their unlawful rocket and mortar attacks and tunnel infiltrations into Israel. As Chapter IV (Hamas’s War Crimes) demonstrates, Hamas and other terrorist organisations in the Gaza Strip systematically and deliberately violated the Law of Armed Conflict and committed war crimes and crimes against humanity, at the expense of civilian life and property in Israel and in the Gaza Strip. As described in Chapter VI (IDF’s Conduct during the Conflict), Israel attempted at all times to mitigate risk to civilians and civilian property during the 2014 Gaza Conflict, in accordance with its obligations under the Law of Armed Conflict (and in many cases, with restrictions imposed by national policy and military directives, which went beyond the Law of Armed Conflict requirements). Such efforts stood in stark contrast with Hamas and other terrorist organisations’ incessant attacks on Israel’s civilian population.

A. Israel’s Strategic Objectives

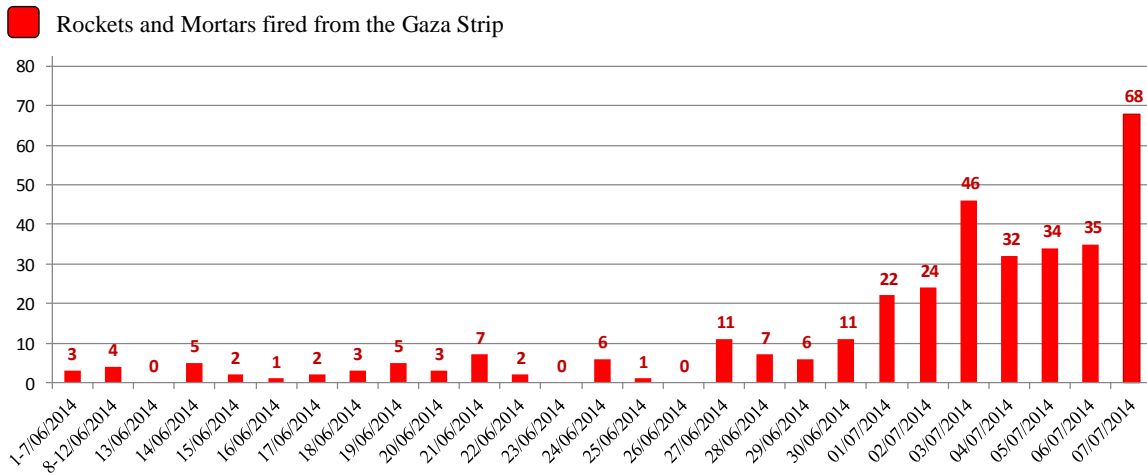
76. At the outset of the 2014 Gaza Conflict, which followed over a month of continuous and increasing rocket and mortar launches towards Israeli civilian centres (as detailed in the graph below), Israel publicly announced its strategic goals for the Operation: to defend its citizens and restore sustained calm and security to the Israeli civilian population from unlawful attacks. On July 8, at the very beginning of the Operation, Prime Minister Netanyahu explained:

In recent days, Hamas terrorists have fired hundreds of rockets at Israel’s civilians. No other country lives under such a threat, and no country would accept such a threat. Israel will not tolerate the firing of rockets on our cities and towns. We have therefore significantly expanded our operations against Hamas and the other terrorist organisations in Gaza.

¹⁰⁶ See Remarks by National Security Advisor Susan E. Rice to the National Jewish Leaders Assembly (July 28, 2014) (“Hamas initiated this conflict. And, Hamas has dragged it on.”), available at <http://www.whitehouse.gov/the-press-office/2014/07/29/remarks-national-security-advisor-susan-e-rice-national-jewish-leaders-a>.



This comes after our repeated efforts to restore calm were met with increased Hamas rocket fire. Israel is not eager for war, but the security of our citizens is our primary consideration. Israel targets Hamas terrorists and not innocent civilians. By contrast, Hamas targets Israeli civilians while hiding behind Palestinian civilians.¹⁰⁷



77. Over the course of the 2014 Gaza Conflict, Israel focused its military efforts on two main objectives: (1) degradation of Hamas’s and other terror organisations’ military infrastructure, particularly with respect to their rockets and mortar launching capabilities, and, as the conflict proceeded, (2) neutralisation of their network of cross-border assault tunnels. While Israel envisions the transformation of the Gaza Strip into a completely demilitarised territory¹⁰⁸ — a vision shared by the European Union¹⁰⁹ and the United States¹¹⁰ as a cornerstone principle of the peace process and a condition for long-term security and stability in the region — Israel did not set out to accomplish this goal by military means during the 2014 Gaza Conflict.

78. Instead, as mentioned above, the strategic objective of the Operation was to stem the attacks directed against Israeli civilians and to provide security to the residents of Israel. Therefore, the IDF sought to damage and destroy rocket and mortar launchers as well as supporting infrastructure,

¹⁰⁷ Prime Minister’s Office, Press Releases, Statement by Prime Minister Benjamin Netanyahu (July 8, 2014), available at <http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokebibi080714.aspx>.

¹⁰⁸ Netanyahu talks demilitarization in US Interviews, Haaretz (July 28, 2014), available at <http://www.haaretz.com/news/diplomacy-defense/1.607495>.

¹⁰⁹ EU Council Conclusions on the Middle East Peace Process, Brussels (July 22, 2014), available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/144092.pdf; EU Council Conclusions on the Middle East, Brussels (Aug. 14, 2014), available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/144313.pdf.

¹¹⁰ Concurrent Resolution Denouncing the Use of Civilians as Human Shields by Hamas and Other Terrorist Organizations in Violation of International Humanitarian Law, H. Con. Res. 107, U.S. Senate (Dec. 9, 2014), available at <http://www.gpo.gov/fdsys/pkg/BILLS-113hconres107eas/pdf/BILLS-113hconres107eas.pdf>.



degrade and disrupt Hamas command, control, communication, and intelligence capabilities, and attack Hamas's and other terror organisations' militants. To protect Israeli citizens from the threat of cross-border assault tunnels, the IDF was compelled to conduct a limited ground incursion into the Gaza Strip to locate and dismantle these cross-border tunnels, which were located under the urban areas in the outskirts of the Gaza Strip. Israel promptly ceased all offensive military action when Hamas agreed to abide by a ceasefire and suspended attacks against Israel.

79. In keeping with its objective to restore quiet and security and protect its population against attacks, throughout the 2014 Gaza Conflict Israel repeatedly strove to achieve a cessation of active hostilities and to uphold the 2012 ceasefire understandings (with Egypt's addition of a reference to ceasing all activity below ground, *i.e.*, the cross-border tunnels). Israel also declared unilateral humanitarian ceasefires, cooperated with the international community and kept humanitarian crossings open in order to provide civilians in the Gaza Strip with humanitarian aid, even as Hamas and other terrorist organisations continued attacks that placed Israeli and Palestinian civilians, humanitarian workers, and IDF soldiers at risk.¹¹¹

80. In contrast, Hamas's conduct prolonged the 2014 Gaza Conflict. Hamas and other terrorist organisations in the Gaza Strip repeatedly rejected, or accepted and then broke, attempted ceasefires. For instance, Hamas rejected the July 15 Egyptian ceasefire initiative accepted by Israel (the terms of which were nearly identical to those of the ceasefire understandings agreed upon on August 26, 2014). Israel suspended combat operations on July 15 until it became apparent that Hamas had no intention of stopping its attacks.¹¹² Hamas also made several extreme demands as preconditions for a ceasefire and escalated those demands as the conflict progressed. Early on in the 2014 Gaza Conflict, Khaled Mashal, Hamas's political leader, declared that Hamas would not be satisfied with a return to the 2012 ceasefire and mutual understandings, and that Hamas sought additional far-reaching concessions from Israel, as well as from other actors that were not engaged in the hostilities, such as Egypt.¹¹³ Furthermore, on July 20 and 28, and on August 1, 8, 13 and 19, Hamas and other terrorist organisations in the Gaza Strip breached mutually agreed-upon ceasefires.

¹¹¹ See Chapter VI (IDF's Conduct during the Conflict), Section E.

¹¹² See graph in Section B, *infra*. See also Chapter VI (IDF's Conduct during the Conflict), Section E. For a catalogue of Hamas's ceasefire violations, see *Protective Edge: Hamas' Violations of Ceasefires - a Chronology*, Israel Ministry of Foreign Affairs, available at <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Pages/Protective-Edge-Hamas-violations-of-ceasefires-chronology.aspx>.

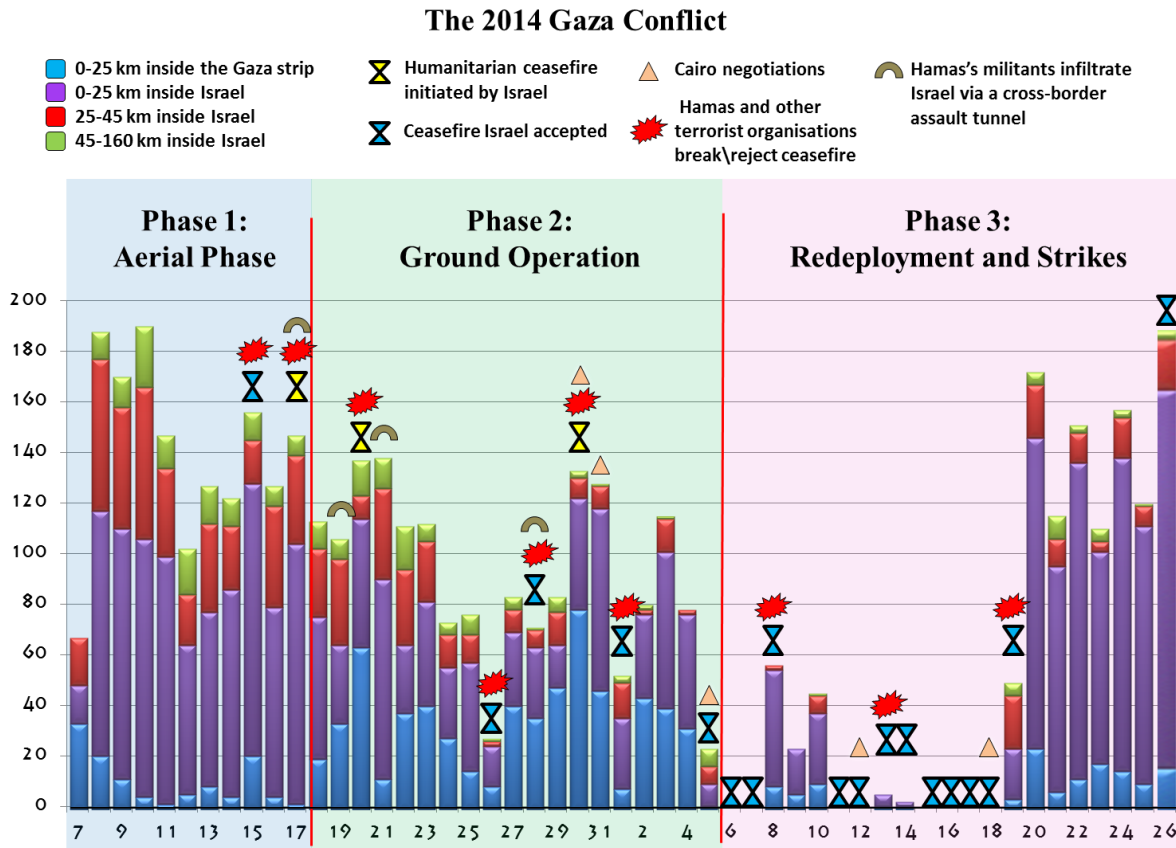
¹¹³ Ruth Sherlock & Carol Malouf, *Hamas Leader Khaled Meshal Lays Out Terms of Ceasefire*, The Telegraph (July 17, 2014), available at <http://www.telegraph.co.uk/news/worldnews/middleeast/palestinianauthority/10974072/Hamas-leader-Khaled->

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B. Phases of the 2014 Gaza Conflict

81. The 2014 Gaza Conflict consisted of three operational phases: precision aerial strikes (Phase One); a limited ground incursion combined with continued aerial strikes (Phase Two); and redeployment and aerial strikes (Phase Three). The chart below demonstrates that throughout all three phases, Hamas and other terrorist organisations in the Gaza Strip launched a barrage of rocket and mortar attacks towards Israel's civilian population and used cross-border tunnels to infiltrate Israeli territory in order to attack, kidnap, and kill Israeli civilians and soldiers. This chart and the chart in Section B.3 below also demonstrate that throughout the 2014 Gaza Conflict, Hamas and other terrorist organisations repeatedly rejected or violated ceasefire accords.



Footnote continued from previous page
[Meshaal-lays-out-terms-of-ceasefire.html](#). For example, Hamas demanded the opening of the Egyptian Rafah crossing.



1. Phase One: The Aerial Campaign (July 7 – July 17)

82. In order to protect its civilians and restore an acceptable level of protection and normalcy to the civilian population, the Government of Israel ordered an expanded aerial campaign to degrade the military capacity of Hamas and other terrorist organisations in the Gaza Strip to conduct such attacks. Primarily through air strikes, as well as through naval strikes by the Israel Navy, Israel sought to neutralise this threat by conducting carefully targeted attacks against senior militant commanders, destroying or disrupting projectile launch capabilities, command posts, weapons depots, rocket and mortar manufacturing sites, and — as the threat of cross-border assault tunnels became increasingly clear — neutralising cross-border assault tunnel routes.¹¹⁴

83. During this first phase of the Operation, Israeli civilians continued to face the threat of attack by air, sea, and land. Between July 7 and July 17, Hamas and other terrorist organisations in the Gaza Strip launched an average of 140 rockets and mortars towards Israel per day. Warning sirens sounded in all major Israeli cities, including Ashdod, Ashkelon, Be'er Sheva, Tel Aviv, Jerusalem, and as far north as Haifa. Hamas employed long-range weapons, extending the threat of rocket fire to about 70 percent of the Israeli population and terrorising over six million Israeli civilians.¹¹⁵ On July 8, the IDF intercepted four armed militants belonging to Hamas's naval commando unit, who infiltrated Israel by sea and landed on the Israeli coast near the residential community of Kibbutz Zikim.¹¹⁶ On July 14, two Hamas unmanned aerial vehicles ("UAV") penetrated Israeli territory; one of them was intercepted by the IDF while the other managed to return to the Gaza Strip.

84. A week into the 2014 Gaza Conflict, after actively engaging with both sides, Egypt announced a ceasefire initiative that was endorsed by the Arab League.¹¹⁷ Israel accepted this proposal and suspended military operations on the morning of July 15.¹¹⁸ However, Hamas rejected

¹¹⁴ See Prime Minister's Office, Press Release, *Cabinet Approves PM Netanyahu's Economic Benefits Plan for Sderot and the Communities in the Area Adjacent to the Gaza Strip* (July 13, 2014) ("The IDF will continue to operate until the goals of Operation Protective Edge are achieved – the restoration of quiet to Israel's citizens while inflicting a severe blow to the terrorist infrastructure."), available at <http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokeEco130714.aspx>.

¹¹⁵ Israel's defence systems were not able to fully insulate the Israeli home front from the effect of these attacks. See Chapter IV (Hamas's War Crimes) and Chapter V (The Threat to Israel's Civilian Population).

¹¹⁶ See *Hamas Played Its Best Cards, and Lost*, IDF (Oct. 13, 2014), available at <http://www.idfblog.com/blog/2014/10/13/hamas-played-best-cards-lost/>.

¹¹⁷ *Arab League urges 'all parties' to back Egypt's Gaza truce plan*, Arab News (July 14, 2014), available at <http://www.arabnews.com/news/602176>.

¹¹⁸ Prime Minister's Office, Secretary Announcements, Remarks by Prime Minister Benjamin Netanyahu (July 18, 2014), available at <http://www.pmo.gov.il/English/MediaCenter/SecretaryAnnouncements/Pages/govmes180714.aspx>.



the ceasefire efforts, launching over 50 rockets that morning alone.¹¹⁹ In the face of unceasing rocket attacks against Israeli civilians, Israel had no choice but to resume military operations.

85. Two days later, at dawn on July 17, 13 armed Hamas militants infiltrated Israeli territory via a cross-border assault tunnel with an exit point in close proximity to civilian homes in Kibbutz Sufa, a residential community in southern Israel. In response to the imminent danger to civilians, the IDF instructed residents of 13 nearby residential communities to remain in their homes. Before the militants were able to carry out attacks within Israel, the IDF launched aerial strikes against them. Some of the militants were killed, while others escaped back to the Gaza Strip through the cross-border assault tunnel — leaving behind, among other equipment, four rocket-propelled grenade (“RPG”) launchers and more than a dozen rockets, machine guns, assault rifles, and grenades.¹²⁰ On the same day, the IDF intercepted another Hamas UAV that had penetrated Israeli airspace and that Hamas’s military wing claimed was intended to attack a target located deep inside Israel.¹²¹

86. The July 17 underground incursion by Hamas militants into Israeli territory — coupled with Hamas’s rejection of the Egyptian-brokered ceasefire two days earlier — made it clear that IDF airstrikes had not neutralised the threat of imminent danger of rocket and mortar attacks and ground incursions directed against both Israeli civilians and IDF personnel. The IDF tried to minimise the threat posed by the network of cross-border assault tunnels by airstrikes directed at known tunnel shafts. However, these strikes alone could not neutralise the threat of infiltrations, because Hamas and other terrorist organisations could bypass damage to sections of tunnels by digging around or using alternative sections of the tunnels. In addition, not all cross-border assault tunnel routes and

¹¹⁹ The ceasefire was supposed to take place starting at 09:00. Between 09:00 and 14:30, Hamas and other terrorist organisations fired 56 rockets. Israel did not initiate air strikes until 14:30, when it became clear that Hamas had no intention of respecting the ceasefire. During the entire day of July 15, a total of 157 rockets were fired towards Israel. Hamas officials and spokesmen, including Abu Obeida, the Hamas spokesman for the Izz al-Din al-Qassam Brigades, and Sami Abu Zuhri, a Gazan official, announced that Hamas had rejected the Egyptian ceasefire initiative. See, e.g., Nidal al-Mughrabi & Jeffery Heller, *Israel Targets Top Hamas Leader as Cease-Fire Collapses*, Reuters (July 15, 2014), available at <http://www.reuters.com/article/2014/07/15/us-palestinians-israel-idUSKBN0FI04420140715>. Leading international actors, such as U.S. Secretary of State John Kerry, strongly condemned Hamas’s rejection of the ceasefire: “I cannot condemn strongly enough the actions of Hamas in so brazenly firing rockets in multiple numbers in the face of a goodwill effort to offer a ceasefire, in which Egypt and Israel worked together, that the international community strongly supports.” Michael Wilner, *Kerry Slams Hamas for Bucking Ceasefire with Israel*, The Jerusalem Post (July 15, 2014), available at <http://www.jpost.com/Operation-Protective-Edge/Kerry-cancels-trip-to-Cairo-relying-on-Egyptian-brokered-ceasefire-instead-362853>.

¹²⁰ For a video of the infiltration on July 17, see IDF, *Footage of Hamas Tunnel Terror Attack Being Thwarted*, YouTube (July 17, 2014), <https://www.youtube.com/watch?v=SM6WUoel7xk>. See also IDF, *Tunnels and Weapons Used During Hamas Infiltration into Israel*, YouTube (July 17, 2014), <https://www.youtube.com/watch?v=xjkwIMRZI8o>.

¹²¹ *IDF intercepts another Hamas UAV*, Ynetnews (July 17, 2014), available at <http://www.ynetnews.com/articles/0,7340,L-4545505,00.html>.



shafts that were being used for military purposes were known to the IDF at the time, and presence on the ground was required in order to locate them. Thus, in light of the severe risk that these tunnels posed to Israeli civilians, as well as to IDF forces, Israel decided to launch a ground operation. As Prime Minister Netanyahu stated, the use of ground forces to counter this threat was a last resort:

Because it is not possible to deal with the tunnels only from the air, our soldiers are now doing so on the ground We chose to commence this operation after we had exhausted the other possibilities, and with the understanding that without action, the price that we would pay would be much greater.¹²²

¹²² Prime Minister's Office, Secretary Announcements, Remarks by Prime Minister Benjamin Netanyahu (July 18, 2014), available at <http://www.pmo.gov.il/English/MediaCenter/SecretaryAnnouncements/Pages/govmes180714.aspx>.



In-Depth: The Tunnel Threat

Increasing Tunnel Activity: 2001-2009

Beginning in 2001, Hamas and other terrorist organisations in the Gaza Strip began to dig tunnels in order to direct military activity against Israel. These tunnels followed the use of already existing smuggling tunnels, which for two decades have connected Egypt and the Gaza Strip.¹²³ These tunnels have facilitated the illicit movement of a variety of supplies, such as construction materials, dual-purpose materials and weapons, as well as militants. The international community has long acknowledged the dangerous impact of such arms trafficking on regional stability.¹²⁴

Following the Israeli withdrawal from the Gaza Strip in 2005, the construction and utilisation of military tunnels grew and Hamas redirected its military activities towards planning attacks on sovereign Israeli territory by way of secret cross-border tunnels. On June 25, 2006, IDF soldier Corporal Gilad Shalit was kidnapped through a tunnel that infiltrated Israeli territory near the Kerem Shalom crossing. Corporal Shalit was held in the Gaza Strip for five years *incommunicado* and freed in 2011 only after Israel agreed to release 1,027 Palestinian security prisoners of various organisational affiliations.

When Hamas violently seized control of the Gaza Strip in 2007,¹²⁵ it also took over the tunnel and smuggling industry, which enhanced its ability to acquire arms and construction materials for tunnels used for military purposes. Over the years and due to Hamas's control over the Gaza Strip, Hamas's tunnel-construction efforts and capabilities improved tremendously. Tunnels became longer, deeper, more stable, and more secure. Hamas's efforts focused on three types of tunnels —

¹²³ Smuggling tunnels are particularly prevalent at the border-city of Rafah, the territory of which is split between the Gaza Strip and in Egypt. See Suzanne Goldenberg, *Guns for sale - how stolen Israeli weapons arm Fatah's fighters*, *The Guardian* (Dec. 15, 2000), available at <http://www.theguardian.com/world/2000/dec/16/israel>. Hamas had also employed children as labourers in smuggling tunnels. Nicolas Pelham, *Gaza's Tunnel Phenomenon: The Unintended Dynamics of Israel's Siege*, *J. Palestinian Stud.* No. 164, v. 41, at 6 (Summer 2012), available at <http://palestine-studies.org/jps/fulltext/42605>. See also Khaled Kraizim, *The Children of Gaza's Tunnels*, *Al Monitor* (May 19, 2013), available at <http://www.al-monitor.com/pulse/iw/originals/2013/05/child-labor-gaza-tunnels-egypt-rafah.html>.

¹²⁴ From 1994-1999, the IDF, the security forces of Egypt, and the Palestinian Authority discovered approximately 60 smuggling tunnels linking the two sides of Rafah. Over the course of the Second Intifada (beginning in 2000), terrorist organisations became increasingly motivated to use tunnels along the Egyptian border in order to smuggle arms into the Gaza Strip. From 2000 until the Israeli withdrawal from the Gaza Strip in 2005, the IDF discovered 121 smuggling tunnels. In 2009, the international community acknowledged the arms smuggling problem and set up the Gaza Counter-Arms Smuggling Initiative (GCASI) to combat this threat.

¹²⁵ See Chapter II (Background to the Conflict).



smuggling tunnels; combat tunnels, which are tunnels used for internal military activity underneath the populated urban areas of the Gaza Strip; and cross-border assault tunnels, which originate in the urban areas of the Gaza Strip and open inside Israeli territory, and are used by militants to infiltrate Israeli territory in order to attack, kill, and kidnap Israeli civilians and soldiers.

Operations in the Gaza Strip 2008-2009 and 2012

During the Gaza Operation 2008-2009 (also known as Operation “Cast Lead”), the IDF found over 70 shafts of combat tunnels inside the Gaza Strip. These tunnels served a variety of operational purposes: they enabled Hamas militants to emerge suddenly from below the ground and ambush, kill, or kidnap IDF ground troops; they connected command and control centres and bunkers for militants to hide in; and they facilitated the storage, transport, and launch of weapons.¹²⁶

In the period following the Gaza Operation 2008-2009, Hamas engaged in an extensive military build-up, which included a massive expansion of its tunnel infrastructure.¹²⁷ After the Gaza Operation 2012 (also known as Operation “Pillar of Defense”), it became evident that Hamas had transferred a great deal of its military activities underground, to both cross-border and combat tunnels.¹²⁸ Hamas employed this strategy to evade IDF attacks against its operations and to reduce the IDF’s intelligence-gathering capabilities. Hamas has increasingly used these tunnels for military activities: to launch rockets and mortars towards Israel’s civilian population (see photos below); to

¹²⁶ Examples of Hamas’s use of these tunnels can be found in Chapter IV (Hamas’s War Crimes) and Chapter VI (IDF’s Conduct during the Conflict).

¹²⁷ Tunnel-digging is a complex and laborious enterprise. A great deal of time, engineering equipment, and manpower, including skilled labour, is required to carefully dig and panel the tunnels and discreetly remove upended earth. Israeli intelligence estimates that, in 2010, the annual cost of tunnel building in the Gaza Strip was approximately 16 million USD. Today, due to rising prices, the annual cost is estimated to be at least 18-20 million USD — or approximately 50% of the budget of Hamas’s military wing. Indeed, the total annual cost is likely even higher, as IDF intelligence confirms that there are additional expenditures that cannot currently be quantified. The costly construction of the tunnels came at the expense of civilians in the Gaza Strip. For example, in many cases, cement imported into the Gaza Strip for the construction of civilian homes was stolen by Hamas and other terrorist organisations and diverted to tunnel construction.

¹²⁸ A document circulated among Palestinian militant groups in the Gaza Strip in 2013 describes the importance and intended effect of the tunnels: “The tunnel war is one of the most important and most dangerous military tactics in the face of the Israeli army because it features qualitative and strategic dimensions, because of its human and moral effects, and because of its serious threat and unprecedented challenge to the Israeli military machine.” Adnan Abu Amer, *Tunnel May Signal Shift in Hamas-Israel Conflict*, Al-Monitor (Oct. 22, 2013), available at <http://www.al-monitor.com/pulse/originals/2013/10/gaza-tunnel-israel-shift-hamas-war.html>. Furthermore, on March 23, 2014, then-Hamas Prime Minister Ismail Haniyeh referenced the tunnels as key to Hamas’s new strategy against Israel: “From below ground and above ground, you, the occupiers, will be dismissed. You have no place in the land of Palestine.” See Nidal Al-Mughrabi, *Hamas rally in Gaza takes aim at Egypt, Israel and Abbas*, Reuters (Mar. 23, 2014), available at <http://www.reuters.com/article/2014/03/23/us-palestinian-gaza-hamas-idUSBREA2M0F920140323>.



discreetly store rockets, mortars and other weapons; to infiltrate Israeli territory through cross-border assault tunnels in order to attack, kill, and kidnap Israeli civilians and soldiers; to provide escape routes and hideouts for militants after conducting attacks; and to harm IDF forces operating inside the Gaza Strip. The use of the combat tunnels creates a 360-degree, multidimensional threat — making it difficult, and sometimes impossible, to ensure that areas of operation are clear of enemy presence, since the enemy could suddenly emerge from unexpected directions, including from civilian sites and structures.¹²⁹

The 2014 Gaza Conflict

Following the Gaza Operation 2012, Hamas prioritised developing cross-border assault tunnel infrastructure and devoted substantial resources — in manpower, materials, and finances — towards this goal. Cross-border tunnel routes often originated in urban neighbourhoods on the outskirts of the Gaza Strip and extended underground beneath the heavily guarded border between the Gaza Strip and Israel, in violation of Israeli sovereignty. These cross-border assault tunnels, many of which were built and fortified by concrete, were between one and 2.5 kilometres long and up to 25-40 metres deep. Each tunnel had dozens of shafts allowing for various entry or exit points along its route. In the two years leading up to the 2014 Gaza Conflict, the IDF exposed four tunnels that ran underneath Israeli territory — which were only a small portion of Hamas's cross-border tunnel infrastructure.¹³⁰

¹²⁹ See Chapter VI (IDF's Conduct during the Conflict), Section C.

¹³⁰ On November 8, 2012, a tunnel rigged with explosives blew up near Kibbutz Nirim, injuring IDF troops that patrolled the fence between Israel and the Gaza Strip (an additional route of the same tunnel was identified and destroyed during the 2014 Gaza Conflict). On January 13, 2013, a tunnel opening was found in the area of Kibbutz Nahal Oz, and on October 7, 2013, a tunnel of high-quality construction was discovered near Kibbutz Ein HaShlosa. While the IDF was preparing to destroy the latter tunnel, Hamas detonated a high-impact explosive from within the tunnel, injuring five IDF soldiers. On March 18, 2014, another tunnel of high-quality construction was discovered near Kibbutz Ein HaShlosa, extending hundreds of metres into Israel.



Above left: A cross-border assault tunnel discovered on March 18, 2014 near Kibbutz Ein HaShlosha on Israeli territory. Above right: The U.N. Secretary-General, Ban Ki Moon, visited this cross-border tunnel on October 14, 2014.¹³¹ The high-quality construction and large operational capacity of some of the tunnels discovered during the two-year period leading to the 2014 Gaza Conflict highlighted the extent of the danger posed by Hamas's tunnel network. (Source: IDF)

The increasingly high-quality construction and improved operational capacity of both types of tunnels — cross-border assault tunnels and combat tunnels — highlighted the extent of the danger posed by Hamas's military infrastructure. Some tunnels (both cross-border and combat) were equipped for long stays underground. For example, many of the tunnels discovered during the 2014 Gaza Conflict had electricity and communication systems. Many tunnels also had airshafts and sometimes even compressors to allow for ventilation. In addition, tunnels often featured subterranean rooms equipped with beds, first aid materials, non-perishable food, and weapons.

The shafts of cross-border and combat tunnels were strategically located to facilitate Hamas's and other terrorist organisations' military activity. Shafts were often placed near vantage points that provided a military advantage for attacks on approaching IDF troops, and were often concealed within or placed near sensitive civilian sites (such as residential houses, mosques, and medical clinics) that IDF forces might avoid entering or attacking. In order to prevent the detection of the cross-border assault tunnels, the openings into Israeli territory were often left to be finished in the last hours before an intended attack. Hiding entrances in civilian buildings in the Gaza Strip had the added advantage of allowing infiltrators escaping from Israel into the Gaza Strip to blend into the civilian population immediately (possibly with kidnapped Israeli civilians or soldiers), thus

¹³¹ *U.N. Secretary-General, Ban Ki Moon, Visits Hamas Terror Tunnel in Southern Israel*, IDF (Oct. 14, 2014), available at <http://www.idfblog.com/blog/2014/10/14/un-secretary-general-ban-ki-moon-visits-hamas-terror-tunnel-southern-israel/>.



complicating an IDF rescue mission or counter-strike. With the help of its tunnel network, Hamas converted civilian areas into combat zones filled with military objectives that were difficult to identify until they were encountered by IDF soldiers.



Above Left: An open tunnel shaft that served as site for rocket launches towards Israel. (Source: MEMRI-TV)

Above Right: Palestinian Islamic Jihad militants launching rockets from within a tunnel. (Source: MEMRI-TV)¹³²

Throughout the 2014 Gaza Conflict, militants used tunnels in an effort to protect storage and launching sites from exposure.¹³³

A comparison between the combat tunnel infrastructure discovered during the Gaza Operation 2008-2009 and the 2014 Gaza Conflict confirms that Hamas had, in the interim years, developed these tunnels as a central strategic aspect of its warfare. Although IDF forces during the Gaza Operation 2008-2009 encountered some combat tunnels in the Gaza Strip used for operational and logistical purposes, by the time of the 2014 Gaza Conflict, the quantity, quality, and uses of these tunnels had increased dramatically.

The Kidnapping Threat

Cross-border assault tunnels allow a substantial number of armed militants to penetrate Israel at once, carry out attacks on Israeli civilians and IDF troops, and smuggle kidnapped Israelis — dead or alive — back into the Gaza Strip. Similarly, combat tunnels beneath the Gaza Strip support efforts to kidnap IDF soldiers operating there. In two of the instances during the 2014 Gaza Conflict when

¹³² See MEMRI TV, *Palestinian Islamic Jihad Video Showcases Subterranean Rocket Launching Capabilities*, YouTube (July 30, 2014), <https://www.youtube.com/watch?v=hZpP6CaMPRO>.

¹³³ See MEMRI TV, *Footage of Tunnels Used by Hamas for Terror Attacks*, YouTube (July 21, 2014), <https://www.youtube.com/watch?v=IMzLCJyevCk>; MEMRI TV, *TV Report Shows Islamic Jihad Missile-Launching Pads in Gaza Tunnels*, YouTube (Aug. 10, 2014), <https://www.youtube.com/watch?v=2fDFDXwhx3E>.



Hamas attempted to kidnap IDF soldiers, Hamas used combat tunnels dug beneath what appeared to be civilian structures.¹³⁴

Kidnapping is a strategy commonly used in asymmetric warfare by terrorist organisations around the world. Hamas clearly considers the kidnapping of IDF or Israeli civilian personnel as a decisive leverage point over Israel, and therefore devotes substantial resources to this objective. Past conduct also indicates that kidnappings are not for the traditional purpose of preventing a captured enemy from returning to hostilities, but instead to leverage indefinite detention for strategic advantage. Hamas has also identified kidnapping as an effective means of inflicting fear and psychological terror upon the Israeli civilian population, and has for years expressed support and encouragement for kidnappings, and carried out kidnappings and kidnapping attempts, including of civilians.¹³⁵ Indeed, Hamas established a specialised unit called “Nuhba” dedicated to this purpose and has persistently tried to kidnap Israeli soldiers and civilians, including by way of tunnels.¹³⁶

¹³⁴ See Section B.2, *infra*.

¹³⁵ For instance, in an interview with the journal Al-Thabat on April 4, 2006, Ahmed Ja’abri, the head of Hamas’s military wing at the time, declared, “The Jihad warriors, people of Qassam [referring to Izz al-Din al-Qassam, the military wing of Hamas] think night and day about kidnapping Zionists.” *Special Interview- Ahmed Ja’abri*, PALDF (April 05, 2006), available at <http://www.paldf.net/forum/showthread.php?t=55836> (in Arabic).

More recently, in a June 23, 2014 interview with Al-Jazeera following the kidnapping of the three Israeli teenagers in the West Bank, Khaled Mashal, Hamas’s political leader, said: “Such an act [the kidnapping and murder of the three Israelis] is a Palestinian obligation. It is the duty of the Palestinian nation.” Al- Jazeera, *Special Interview- Khaled Mashal*, YouTube (June 23, 2014), <https://www.youtube.com/watch?v=VUVaf-8LS5o> (in Arabic). See also Jack Khoury, *Hamas chief lauds abductors of Israeli Teens, says has no new information*, Haaretz (June 23, 2014), available at <http://www.haaretz.com/news/diplomacy-defense/1.600759>.

¹³⁶ During 2013-2014, Israeli security services foiled many plots by Hamas cells to kidnap Israeli soldiers and civilians. For example, in August 2013, Israeli security services stopped a Hamas military plan to kidnap an Israeli civilian for use as a bargaining chip in a prisoner exchange. The planners, residents of Beit Liqya in the West Bank, were funded by Hamas in the Gaza Strip, and received weapons, gathered intelligence about possible targets, and even prepared a cave in which to hide the kidnapped party. See *Kidnapping attacks – Hamas’s strategic tool against Israel*, Israel Security Agency, available at <http://www.shabak.gov.il/publications/study/Pages/NewItem270714.aspx> (Hebrew). And on June 12, 2014, Hamas militants kidnapped and murdered three Israeli youths in the West Bank. See *Terrorists responsible for abduction and murder of teens apprehended*, Israel Ministry of Foreign Affairs (Sep. 23, 2014), available at <http://mfa.gov.il/MFA/PressRoom/2014/Pages/Terrorists-responsible-for-abduction-and-murder-of-teens-apprehended-23-Sep-2014.aspx>.



2. Phase Two: The Ground Operation (July 17 – August 5)

87. The Government of Israel launched its ground operation on July 17 with the aim of locating and neutralising the threat to Israeli citizens posed by the sophisticated network of secret cross-border assault tunnels.¹³⁷ Given the narrow operational objectives of this mission, IDF ground forces operated in a limited territorial area on the outskirts of the Gaza Strip’s civilian neighbourhoods, where intelligence reports indicated the cross-border assault tunnels originated. The IDF did not employ ground forces beyond these areas, and did not impose a “buffer zone” or “no-go zone” in the areas in which it did operate. While employing ground forces, the IDF continued executing aerial strikes against military targets.

88. IDF ground forces worked to complete this mission as rapidly as possible in order to minimise the time required to maintain a ground combat presence in the Gaza Strip, especially given the heightened threat that the urban ground operation posed to IDF soldiers and Palestinian civilians.¹³⁸ As soon as the IDF accomplished its military goals on August 5, IDF ground forces withdrew, unilaterally terminating ground combat operations against Hamas and other terrorist organisations.

89. From the outset of this phase of the Operation, IDF commanders were acutely aware of the challenges the mission would create. Close combat operations against non-state actors like Hamas who consistently violate international law impose immense burdens on forces committed to compliance with the Law of Armed Conflict. Under such circumstances, the IDF was routinely subject to enormous risk, which Hamas exacerbated by deliberately placing tunnel entrances and exits in urban areas — forcing the IDF to conduct operations in densely populated neighbourhoods. The limited geographic scope of the mission, tailored operational objectives, and efforts to mitigate risk to civilians demonstrate the extent to which the IDF went to balance the need to rapidly

¹³⁷ Prime Minister’s Office, Secretary Announcements, Remarks of Prime Minister Benjamin Netanyahu (July 18, 2014) (“Last night, our forces commenced a ground operation in order to strike at the terrorist tunnels that run from the Gaza Strip into Israeli territory. I remind you that it was through such a tunnel that Hamas terrorists infiltrated into our territory yesterday morning in order to perpetrate a large scale attack against Israel’s citizens. The IDF successfully thwarted this terrorist act. Because it is not possible to deal with the tunnels only from the air, our soldiers are now doing so on the ground. Even here there is no guarantee of 100% success, but we are doing our utmost in order to achieve the maximum. . . . Last night’s operation came after Israel agreed to the Egyptian ceasefire proposal and to the UN initiative for a humanitarian truce. In both cases, Hamas continued firing. We chose to commence this operation after we had exhausted the other possibilities, and with the understanding that without action, the price that we would pay would be much greater.”), available at <http://www.pmo.gov.il/English/MediaCenter/SecretaryAnnouncements/Pages/govmes180714.aspx>.

¹³⁸ For more details about the challenges of urban warfare in the Gaza Strip, see Chapter VI (IDF’s Conduct during the Conflict), Section C.



accomplish its mission with the interest of mitigating risk to civilians. However, mitigating risk in such a context can never truly eliminate risk, and despite extensive efforts, Israel's ground combat operations regrettably resulted in civilian casualties.

90. In recognition of the risk to civilians, throughout the ground operation, the IDF went to great lengths to mitigate danger to civilians, implementing extensive precautionary measures, including the provision of effective advance warnings.¹³⁹ For instance, after the IDF determined that locating and neutralising the cross-border assault tunnels required entry into the neighbourhood of Shuja'iyyeh — a Hamas stronghold on the outskirts of the Gaza Strip from which hundreds of rockets were fired at Israel, and from which several cross-border assault tunnels originated — the IDF repeatedly warned residents to evacuate, indicating when IDF forces would be operating in the area. Following three days of warnings, the IDF postponed its entry to the area by an additional 24 hours, in order to allow as many residents as possible to evacuate before the IDF ground forces entered Shuja'iyyeh on July 19. The warnings that were provided, and the delay in the operation, meant that the IDF lost the operational element of surprise and allowed Hamas militants to be fully prepared for combat.¹⁴⁰ In another attempt to minimise harm to civilians, Israel announced a unilateral suspension of fire in Shuja'iyyeh on July 20 to allow for the evacuation of civilians who had remained there despite IDF warnings, including wounded civilians.¹⁴¹ The IDF continued to hold its fire even when militants reinitiated fire a mere 40 minutes into the suspension and continued to direct steady fire at IDF troops for a number of hours.

91. As stated above, the IDF's operational objective during the ground operation was to neutralise the cross-border assault tunnels and the imminent danger they presented not only to the IDF but to Israeli civilians. Over the course of the ground operation, the IDF encountered a total of 32 cross-border assault tunnels. Fourteen of these tunnels actually penetrated Israeli territory and contained openings in or close to residential communities; meanwhile, 18 other tunnels that were under construction approached the border with Israel. The process of locating, mapping and neutralising the cross-border assault tunnels was complex. It required substantial resources, thoroughness, precision, and a considerable amount of time. An effective neutralisation of a tunnel

¹³⁹ For information about the extent of the IDF's precautionary measures, see Chapter VI (IDF's Conduct during the Conflict), Section D.2.b.

¹⁴⁰ In contrast, Hamas issued contrary instructions directing civilians to stay. See Chapter IV (Hamas's War Crimes), Section C.

¹⁴¹ *Shortlived truce broken in Gaza's Shujayea*, Al-Jazeera (July 20, 2014), available at <http://www.aljazeera.com/news/middleeast/2014/07/ceasefire-under-way-gaza-201472010432898980.html>; *Israel, Hamas agree to two-hour truce in Gaza's Shejaiya*, Yahoo News (July 20, 2014), available at <http://news.yahoo.com/hamas-accepts-call-three-hour-humanitarian-truce-095802332.html>.



required dismantling it entirely. To locate the various cross-border routes, IDF forces had to conduct extensive digging and engineering operations. And to dismantle the tunnels, the IDF had to use explosives, which led to damage to the ostensibly civilian structures used to conceal cross-border tunnel openings, and on occasion caused unavoidable incidental damage to the civilian buildings situated aboveground.

92. The IDF had to accomplish this mission in urban terrain controlled by the enemy, under the constant threat of enemy attack. The location of these tunnels in and around civilian structures in urban areas created serious operational challenges for IDF ground forces. The fact that tunnels had multiple openings meant that the IDF was unable to ensure that areas of operation were clear of enemy presence and also unable to know from which direction militants could emerge and how close they could get to IDF troops. Indeed, militants from Hamas and other terrorist organisations prepared and carried out numerous ambushes, attacks, and kidnapping attempts against IDF forces near tunnel shafts. Therefore, neutralising the cross-border assault tunnels required extensive protection of the IDF forces that were locating, mapping and dismantling the tunnels in the Gaza Strip. IDF forces had to use armoured and infantry forces as well as aerial support, and to take up vantage points in order to reduce the threat and harm to the forces on the ground — including the threat that Hamas would kidnap soldiers within the Gaza Strip. As a result of these challenges, the ground operation required a large number of forces in order to complete the mission.¹⁴²

93. In Shuja'iyeh, for example, IDF forces met strong and organised resistance. Hamas cooperated with other terrorist organisations, using offensive and defensive positions prepared in advance, booby-traps, and a vast network of combat tunnels (the majority of which were placed in civilian structures that Hamas turned into military objectives). During the ground operation in Shuja'iyeh, IDF forces found six cross-border assault tunnels directed at Israeli communities, dozens of tunnel shafts, and dozens of civilian houses rigged with booby-traps.

94. Meanwhile, during this phase of the 2014 Gaza Conflict, Hamas and other terrorist organisations continued launching thousands of rockets and mortars at Israel's civilian population. In just one example, a rocket struck a civilian house in Yehud, a city near Ben Gurion International Airport, Israel's main commercial aviation hub. This incident prompted the U.S. Federal Aviation

¹⁴² Ground forces were accompanied by ancillary officers, such as Civilian Affairs Officers, who advised operational commanders regarding aspects concerning the civilian population. *See* IDF Chapter VI (IDF's Conduct during the Conflict), Section E.1.



Administration to issue a notice prohibiting all U.S. commercial flights to the airport.¹⁴³ Many European and other airlines subsequently cancelled flights to Israel, which were only gradually restored thereafter.¹⁴⁴

95. Hamas also sought to implement its kidnapping strategy throughout the 2014 Gaza Conflict, and especially during the ground operation, as Hamas militants made kidnapping attempts both through cross-border assault tunnels and through combat tunnels in the Gaza Strip. For example, on July 20, Hamas militants kidnapped the body of First Sergeant Oron Shaul through a combat tunnel shaft located in Shuja'iyeh.¹⁴⁵ Preventing Hamas from kidnapping Israeli civilians and soldiers was a high-priority military objective throughout the Operation.



Above Left: A structure designed to appear civilian in nature that was built above the combat tunnel used by Hamas militants to kidnap the body of First Sergeant Oron Shaul in Shuja'iyeh on July 20. Above Right: Image of a combat tunnel shaft hidden under a carpet inside a civilian house in Deir al Balah, found by IDF forces on July 22. (Source: IDF)

¹⁴³ Federal Aviation Administration, Press Release, Notice to Airmen (July 22, 2014), http://www.faa.gov/news/press_releases/news_story.cfm?newsId=16694.

¹⁴⁴ Jad Mouawad, *Airlines Suspend Flights to Israel After Hamas Rocket Falls Near Main Airport*, N.Y. Times (July 22, 2014), available at http://www.nytimes.com/2014/07/23/world/middleeast/faa-halts-us-flights-to-israel.html?_r=0; Mark Berman, *FAA announces that U.S. flights to and from Tel Aviv can resume*, The Washington Post (July 23, 2014), available at <http://www.washingtonpost.com/news/post-nation/wp/2014/07/23/faa-u-s-flights-banned-from-flying-to-and-from-israel-for-another-day/>.

¹⁴⁵ Hamas is still holding the body of the kidnapped soldier, First Sergeant Oron Shaul. See *Staff Sergeant Oron Shaul*, Prime Minister's Office (July 20, 2014), available at <http://www.pmo.gov.il/English/TerrorInjured/Pages/vicOronShaul.aspx>. In addition to this kidnapping, Hamas militants carried out another kidnapping attempt through a combat tunnel that was located within an urban area in the Gaza Strip. On August 1, during a mutually agreed-upon ceasefire, Hamas militants opened fire at IDF soldiers near a combat tunnel in Rafah, and one of the militants dragged Lieutenant Hadar Goldin's body through a combat tunnel. See Section B.2, *infra*. In another incident, on July 25, when IDF forces encountered Hamas militants emerging from a tunnel shaft in Khuza'a, Hamas militants unsuccessfully tried to kidnap wounded IDF soldiers. Two soldiers were killed in this attack.



96. Furthermore, during the 2014 Gaza Conflict, Hamas militants infiltrated Israeli territory four times by way of cross-border assault tunnels: on July 17 (before the start of the IDF ground operation), and on July 19, 21 and 28 (during the ground operation). Hamas employed well-armed, specially trained militants to execute these attacks. The militants carried weapons, including anti-tank missiles, machine guns, grenades, and sometimes even anti-tank mines, as well as equipment to facilitate kidnappings, such as tranquillising drugs and handcuffs. The first infiltration attack following the launch of the ground operation occurred on July 19 near Kibbutz Be'eri, in which two IDF soldiers patrolling the area were killed.¹⁴⁶ Another attack occurred on July 21 in the territory of Kibbutz Nir Am,¹⁴⁷ in which four IDF soldiers protecting the Kibbutz were killed. An additional attack occurred on July 28 in the territory of Kibbutz Nahal Oz,¹⁴⁸ in which five IDF soldiers protecting the Kibbutz were killed. Throughout the 2014 Gaza Conflict, Israeli civilians near the border with the Gaza Strip lived in constant fear that Hamas militants could emerge from the ground and attack them at any time.¹⁴⁹

¹⁴⁶ On July 19, approximately ten armed Hamas militants emerged from a tunnel opening 4.7 kilometres from civilian homes in Kibbutz Be'eri, equipped with tranquillisers and handcuffs, indicating their intention to kidnap civilians or soldiers. They fired at IDF vehicles that they encountered, killing two soldiers and wounding three. One of the militants was killed and the rest escaped to the Gaza Strip, leaving behind two RPG launchers and rockets, anti-tank mines, a machine gun, AK47 assault rifles, magazines and grenades. Also on July 19, while the IDF Engineer Corps was mapping a tunnel network near the Kissufim crossing, three militants exited a cross-border tunnel shaft on the Gazan side, crossed the fence, and launched anti-tank missiles towards a bulldozer. As a result of IDF fire, an explosive belt that was strapped to one of the militants exploded. Two militants were killed and the third escaped back to the Gaza Strip via the tunnel. In addition to personal weapons and anti-tank missiles, tranquillising drugs and handcuffs were found on the bodies of militants, demonstrating their intention to kidnap.

¹⁴⁷ On July 21, approximately 12 Hamas militants infiltrated Israel via a tunnel opening located in the territory of Kibbutz Nir Am, just 1.3 kilometres from civilian homes in the Kibbutz and 1.1 kilometres from civilian homes in the city of Sderot. The militants encountered an IDF force, and attacked them with anti-tank missiles, machine-gun fire, and small arms. Four Israeli soldiers were killed, and a Hamas militant attempted to kidnap one of the soldiers.

¹⁴⁸ On July 28, nine Hamas militants infiltrated Israeli territory through a tunnel opening in the territory of Kibbutz Nahal Oz, just two kilometres from civilian homes in the Kibbutz. They attacked an IDF post near the tunnel shaft and killed five soldiers. The militants were equipped with at least two RPG launchers and rockets, a machine gun, AK47 assault rifles, grenades, and magazines. The video of the incident, which was filmed by one of the militants, includes footage of militants exiting the tunnel onto Israeli territory, attacking an IDF post, killing five Israeli soldiers and trying, unsuccessfully, to kidnap one of them. Edited parts of this video were publicised for propaganda purposes. See RoYan 1, *Nahal Oz Hamas attack on Israeli military outpost*, YouTube (July 29, 2014), <https://www.youtube.com/watch?v=SdGCtjFjWU>. Later, three ready-to-use motorcycles, explosives, and RPG rifles and personal weapons were found in the tunnel, attesting to the militants' ability to penetrate deep into Israeli territory and carry out attacks.

¹⁴⁹ For more detail on the impact of these infiltrations on Israeli civilian life, see Chapter IV (Hamas's War Crimes) and Chapter V (The Threat to Israel's Civilian Population). See also, e.g., Maayan Lubell, *Tunnel Attack Fears Turn Gaza Border Kibbutzim in Ghost Towns*, Reuters (July 22, 2014), available at <http://www.reuters.com/article/2014/07/22/us-palestinians-israel-tunnels-idUSKBN0FR1KV20140722>.



Above: Photos of tunnels found during the ground operation phase of the 2014 Gaza Conflict. (Source: IDF)¹⁵⁰



Above Left: Three ready-to-use motorcycles found inside a cross-border assault tunnel with an opening in close proximity to civilian homes in Kibbutz Nahal Oz, discovered following the infiltration of Hamas militants on July 28. These motorcycles attest to the militants' ability to penetrate deep into Israeli territory and carry out attacks. Above Right: Explosives, RPG rifles and personal weapons found in the same tunnel. (Source: IDF)

97. Throughout the ground operation, Hamas and other terrorist organisations frustrated ceasefire efforts. For example, on July 25, the U.S. Secretary of State, the U.N. Secretary General, and the Egyptian Foreign Minister supported a ceasefire initiative at a joint press conference in Cairo. This initiative called for a seven-day humanitarian ceasefire in anticipation of the coming Muslim holidays of Laylat Al-Qadr and Eid Al-Fitr.¹⁵¹ As a first step, Robert Serry, the U.N. Special Coordinator for the Middle East Peace Process, negotiated a 12-hour humanitarian pause. Israel accepted the proposal. The U.N. Special Coordinator repeatedly called for extensions over the next

¹⁵⁰ For video footage of a tunnel found during the 2014 Gaza Conflict, see IDF, *Inside a Hamas Terror Tunnel*, YouTube (August 1, 2014), <https://www.youtube.com/watch?v=k3AY7o9Xg-g&feature=youtu.be>.

¹⁵¹ Remarks, John Kerry, U.S. Secretary of State, Cairo, Egypt (July 25, 2014), available at <http://www.state.gov/secretary/remarks/2014/07/229803.htm>.



two days,¹⁵² and Israel indicated it would agree to implement such extensions. However, Hamas resumed rocket fire on July 26, minutes after the original 12-hour ceasefire expired.¹⁵³ On July 28, Israel and Hamas agreed to a humanitarian ceasefire called for by the Security Council in light of the upcoming Muslim holidays¹⁵⁴ — only to have this ceasefire broken by rockets fired into Israel. The U.N. Special Coordinator negotiated another ceasefire, set to begin on the morning of August 1, which Israel again accepted. An hour and a half into this mutually-agreed upon ceasefire, however, Hamas militants ambushed IDF forces in the Rafah district, killing two IDF soldiers and kidnapping a third soldier through a combat tunnel. Although the IDF initially believed that the kidnapped soldier was still alive, forensic evidence found at the tunnel a few hours after the attack indicated that the soldier had been killed.¹⁵⁵ Following this ceasefire violation, the U.N. Special Coordinator urged the Palestinian parties “to urgently reaffirm their commitment to the humanitarian ceasefire.”¹⁵⁶

98. The ground fighting in the Gaza Strip took a heavy toll on the IDF. Forty-one IDF soldiers were killed and many others were injured during the ground operation while trying to defend Israel’s civilian population from the threat posed by cross-border assault tunnels. As further detailed below,¹⁵⁷ combat in densely populated urban areas creates significant operational and tactical challenges, which were compounded by Hamas’s exploitation of civilian structures in an urban terrain (at the cost of enhanced risk to the civilian population). Under these difficult circumstances, the IDF took extensive steps to mitigate the risk of harm to civilians in the area of hostilities, often resulting in increased risk to its own forces.

¹⁵² Statement by Robert Serry, United Nations Special Coordinator for the Middle East Peace Process, calling for an extension of the humanitarian pause, Jerusalem (July 26, 2014), available at <http://www.unsco.org/Documents/Statements/SC/2014/Statement%20by%20the%20UN%20Special%20Coordinator%2026%20July%202014.pdf>.

¹⁵³ Sam Frizell, *Hamas Agrees to Cease-Fire, but Rockets Keep Flying*, Time (July 27, 2014), available at <http://time.com/3042209/israel-gaza-hamas-cease-fire/>.

¹⁵⁴ Yousef Al-Helou et al., *Holiday Bring No Respite from Death in Gaza, Israel*, USA Today (July 29, 2014), available at <http://www.usatoday.com/story/news/world/2014/07/28/un-demands-gaza-cease-fire/13257629/>.

¹⁵⁵ A day after the attack, a special tribunal presided over by the IDF Chief Rabbi determined that the soldier in question, Lieutenant Hadar Goldin, had been killed. See *Lieutenant Hadar Goldin*, Prime Minister’s Office (Aug. 1, 2014), available at <http://www.pmo.gov.il/english/terrorinjured/pages/vichadargoldin.aspx>.

¹⁵⁶ See Statement by Robert Serry, United Nations Special Coordinator for the Middle East Peace Process, on a reported violation of the humanitarian ceasefire, Jerusalem (Aug. 1, 2014), available at <http://www.unsco.org/Documents/Statements/SC/2014/Statement%20by%20the%20UN%20Special%20Coordinator%201%20August%202014.pdf>; *Terrorists Breach Ceasefire, Suspected Abduction*, Israel Ministry of Foreign Affairs, available at <http://mfa.gov.il/MFA/PressRoom/2014/Pages/Terrorists-breach-ceasefire,-suspected-abduction-1-Aug-2014.aspx>.

¹⁵⁷ Chapter VI (IDF’s Conduct during the Conflict), Section C.



99. On the morning of August 5, after neutralising a total of 32 cross-border assault tunnels, the IDF withdrew its ground forces from the Gaza Strip,¹⁵⁸ even though rocket and mortar attacks on Israel continued and a permanent ceasefire had not been reached.

3. Phase Three: Redeployment and Aerial Strikes (August 5 – August 26)

100. After IDF ground forces withdrew from the Gaza Strip on August 5, Hamas and other terrorist organisations continued to launch rockets and mortars at Israel, in breach of various mutually agreed-upon ceasefires. For instance, after agreeing to a 72-hour Egyptian-brokered ceasefire beginning on August 5, fire from the Gaza Strip resumed before the ceasefire was set to expire on August 8, with mortars launched towards the Kerem Shalom Crossing point. This breach occurred despite the fact that Israel had notified Egypt of its willingness to extend the ceasefire for another 72 hours. Hamas subsequently agreed to another Egyptian-brokered 72-hour ceasefire to begin on August 11, but once again terrorist organisations in the Gaza Strip violated the agreement by launching mortars. During this period, Hamas also fired rockets into Israel from Lebanon, in an attempt to open additional fronts against Israel and divert IDF resources.¹⁵⁹ On August 19, Hamas and other terrorist organisations broke yet another ceasefire by launching approximately 50 rockets and mortars at Israel.

101. In contrast, Israel refrained from launching attacks during all ceasefires. When ceasefires were not in force or after they had been violated by the other side, the IDF conducted airstrikes in an effort to further degrade the rocket- and mortar-launching capabilities of Hamas and other terrorist organisations in the Gaza Strip.

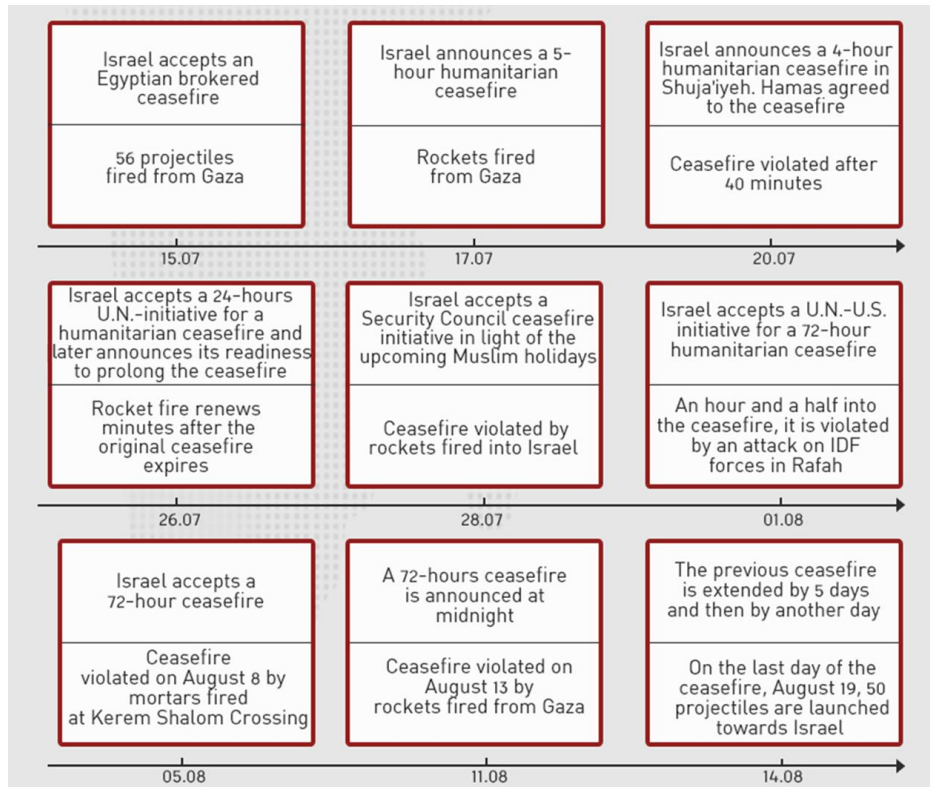
102. Between August 20 and the end of active hostilities on August 26, Hamas and other terrorist organisations continued to fire at Israel, directing mortars mainly towards the Israeli residential

¹⁵⁸ *PM Netanyahu holds press conference*, Israel Ministry of Foreign Affairs (Aug. 6, 2014) (“You either achieve it by agreement or you achieve it by actually going in to the other side, finding the points of origin of the tunnel or a point of origin, identify the trajectory of the tunnel and then dismantling it, destroying it through various means. And that’s basically what we did. If we could have done it diplomatically, fine. If not, we did it militarily and the army just told us that they completed this activity and then we went out. We went in to deal with the tunnels; we went out after we finished dealing with the tunnels.”), available at <http://mfa.gov.il/MFA/PressRoom/2014/Pages/PM-Netanyahu-holds-press-conference-6-Aug-2014.aspx>.

¹⁵⁹ *Hamas Al-Aqsa TV News Chief: Rockets From Lebanon In Recent Gaza War Were Fired On Instructions By Hamas Military Wing*, Middle East Media Research Institute (Feb. 17, 2015), available at <http://www.memri.org/report/en/0/0/0/0/8441.htm>.



communities of southern Israel. During this period, an average of 146 rockets and mortars were fired at Israel per day, killing three Israeli civilians, including a 4-year-old boy in his home.¹⁶⁰



C. Ceasefire and Outcome of the 2014 Gaza Conflict

103. The 2014 Gaza Conflict concluded on August 26, with a ceasefire adhered to by both Israel and Hamas. During the 51 days of the 2014 Gaza Conflict, Hamas and other terrorist organisations fired more than 4,500 rockets and mortars, approximately 4,000 of which were directed at Israeli cities, towns, and residential communities.¹⁶¹ Hamas also executed a number of cross-border attacks on Israeli territory. In response to Hamas’s actions, the IDF attacked thousands of military targets

¹⁶⁰ See Chapter V (The Threat to Israel’s Civilian Population).

¹⁶¹ The remaining rockets and mortars were directed at IDF troops in the Gaza Strip. Approximately 250 of the launches directed towards Israel failed, landing in the Gaza Strip. These rockets and mortars contributed substantially to the damage to civilian life and property in the Gaza Strip incurred during the 2014 Gaza Conflict. See Chapter IV (Hamas’s War Crimes), Section A. See also Annex: *Palestinian Fatality Figures in the 2014 Gaza Conflict*, also available at <http://mfa.gov.il/ProtectiveEdge/Documents/PalestinianFatalities.pdf>.



throughout the Gaza Strip¹⁶² and neutralised a total of 32 cross-border assault tunnels — 14 of which crossed into Israel near or within civilian residential communities, and 18 under construction which approached the border with Israel.

104. Unfortunately, Hamas and other terrorist organisations prolonged the 2014 Gaza Conflict by repeatedly violating or rejecting temporary ceasefires and setting unreasonable preconditions for negotiations. In violation of international law, these organisations employed military strategies that involved deliberate targeting of Israeli civilians and were designed to exacerbate unnecessary and unlawful risk and harm to civilian life on both sides. Hamas and these terrorist organisations operated against the best interests of the people of the Gaza Strip, succeeding only in causing further instability.

105. In total, six civilians in Israel (five Israeli civilians and one Thai national) and 67 IDF soldiers lost their lives during the 2014 Gaza Conflict. In the Gaza Strip, approximately 2,125 Palestinians were killed.¹⁶³ As of April 2015, at least 936 of these fatalities (at least 44% of the total) have been positively identified by the IDF as militants affiliated with Hamas and other terrorist organisations in the Gaza Strip.¹⁶⁴ Thirty-six percent of total fatalities have been classified as civilians not taking a direct part in the hostilities, either because there was no indication that they

¹⁶² For additional information regarding the military targets attacked by the IDF and the targeting process, see Chapter VI (IDF's Conduct during the Conflict), Section D.

¹⁶³ It has been claimed that the disparity between the number of Palestinian and Israeli fatalities demonstrates that the IDF employed disproportionate force against its adversaries in the Gaza Strip. This claim reflects a flawed understanding of the principle of proportionality under the Law of Armed Conflict, which requires a party planning an individual attack on a specific target to assess whether the expected incidental harm (to civilians, civilian objects or a combination thereof) would be excessive in relation to the concrete and direct military advantage anticipated. Proportionality is not assessed by comparing numbers of fatalities on both sides to the conflict after the conflict is over. The numbers comparison is also a flawed understanding of the principle of proportionality in the *ius ad bellum* context: assessing the proportionality of force in self-defence is not a comparison of how much force each sides uses (or how much harm each side causes), but concerns the amount of force used by one side of the conflict in order to repel an armed attack. For a detailed analysis, see Annex: *Palestinian Fatality Figures in the 2014 Gaza Conflict*, also available at <http://mfa.gov.il/ProtectiveEdge/Documents/PalestinianFatalities.pdf>.

¹⁶⁴ A special team within the IDF Intelligence Corps has been charged with closely tracking information relating to Palestinian fatalities, drawing from both classified and public sources. The information gathered thus far has revealed that the share of militants among the deceased is much higher than estimates published by the U.N., various non-governmental organisations, and media sources — which relied heavily on inaccurate and deliberately misleading and falsified fatality lists, such as those published by the Hamas-controlled Gaza Health Ministry. Hamas deliberately blurred the distinction between militants and civilian fatalities in the 2014 Gaza Conflict — a strategy it has employed previously — complicating efforts to categorise fatalities accurately based solely on public sources. Thus, IDF Intelligence has performed its own careful, thorough analysis. For a comprehensive description of the IDF analysis and findings, see Annex: *Palestinian Fatality Figures in the 2014 Gaza Conflict*, also available at <http://mfa.gov.il/ProtectiveEdge/Documents/PalestinianFatalities.pdf>. See also Chapter IV (Hamas's War Crimes), Section B; Chapter II (Background to the Conflict), Section D; Chapter VI (IDF's Conduct during the Conflict), Section D.3.



were involved in combat or because they were assumed to be uninvolved based upon their age and gender.¹⁶⁵ Twenty percent of total fatalities, all males between the ages of 16-50, have yet to be identified as having been involved or uninvolved in combat.

106. At the end of the 2014 Gaza Conflict, both sides agreed to a month-long temporary ceasefire without preconditions. Further negotiations of terms in Egypt were meant to follow, but as of April 2015, negotiations have yet to commence. During the lull in active hostilities since the end of August 2014, Israel has facilitated the reconstruction of the Gaza Strip, agreeing to a Gaza Reconstruction Mechanism, as detailed in Chapter VI (IDF's Conduct during the Conflict). Hamas, for its part, is actively preparing for future hostilities against Israel.¹⁶⁶ Hamas and other terrorist organisations continue to incite terror attacks against Israeli civilians,¹⁶⁷ to attempt to smuggle illicit weapons and related materials,¹⁶⁸ to conduct rocket test launches, to fire rockets towards Israel,¹⁶⁹ to plan future attacks and kidnappings,¹⁷⁰ and to develop the tunnel infrastructure¹⁷¹ (including by

¹⁶⁵ In all but a few rare instances, women, children under the age of 16, and the elderly were automatically categorised as "uninvolved," despite the fact that the media and IDF intelligence have documented cases of members of these groups providing combat assistance. See, e.g., *Gaza Terror Group Trains Women to Become Jihadists*, Arutz Sheva (Feb. 27, 2015), available at <http://www.israelnationalnews.com/News/News.aspx/191913#.VPV1T3ysUkV>; see also Annex: *Palestinian Fatality Figures in the 2014 Gaza Conflict*, also available at <http://mfa.gov.il/ProtectiveEdge/Documents/PalestinianFatalities.pdf>.

¹⁶⁶ See, e.g., *Hamas and the other terrorist organizations based in Gaza are rehabilitating the military capabilities damaged in Operation Protective Edge through extensive recruitment, the establishment of military units and intensive military training*, Meir Amit Intelligence and Terrorism Information Center (Feb. 2, 2015), available at http://www.terrorism-info.org.il/Data/articles/Art_20765/E_017_15_11612686.pdf; Amos Harel, *Hamas seeking to fight Israel from Lebanon*, Haaretz (Feb. 18, 2015), available at <http://www.haaretz.com/news/diplomacy-defense/premium-1.642980>; Quentin Sommerville, *Inside the Gaza Strip's tunnels, militants get ready for the next war*, BBC News (Feb. 26, 2015), available at <http://www.bbc.com/news/world-middle-east-31637592>.

¹⁶⁷ *Recurring Palestinian Incitement: Leaders Praise Tel Aviv Stabbings*, IDF (Jan. 22, 2015), available at <http://www.idfblog.com/blog/2015/01/22/recurring-palestinian-incitement-leaders-praise-tel-aviv-stabbings/>; *Israel says it busted Hamas cell planning attacks*, Yahoo News (Nov. 27, 2014), available at <http://news.yahoo.com/israel-says-busted-hamas-cell-planning-attacks-101830915.html?ylt=AwrBEiTvBXdUS3cA1KjQtDMD>.

¹⁶⁸ *Cleared for Publication: Three Hamas-Affiliated Suspects Arrested in Smuggling Attempt*, IDF (Feb. 12, 2015), available at <http://www.idfblog.com/blog/2015/02/12/cleared-publication-three-hamas-affiliated-suspects-arrested-smuggling-attempt/>.

¹⁶⁹ Yoav Zitun, *Gaza rocket hits Israel for third time since summer war*, Ynetnews (Dec. 19, 2014), available at <http://www.ynetnews.com/articles/0,7340,L-4605554,00.html>; *Rocket hits southern Israel as Independence Day ends*, Ynetnews (April 23, 2015), available at <http://www.ynetnews.com/articles/0,7340,L-4650066,00.html>.

¹⁷⁰ *Israel says arrests W. Bank Hamas cell planning attacks*, Yahoo News (Mar. 22, 2015), available at <http://news.yahoo.com/israel-says-arrests-w-bank-hamas-cell-planning-165529977.html>; *Israel says it busted Hamas cell planning attacks*, Associated Press (Nov. 27, 2014), available at <http://www.dailymail.co.uk/wires/ap/article-2851569/Israel-says-busted-Hamas-cell-planning-attacks.html>. See also *News of Terrorism and the Israeli-Palestinian Conflict (April 15-21, 2015)*, Meir Amit Intelligence and Terrorism

Footnote continued on next page



diverting precious resources in the Gaza Strip to rearmament and reconstruction of the cross-border assault tunnels). Hence, the threat posed by Hamas's and other terrorist organisations' attacks remains.

Footnote continued from previous page

Information Center (April 28, 2015), available at http://www.terrorism-info.org.il/Data/articles/Art_20799/E_060_15_14914496.pdf.

¹⁷¹ See *Rocket Testing and Tunnel Reconstruction*, IDF (Dec. 22, 2014), available at <http://www.idfblog.com/blog/2014/12/22/hamas-reconstructing-tunnels-southern-israel/>; Yoav Zitun, *Senior IDF officer: Hamas will improve ahead of the next round*, Ynetnews (Jan. 20, 2015), available at <http://www.ynetnews.com/articles/0,7340,L-4617385,00.html>; Elior Levy, *Hamas reconstructing terror tunnels using Israeli materials*, Ynetnews (Dec. 19, 2014), available at <http://www.ynetnews.com/articles/0,7340,L-4605504,00.html>; *Palestinian Islamic Jihad Digs New Tunnels in the Gaza Strip*, MEMRI TV (Sept. 4, 2014), available at <http://www.memritv.org/clip/en/4478.htm>.



IV. Violations of the Law of Armed Conflict, War Crimes, and Crimes Against Humanity Committed by Hamas and Other Terrorist Organisations during the 2014 Gaza Conflict

107. Throughout the 2014 Gaza Conflict, Hamas and other Palestinian terrorist organisations in the Gaza Strip¹⁷² intentionally and systematically employed military strategies designed to maximise harm to civilian life and property, both in Israel and in the Gaza Strip. These military strategies gave rise to violations of the Law of Armed Conflict,¹⁷³ war crimes, and crimes against humanity.

108. During the 2014 Gaza Conflict, Hamas and other terrorist organisations in the Gaza Strip employed two primary means to target Israeli civilians: rocket and mortar launches and cross-border tunnel attacks. Rocket and mortar assaults were not new to the Israeli public. Beginning in 2001, Hamas and other terrorist organisations pursued a deliberate policy of launching widespread and systematic rocket and mortar attacks against Israel's civilian population. This policy was carried out with particular zeal in 2008-2009, 2012, and once again, in 2014, when Israeli civilians were bombarded with hundreds of rockets and mortars within a span of days.¹⁷⁴ In the month leading up to the 2014 Gaza Conflict, Hamas and other terrorist organisations in the Gaza Strip launched more than 300 rockets and mortars at the Israeli civilian population. During the 2014 Gaza Conflict, they fired more than 4,500 rockets and mortars, approximately 4,000 of which were directed at Israeli cities, towns, and residential communities.¹⁷⁵ These launches caused deaths, injuries, and property

¹⁷² Aside from Hamas, a variety of other terrorist organisations in the Gaza Strip are actively engaged in hostilities against the State of Israel, primarily the Palestinian Islamic Jihad, as well as Fatah-affiliated and Salafist-*jihadi* groups. According to IDF estimates, of the Palestinian militants operating in the Gaza Strip during the 2014 Gaza Conflict, approximately 16,000 belonged to Hamas, 5,000 to the Palestinian Islamic Jihad, and 5,000 to other groups.

¹⁷³ This Paper uses the term Law of Armed Conflict in its ordinary sense — describing the legal obligations of parties to an armed conflict in the course of their military operations. International Humanitarian Law is used by many commentators and countries as an interchangeable term, as is the laws of war.

¹⁷⁴ During the Gaza Operation 2008-2009 (also known as Operation “Cast Lead”) and the Gaza Operation 2012 (also known as Operation “Pillar of Defense”), Hamas and other terrorist organisations in the Gaza Strip fired, respectively, 864 and approximately 1,500 rockets and mortars at Israel's civilian population. *See* Chapter II (Background to the Conflict), Section B.

¹⁷⁵ Between 100 and 150 rockets and mortars landed in each of the following cities, towns and residential communities in southern Israel: Be'er Sheva, Be'eri, Kissufim, Kfar Aza, Nirim, Netiv HaAsara, Netivot, Ein HaShlosha, and Sderot. The major Israeli cities of Ashdod and Ashkelon each suffered landings of between 200 to 250 rockets, as did the residential communities of Zikim and Kerem Shalom. The rockets and mortars that were not directed at Israeli cities, towns or residential communities were directed at IDF forces in the Gaza Strip. Approximately 250 of the launches directed towards Israel failed, landing within the Gaza Strip.



damage to civilians and civilian property, and terrorised more than six million Israelis residing within range of these unlawful attacks.¹⁷⁶

109. During the 2014 Gaza Conflict, Hamas for the first time utilised a method of targeting civilians not seen in previous rounds of hostilities: cross-border assault tunnels. Over the course of the 2014 Gaza Conflict, Hamas militants repeatedly infiltrated Israel through secret tunnels originating in the Gaza Strip and opening in or close to residential communities in Israel, for the purpose of attacking Israeli civilians and soldiers.¹⁷⁷ In deliberately targeting Israeli civilians by rocket and mortar fire and tunnel attacks, as part of a widespread and systematic policy, these terrorist organisations violated the Law of Armed Conflict and committed war crimes and crimes against humanity.

110. During the 2014 Gaza Conflict, not only Israeli civilians fell victim to Hamas and other terrorist organisations' deliberately harmful military strategies, but Gazan civilians as well. These terrorist organisations knowingly endangered civilian life and property in the Gaza Strip by locating their military operations and assets within and around civilian buildings in densely-populated civilian areas. These organisations conducted hostilities from built-up civilian areas in order to shield their military objectives from IDF attack, with the knowledge that Israel would take precautions and even call off strikes in order to spare civilian life and property. Thus, Hamas and other terrorist organisations in the Gaza Strip launched some 550 rockets and mortars within or nearby "sensitive sites" such as schools, U.N. facilities, hospitals, and places of worship,¹⁷⁸ and made extensive use of these and other civilian structures for command and control operations, military communications, sniper posts, weapons storage, and cover for combat tunnels. These organisations further exacerbated harm to civilian life and property in the Gaza Strip by extensive rigging of civilian structures and residential streets with booby-traps and Improvised Explosive Devices (hereinafter: "IEDs"). In deploying these strategies, Hamas and other terrorist organisations not only were directly responsible for the scale of the civilian casualties and property damage in the Gaza Strip during the 2014 Gaza Conflict, but also violated the Law of Armed Conflict and committed war crimes.

111. The clear disregard for civilian life exhibited by Hamas and other terrorist organisations during the 2014 Gaza Conflict was not new. For years, Hamas and other terrorist organisations in the Gaza Strip have carried out countless illegal attacks against Israeli civilians, from suicide bombings

¹⁷⁶ See Chapter V (The Threat to Israel's Civilian Population).

¹⁷⁷ See Chapter III (Objectives and Phases of the Conflict).

¹⁷⁸ This IDF estimate refers to projectiles launched within 25 metres of the following "sensitive sites": educational institutions, U.N. facilities, medical facilities, places of worship, post offices, cemeteries, sports facilities, governmental buildings, fire stations, and prisons.



to rocket and mortar fire.¹⁷⁹ In light of Hamas's history of ruthless and deliberate attacks against Israeli civilians and others, the State of Israel,¹⁸⁰ the United States, Canada, the European Union, Australia, New Zealand, and Japan, have designated Hamas or its military wing, Izz al-Din al-Qassam Brigades, as a terrorist organisation.¹⁸¹ Other terrorist organisations with operations in the Gaza Strip have been similarly designated.¹⁸² Without discounting Hamas and these organisations' longstanding and flagrant disregard for the Law of Armed Conflict,¹⁸³ the following discussion focuses mainly on unlawful and deliberately harmful practices employed during the 2014 Gaza Conflict.

A. Hamas and other Terrorist Organisations in the Gaza Strip Committed War Crimes and Crimes Against Humanity by Deliberately Attacking Israeli Civilians

112. **Rocket and Mortar Attacks.** Throughout the 2014 Gaza Conflict, rockets and mortars launched from the Gaza Strip by Hamas and other terrorist organisations posed a continuous threat to

¹⁷⁹ For more information on Hamas, see Chapter II (Background to the Conflict).

¹⁸⁰ Government Decision pursuant to Prevention of Terrorism Ordinance No. 33 of 5708-1948 (in force since 1989), available at http://www.mod.gov.il/Defence-and-Security/Fighting_terrorism/Documents/teror16.11.xls (partially in Hebrew).

¹⁸¹ For United States designation, in force since 1997, see United States Department of State, List of Foreign Terrorist Organizations, available at <http://www.state.gov/j/ct/rls/other/des/123085.htm>. For Canadian designation, in force since 2002, see Government of Canada, Department of Public Safety, Currently Listed Terrorist Entities, available at www.publicsafety.gc.ca/cnt/ntnl-scrnt/cntr-trrrsm/lstd-ntts/crrnt-lstd-ntts-eng.aspx. For European Union designation, in force since 2003, see Council of the European Union Common Position 2003/651/CFSP of 12 September, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003E0651:EN:HTML>. For Australia designation, in force since 2003, see Australian Government, Australian National Security, Listed Terrorist Organisations, available at <http://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx>. For New Zealand designation, in force since 2010, see New Zealand Police, Lists Associated with Resolution 1373, available at <http://www.police.govt.nz/advice/personal-community/counterterrorism/designated-entities/lists-associated-with-resolution-1373>. For Japan designation, in force since 2003, see Japan's *Foreign Exchange and Foreign Trade Act* (Act No. 228 of December 1, 1949; Final revision: Act No. 102 of October 21, 2005), available at <http://www.mofa.go.jp/announce/announce/2002/7/0705.html> and <http://www.mofa.go.jp/announce/press/2003/9/0930.html>. See also Chapter II (Background to the Conflict).

¹⁸² For example, the Palestinian Islamic Jihad has been designated as a terrorist organisation by many states. See, e.g., United States designation, in force since 1997, United States Department of State, List of Foreign Terrorist Entities, *supra* note 181; European Union designation, in force since 2001, Council of the European Union Common Position 2003/651/CFSP of 12 September, *supra* note 181; Canadian designation, in force since 2002, Government of Canada, Department of Public Safety, Currently Listed Terrorist Entities, *supra* note 181; Australian designation, in force since 2004, Australian Government, Australian National Security, Listed Terrorist Organisations, *supra* note 181; New Zealand designation, in force since 2010, New Zealand Police, List Associated with Resolution 1373, *supra* note 181.

¹⁸³ See, e.g., *The Operation in Gaza - Factual and Legal Aspects*, Israel Ministry of Foreign Affairs (July 29, 2009), available at http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Operation_in_Gaza-Factual_and_Legal_Aspects.aspx.



Israeli civilians. These organisations launched approximately 4,000 rockets and mortars at Israel,¹⁸⁴ threatening six million Israeli civilians (almost 70% of Israel's population) within range of the attacks.¹⁸⁵ On average, Israeli civilians faced the threat of almost 80 rocket and mortar launches per day during the 2014 Gaza Conflict — double the intensity of rocket and mortar attacks against Israel during the Gaza Operation 2008-2009 (also known as Operation “Cast Lead”).¹⁸⁶ These rockets and mortars killed six civilians in Israel, including a four-year-old child who was killed by a mortar strike while playing inside his family home on August 22.¹⁸⁷ Additionally, rocket and mortar attacks injured approximately 1,600 civilians in Israel, over 270 of whom were children.¹⁸⁸ Across Israel, rockets, mortars, and shrapnel hit apartment buildings, schools, houses, cars, and power lines, causing approximately 150 million NIS (over 39 million USD) in direct damage to civilian property and approximately 1.7 billion NIS (approximately 443 million USD) in indirect damage to civilians.¹⁸⁹

¹⁸⁴ The IDF estimates that Hamas conducted at least 70% of these launches.

¹⁸⁵ *Israel under fire July-August 2014 - A Diary*, Israel Ministry of Foreign Affairs (Aug. 26, 2014), available at <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Pages/Israel-under-fire-July-2014-A-Diary.aspx>.

¹⁸⁶ During the Gaza Operation 2008-2009, 36 rockets on average were launched at Israel daily. During the 2014 Gaza Conflict, Hamas and other terrorist organisations in the Gaza Strip were armed with weapons caches substantially larger and more deadly than in the Gaza Operation 2008-2009. These organisations invested heavily in rearmament following the Gaza Operation 2008-2009 and the Gaza Operation 2012 engagements, which shrunk their weapons stockpiles substantially. By 2014, Hamas and other terrorist organisations in the Gaza Strip had accumulated what the IDF estimates to have been 10,000 rockets and mortars, a ten-fold increase compared to the Gaza Operation 2008-2009. Their long-range rocket arsenal, non-existent during the Gaza Operation 2008-2009, included 160-km range R-160 rockets, 75-km range Iranian Fajr-5 missiles, 80-km range J-80 rockets, 75-km range M-75 rockets, and 60-km range Sajeel rockets capable of reaching central and northern Israel, including the major Israeli cities of Jerusalem, Tel Aviv, and Haifa. Additionally, these organisations had accumulated thousands of rockets and mortars with ranges of up to 45 kilometres.

¹⁸⁷ On July 15, a mortar strike killed 37-year-old Dror Hanin at the Erez Crossing. On July 19, a rocket struck near Dimona, killing 32-year-old Ouda al-Waj and injuring three family members. On July 23, a mortar struck near Ashkelon, killing 36-year old Narakorn Kittiyangkul, a foreign worker from Thailand. On August 22, a mortar killed four-year-old Daniel Tregerman in his home in Nahal Oz. On August 26, an hour before a negotiated ceasefire was to begin, a mortar struck Kibbutz Nirim, killing 55-year old Ze'ev Etzion and 43-year old Shahar Melamed. See *Israel under fire July-August 2014 - A Diary*, *supra* note 185. Many more civilians were killed and injured by rocket and mortar fire from the Gaza Strip in the years preceding the 2014 Gaza Conflict. For information on fatal projectile attacks, see

<http://www.mfa.gov.il/mfa/foreignpolicy/terrorism/palestinian/pages/victims%20of%20palestinian%20violence%20and%20terrorism%20sinc.aspx>. See also Chapter V (The Threat to Israel's Civilian Population).

¹⁸⁸ Statistics provided by the Ministry of Health, based on the numbers of civilians who sought medical care at Israeli hospitals for rocket and mortar-related injuries. More than 800 of these were treated by Israel's national emergency medical service, Magen David Adom.

¹⁸⁹ Indirect damage includes lost income from missed work days among individuals who could not get to work because of the threat of rocket and mortar fire, particularly in southern Israel; loss of business income; damage to agriculture, and other losses. By May 29, 2015 a total of 4,572 claims had been filed for compensation due to direct damages (such as damage to buildings and vehicles) resulting from the 2014 Gaza Conflict, and the Israel Tax Authority had compensated civilians for direct damages amounting to over 120 million NIS (over 31 million USD). The Israel Tax Authority estimates that total compensation for direct damages will reach approximately 150 million



113. Damage to civilian life and property would have been far more extensive were it not for Israel's broad-ranging efforts to protect its population. Israel invested in warning sirens, bomb shelters, the Iron Dome counter-missile defense system, and public safety campaigns guiding the public in the event of rocket attacks. Seven-hundred and thirty-five rockets were headed directly for major cities and other populated areas before being intercepted by the Iron Dome.¹⁹⁰ On many occasions, Hamas and other terrorist organisations tried to saturate and overwhelm these protective mechanisms by firing rockets and mortars at different cities and towns simultaneously, or by firing a barrage of rockets and mortars at a particular city or town — tactics that demonstrate their determination to circumvent Israel's protective mechanisms in order to harm civilians. Often, these efforts were successful: despite Israel's protective mechanisms, extensive harm to civilian life and property was still inflicted by rockets and mortars that eluded interception and by falling shrapnel from intercepted rockets.



Above: Multiple rockets launched simultaneously towards Israel on July 12 in an attempt to overwhelm Israel's protective mechanisms. (Source: Amir Cohen, Reuters)

NIS (over 39 million USD). By May 29, 2015 a total of 25,240 claims had been filed for compensation due to indirect damages resulting from the 2014 Gaza Conflict, and the Israel Tax Authority had compensated civilians for approximately 1.3 billion NIS (over 334 million USD) for indirect damages. The Israel Tax Authority estimates that total compensation for indirect damages will reach approximately 1.7 billion NIS (approximately 443 million USD). As of May 29, 2015, 1% of claims for direct damage and 13% of claims for indirect damage were still being processed.

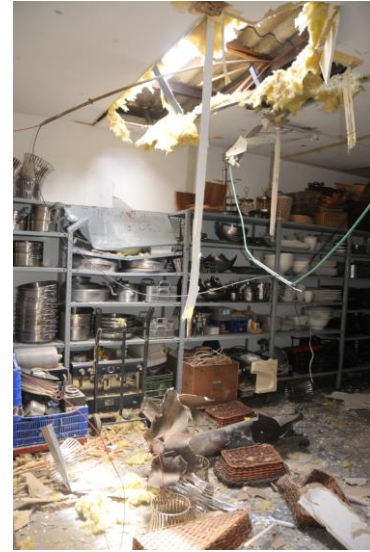
¹⁹⁰ The Iron Dome is programmed to intercept only those rockets headed towards populated areas.



State of Israel



Above: A family home in Ashkelon hit directly by a rocket launched from the Gaza Strip on August 26. Over 60 Israeli civilians were injured in the incident. (Sources: Edi Israel, NRG news; EPA)



Above left: A house in the Israeli town of Yehud (near Ben Gurion International Airport) hit directly by a rocket from the Gaza Strip on July 22. (Source: IDF) Above right: A communal kitchen of a residential community in central Israel hit by a rocket on July 17. (Source: Israel Police)

114. Rocket and mortar attacks by Hamas and other terrorist organisations were intended not just to kill and injure Israeli civilians, but to spread terror among the six million Israelis within their range. On August 28, two days after the ceasefire was declared, Hamas leader Khaled Mashal confirmed in a public address that terrorising Israeli civilians had been a central Hamas goal during the 2014 Gaza Conflict: “We have achieved a balance of terror.... Otherwise, how would you account for five millions Israelis hiding in shelters?”¹⁹¹ The only warning of an impending strike came from the Israeli Home Front Command’s siren system, which was in most cases capable of alerting civilians merely seconds before anticipated impact.¹⁹² Depending on their proximity to the Gaza Strip, Israeli civilians had between 15 and 90 seconds to find shelter before a rocket or a mortar hit.¹⁹³ During the 2014 Gaza Conflict, Hamas and other terrorist organisations directed some 2,784 launches at Israeli towns in Otef Aza (the border region with the Gaza Strip),¹⁹⁴ where civilians had a mere 15 seconds or less to find shelter.¹⁹⁵

¹⁹¹ *Hamas Leader Khaled Mashal: Israel Perpetrated a Holocaust Worse than Hitler’s in Gaza*, MEMRI TV (Aug. 28, 2014), available at <http://www.memritv.org/clip/en/0/0/0/239/0/4466.htm> (video content from Al-Quds TV).

¹⁹² On July 12, Hamas uncharacteristically announced its intention to fire 80-km range J-80 rockets at Tel Aviv within the hour, at 21:00, instructing “the enemy to wait for our rockets at this time” and the media “to direct cameras at the skies of Tel Aviv.” As opposed to warnings issued by the IDF preceding attacks of military objectives in the Gaza Strip, this notice preceded an unlawful strike deliberately targeting the civilian population of Israel.

¹⁹³ *Map of Early Warning Alerts*, Home Front Command, available at <http://www.oref.org.il/1096-en/Pakar.aspx>.

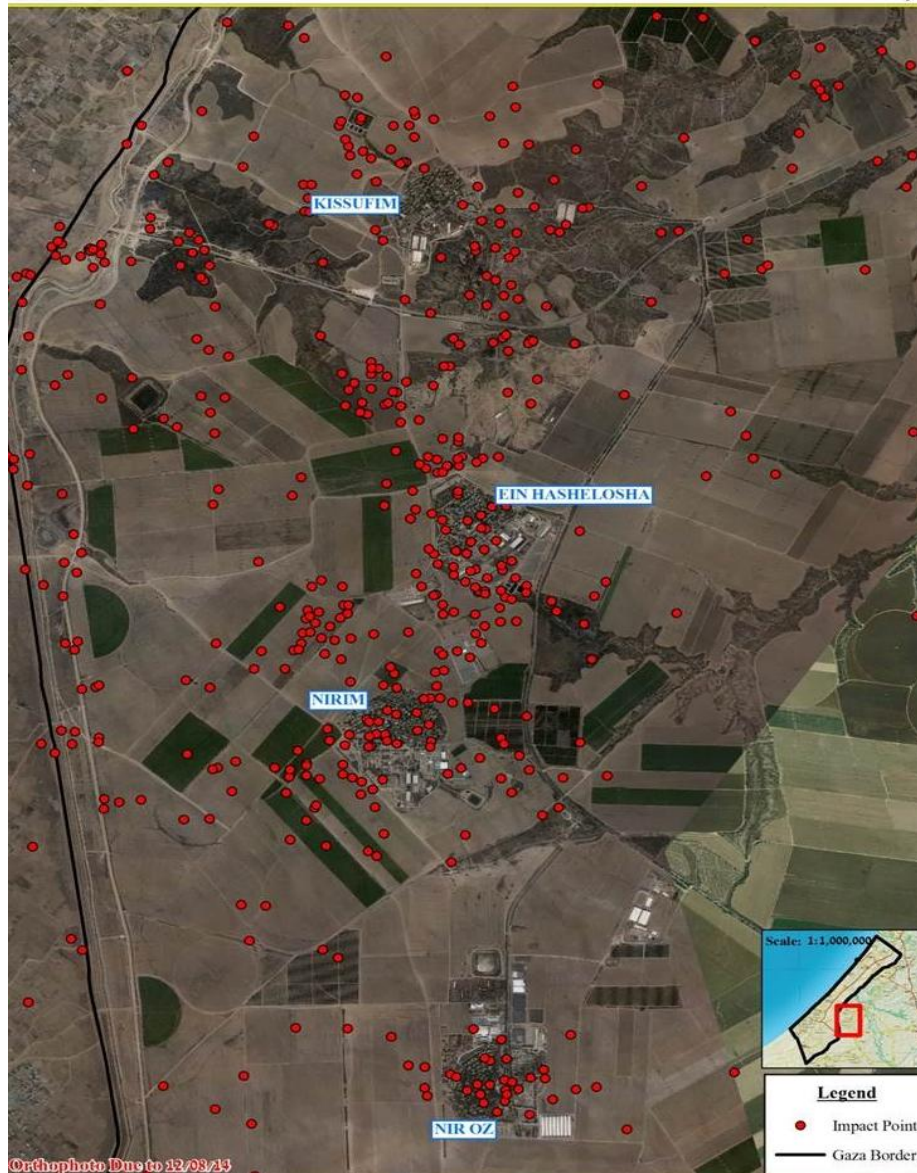
¹⁹⁴ Otef Aza refers to the region of Israel surrounding the Gaza Strip and reaching 7 kilometres into Israel.

¹⁹⁵ *Map of Early Warning Alerts*, Home Front Command, *supra* note 193.



Attacks on Civilian Areas

Scale: 1:25,000



Above: Aerial map of several residential communities on the border with the Gaza Strip that were battered by rocket and mortar fire. Red dots mark the location of rocket and mortar landings throughout the course of the 2014 Gaza Conflict. As can be seen by the heavy concentration of impact points in civilian communities, launches were primarily directed at civilian targets. These same communities were also terrorised by nearby tunnel infiltrations by Hamas militants, as described in the next Section. (Source: IDF)



115. As intended, these rocket and mortar attacks instilled such terror that thousands of residents of southern Israel left their homes for days or weeks to escape the range of fire.¹⁹⁶ Summer camps and medical clinics were closed and civilian train services were halted due to fear of rocket and mortar fire.¹⁹⁷ For example, civilian train service from the southern cities of Ashkelon to Sderot was suspended from July 18 to August 28, after IDF intelligence determined that terrorist organisations in the Gaza Strip were planning to target that line with anti-tank missiles, projectiles that are far more accurate than rockets and mortars.

116. In targeting and terrorising Israeli civilians with rockets and mortars, Hamas and other terrorist organisations in the Gaza Strip violated fundamental customary norms of the Law of Armed Conflict that prohibit a party to hostilities from deliberately making civilians the object of attack, and that prohibit acts or threats of violence primarily intended to spread terror among the civilian population.¹⁹⁸ Violations of these prohibitions constitute war crimes under customary international law.¹⁹⁹

117. Furthermore, when Israelis were killed by rockets and mortars deliberately launched at the Israeli civilian population, these assaults constituted crimes against humanity of murder.²⁰⁰ In

¹⁹⁶ In Sdot Negev Regional Council, between 1,400 to 1,800 residents left (16%-20% of residents); in one particular community in the Council, Kibbutz Sa'ad, approximately 800 residents evacuated (80% of residents). In Hof Ashkelon Regional Council, approximately 4,800 residents evacuated (30% of residents). In the Eshkol Regional Council, approximately 70% of residents of the kibbutz communities bordering the Gaza Strip evacuated, and approximately 40% of residents of other communities within the Council evacuated. In Sha'ar HaNegev Regional Council, approximately 950 residents evacuated (13% of residents). *See also* Chapter V (The Threat to Israel's Civilian Population), Section C.4.

¹⁹⁷ During the 2014 Gaza Conflict, the IDF Home Front Command issued instructions prohibiting the operation of schools, summer camps and kindergarten and preschool activities up to 40 kilometres from the Gazan border. The Ministry of Education reported that, as a result of rocket fire, 219 schools in 34 districts in southern and central Israel, including in the cities of Ashdod, Ashkelon, Be'er Sheva, and Yavne were forced to cancel summer-programming for 31,557 youth. Some high school exams had to be conducted in bomb shelters, and ongoing fire disrupted some exams while in progress. According to the Ministry of Health, 38 medical clinics and 25 family health centres situated within 40 kilometres of the Gaza Strip were forced to close due to the threat of rocket and mortar fire. *See also* Chapter V (The Threat to Israel's Civilian Population).

¹⁹⁸ This customary rule is reflected in Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (June 8, 1977), art. 51(2) (hereinafter: "Additional Protocol I") and Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (June 8, 1977), art. 13(2) (hereinafter: "Additional Protocol II"). Although Israel is not a party to the Additional Protocols to the Geneva Conventions, customary norms of international law are part of Israeli law. *See Public Committee against Torture in Israel v. Government of Israel*, HCJ 769/02 ¶ 20 (Dec. 11, 2005).

¹⁹⁹ *See also* Additional Protocol I, art. 85(3,5); Rome Statute of the International Criminal Court, arts. 8(2)(b)(i), 8(2)(e)(i) (hereinafter: "Rome Statute"); Case No. IT-98-29-A *Prosecutor v. Galić*, Appeal Judgment (Nov. 30, 2006), ¶ 98, available at <http://www.icty.org/x/cases/galic/acjug/en/gal-acjud061130.pdf>; Case No. STL-11-01/I *Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging* (Feb. 16, 2011), ¶ 108, available at <https://www.stl-tsl.org/en/rule-176bis-decision>.

²⁰⁰ Unsuccessful launches constituted attempted crimes against humanity of murder.



keeping with the definition of crimes against humanity under customary international law, these rocket and mortar launches were conducted by Hamas and other terrorist organisations knowingly and as a matter of policy, as part of a widespread or systematic attack directed at a civilian population.²⁰¹ Among other indications, the sheer number of rockets and mortars launched towards Israel; the persistence of such launches for over a decade; the consistent statements of intent to harm Israeli civilians dating back to Hamas's establishment;²⁰² and the frequent declarations of responsibility and boasting that followed launches, particularly those directed towards major Israeli cities, all confirm that the attacks were widespread, systematic, and a matter of organisational policy. For example, Hamas and other terrorist organisations in the Gaza Strip declared responsibility for launches directed at Jerusalem, Tel Aviv, Ashdod, Ofakim, Be'er Sheva, Netivot, and Ashkelon on July 8;²⁰³ launches directed at Tel Aviv and Haifa on July 11 and again at Haifa on July 13;²⁰⁴ and launches directed at Tel Aviv and Rishon LeZion on July 13.²⁰⁵ Less than an hour after a rocket seriously injured a 16-year-old Israeli boy outside Ashkelon on July 13, Hamas took credit.²⁰⁶ Even Palestinian officials have acknowledged that these rocket and mortar launches constitute international crimes: in a television interview, Ibrahim Khreisheh, the Palestinian envoy to the U.N. Human Rights Council, confirmed: "The missiles that are now being launched against Israel — each and every missile constitutes a crime against humanity, whether it hits or misses, because it is directed at a civilian target."²⁰⁷

²⁰¹ This customary definition is also reflected in Statute of the International Criminal Tribunal of Rwanda, art. 3; Statute of the Special Court of Sierra Leone, art. 2; the Extraordinary Chambers of the Court of Cambodia, art. 5; Rome Statute, art. 7(1).

²⁰² See The Covenant of the Islamic Resistance Movement, August 18, 1988 (the "Hamas Charter"), art.7, available at http://avalon.law.yale.edu/20th_century/hamas.asp. See also Chapter II (Background to the Conflict), Section A.

²⁰³ For Hamas's admissions of responsibility, see Yoav Zitun, *Israel under attack: Over 100 rockets fired in one day*, YNet News (July 9, 2014), available at <http://www.ynetnews.com/articles/0.7340.L-4539418.00.html>; *Live updates, July 7, 2014: Rockets bombard south, Hamas claims responsibility*, Haaretz (July 8, 2014), available at <http://www.haaretz.com/news/diplomacy-defense/1.603472>. For the Palestinian Islamic Jihad's admission of responsibility, see *Live Updates: Operation Protective Edge, day 1*, Haaretz (July 8, 2014), available at <http://www.haaretz.com/news/diplomacy-defense/1.603677>.

²⁰⁴ For Hamas's admissions of responsibility, see *Live updates: Operation Protective Edge, day 4*, Haaretz (July 12, 2014), available at <http://www.haaretz.com/news/diplomacy-defense/1.604437>; *Live updates: Operation Protective Edge, day 6*, Haaretz (July 14, 2014), available at <http://www.haaretz.com/news/diplomacy-defense/1.604714>. For the Palestinian Islamic Jihad's admission of responsibility, see Elad Benari, *Tel Aviv Targeted by Rockets Again; Islamic Jihad Claims Attack*, Arutz Sheva (July 11, 2014), available at <http://www.israelnationalnews.com/News/News.aspx/182804#.VLQCCdJdWPs>.

²⁰⁵ *Live updates: Operation Protective Edge, day 6*, *supra* note 204.

²⁰⁶ The rocket struck the youth at 12:27; Hamas claimed responsibility for the attack less than an hour later, at 13:08. *Id.*

²⁰⁷ *Video: Envoy to UNHRC on Palestinian ICC Hopes: Israelis Warn Civilians Before Attacks, We Don't*, The Middle East Media Research Institute ("MEMRI") (July 9, 2014), available at <http://www.memri.org/clip/en/0/0/0/0/874/4343.htm>.



118. Aside from inflicting damage on Israeli civilians, these rocket and mortar launches recklessly endangered Palestinian civilian life and property inside the Gaza Strip. For example, in the weeks leading up to the 2014 Gaza Conflict, an errant rocket fired towards Israel landed short in the Gaza Strip, killing a three-year-old girl and injuring four of her family members.²⁰⁸ During the 2014 Gaza Conflict itself, on July 13 and July 15, rockets fired towards Israeli territory struck two of the ten power lines supplying the Gaza Strip with electricity from Israel, leaving 70,000 Palestinian residents of the northern Gaza Strip without power.²⁰⁹ Two weeks later, on July 28, rockets fired towards Israel landed short, striking Al-Shifa Hospital and a playground in Al-Shati refugee camp, killing 10 civilians.²¹⁰ In total, over 250 failed launches landed within the Gaza Strip, contributing substantially to the damage to civilian life and property in the Gaza Strip incurred during the 2014 Gaza Conflict.



Above: Militant rockets fired at Israel fall short, striking Al-Shifa Hospital and a playground in Al-Shati refugee camp, killing 10 Gazan civilians. (Source: IDF)

119. **Tunnel Attacks.** Hamas and other terrorist organisations in the Gaza Strip augmented their rocket and mortar attacks with a ground operation, including infiltrations into Israel through an extensive network of cross-border assault tunnels designed to facilitate attacks on Israeli civilians and

²⁰⁸ See Matan Tzuri, *IDF responds after Gaza rockets fired at Israel*, Ynetnews (June 24, 2014), available at <http://www.ynetnews.com/articles/0,7340,L-4534166,00.html>.

²⁰⁹ See Sharon Udasin, *For second in time in days, Gazan rocket hits electricity line to Gaza*, Jerusalem Post (July 15, 2014), available at <http://www.jpost.com/Operation-Protective-Edge/For-second-in-time-in-days-Gazan-rocket-hits-electricity-line-to-Gaza-362925>; see also *Live Updates: Operation Protective Edge, day 6*, supra note 204.

²¹⁰ See also *Decisions of the IDF Military Advocate General regarding Exceptional Incidents that Occurred during Operation 'Protective Edge' – Update No. 2*, IDF, MAG Corps (Dec. 7, 2014), available at <http://www.law.idf.il/163-6958-en/Patzar.aspx>.



soldiers.²¹¹ Indeed, to facilitate these attacks, Hamas placed tunnel openings in or close to residential communities in Israel. In early 2014, Israeli intelligence sources learned that Hamas was planning to execute a cross-border tunnel attack through a tunnel that opened near the Israeli residential community of Kerem Shalom.²¹² During the 2014 Gaza Conflict, the IDF encountered fourteen cross-border assault tunnels penetrating Israeli territory.²¹³ In addition, 18 unfinished tunnels were discovered approaching the border with Israel which, upon completion, would also facilitate cross-border attacks on Israeli civilians and soldiers. On four separate occasions throughout the 2014 Gaza Conflict, Hamas militants emerged from covert tunnels onto Israeli territory, within the territory or in close proximity to Israeli residential communities:

- On July 17, thirteen Hamas militants infiltrated Israel through a tunnel that opened just 1.5 kilometres from civilian homes in an Israeli community, Kibbutz Sufa. In light of the imminent danger, the residents of 12 nearby residential communities were instructed by the IDF to barricade themselves in their homes for hours.
- Two days later, on July 19, approximately 10 Hamas militants emerged from a tunnel opening 4.7 kilometres from civilian homes in Kibbutz Be'eri armed with lethal weapons as well as tranquillizers and handcuffs for kidnapping Israelis. The residents of five residential communities near the border with the Gaza Strip were instructed by the IDF to barricade themselves in their homes for hours.
- On July 21, approximately 12 Hamas militants infiltrated Israel via a cross-border assault tunnel that opened in the territory of Kibbutz Nir Am, just 1.3 kilometres from civilian homes in the Kibbutz and 1.1 kilometres from civilian homes in the city of Sderot, communities bordering the Gaza Strip. Militants disguised as IDF soldiers and armed with lethal weapons headed towards Nir Am. To ensure civilians' protection, the IDF instructed the residents of all of the communities in the Otef Aza border region to barricade themselves in their homes for hours.
- On July 28, nine Hamas militants infiltrated Israeli territory through a tunnel opening in the territory of Kibbutz Nahal Oz, just two kilometres from civilian homes in the Kibbutz. The residents of the residential communities of Nahal Oz and Alumim were instructed by the IDF to barricade themselves in their homes in the hours surrounding the attack. Following the attack, three ready-to-use motorcycles and deadly weapons were found inside the tunnel,

²¹¹ For more in-depth information on the tunnel threat and kidnapping threat, see Chapter III (Objectives and Phases of the Conflict).

²¹² The IDF struck the tunnel on July 5, 2014 in order to prevent the planned attack. *See also* Chapter II (Background to the Conflict).

²¹³ *Operation Protective Edge: General Information*, IDF (Updated Aug. 25, 2014), available at <http://www.idfblog.com/operationgaza2014/#Generalinformation>.



attesting to the militants' ability to penetrate deep into Israeli territory and carry out attacks.²¹⁴

120. In all of these cases, infiltrators encountered IDF troops stationed near these border towns, obstructing their ability to carry out attacks against civilians. Any deliberate targeting of civilians by way of these tunnels violates the customary international prohibition against intentionally making civilians the object of attack and constitutes war crimes.²¹⁵

121. The perpetual physical threat posed by the tunnels took an enormous psychological toll on Israeli civilians, who were constantly fearful of being attacked or kidnapped from their homes.²¹⁶ Indeed, the Hamas-run newspaper Al-Resalah boasted that the tunnels "terrorised millions of Israelis."²¹⁷ Fear of tunnel infiltrations was a primary catalyst for the massive civilian evacuation from southern Israel described above, in addition to rocket and mortar fire.²¹⁸

²¹⁴ *Israeli forces unearth 'terror motorcycles' from alleged Hamas tunnel in new video*, Telegraph (London) (Aug. 4, 2014), available at <http://www.telegraph.co.uk/news/worldnews/middleeast/gaza/11010380/Israeli-forces-unearth-terror-motorcycles-from-alleged-Hamas-tunnel-in-new-video.html>. See also Chapter III (Objectives and Phases of the Conflict).

²¹⁵ This customary rule is also reflected in Additional Protocol I, art. 51(2); Additional Protocol II, art. 13(2); Rome Statute, arts. 8(2)(b)(i), 8(2)(e)(i).

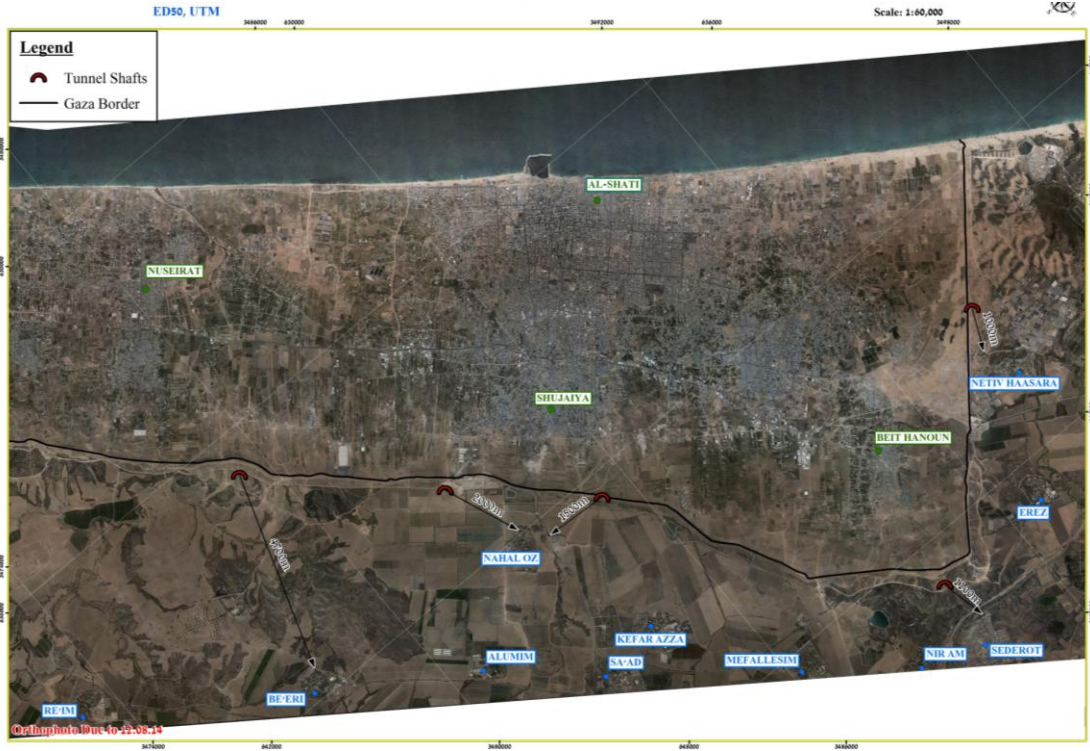
²¹⁶ For personal accounts of Israeli civilians terrorised by tunnel infiltrations, see IDF, *An Inside Look Into Life Under Hamas' Tunnel Threat*, YouTube (July 27, 2014), <https://www.youtube.com/watch?v=wMzMkSpXAcw>.

²¹⁷ *Hamas' Construction of Tunnels Continues*, MEMRI (Oct. 14, 2014), available at <http://www.memri.org/report/en/0/0/0/0/0/8189.htm>.

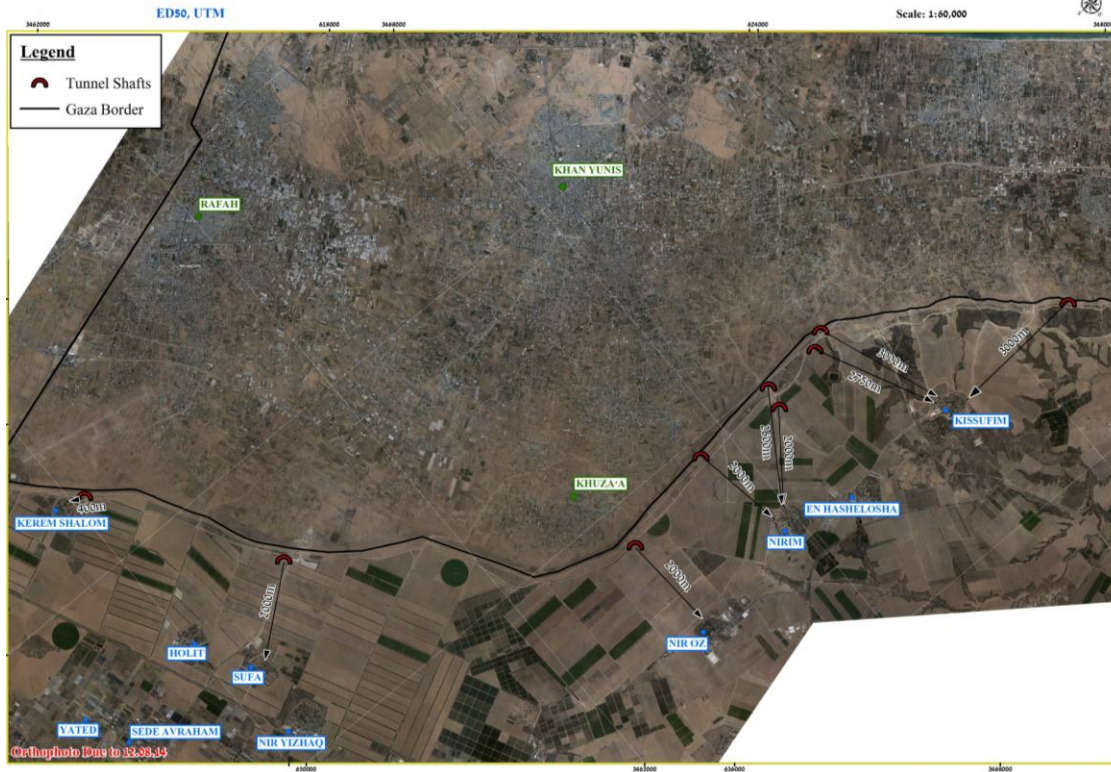
²¹⁸ See also Chapter V (The Threat to Israel's Civilian Population).



State of Israel



Above: Aerial map of openings of cross-border attack tunnels found on Israeli territory bordering the northern and central Gaza Strip. Shafts are marked by a red arch, alongside distances between shafts and civilian homes in residential communities. (Source: IDF)



Above: Aerial map of openings of cross-border attack tunnels found on Israeli territory bordering the southern and central Gaza Strip. Shafts are marked by a red arch, alongside distances between shafts and civilian homes in residential communities. (Source: IDF)

122. **Summary.** Throughout the 2014 Gaza Conflict, Hamas and other terrorist organisations deliberately made Israeli civilians the objects of attacks by way of continuous rocket and mortar fire and tunnel infiltrations leading towards Israeli residential communities. Hamas and these organisations amply demonstrated their intent to target Israeli civilians through countless deadly attacks against Israeli civilians in prior years as well. This illegal intent was reaffirmed by official Hamas statements made during the 2014 Gaza Conflict, such as “Our rockets are aimed at the Hebrews, the murderers, the Israelis, the criminals. . . . Our missiles accurately target the homes of the Israelis and the Zionists,”²¹⁹ and “Anyone who has a knife, a club, a weapon, or a car, yet does not use it to run over a Jew or a settler, and does not use it to kill dozens of Zionists, does not belong to Palestine.”²²⁰ The intentional targeting of Israeli civilians by rocket, mortar, and tunnel attacks

²¹⁹ Hamas Spokesman Fawzi Barhoum. *Video: Hamas to Israeli Arabs: Have No Fear, Our Missiles Target Only the Hebrews*, MEMRI (July 11, 2014), available at <http://www.memri.org/clip/en/0/0/0/0/0/4350.htm> (video from Al-Aqsa TV (Hamas-Gaza)).

²²⁰ Hamas Spokesman Fawzi Barhoum, *Video: Hamas Spokesman Fawzi Barhoum Calls to Carry Out Terror Attacks in Israel and the West Bank*, MEMRI (July 30, 2014), available at <http://www.memritv.org/clip/en/4408.htm> (video from Al-Quds TV (Lebanon)).



constitutes violations of customary rules of the Law of Armed Conflict, war crimes, and crimes against humanity.

B. Hamas and Other Terrorist Organisations in the Gaza Strip Embedded their Military Activities amongst the Civilian Population and Exploited Hospitals, U.N. Facilities, Schools, Mosques, and Homes for Military Operations

123. During the 2014 Gaza Conflict, Hamas and other terrorist organisations embedded military assets and operations within densely-populated civilian areas in the Gaza Strip as a matter of military strategy. Rather than utilizing the less populated areas of the Gaza Strip where they operate during lulls in hostilities, these groups moved their assets and operations to built-up civilian areas in order to shield them from IDF attack. In employing this strategy, these organisations failed to take any measures to protect the civilian population in the Gaza Strip from the dangers of military operations. To the contrary, they actively exploited the presence of Gazan civilians to conduct hostilities. As described in detail in this Section, Hamas and other terrorist organisations transformed hospitals, U.N. facilities, schools, mosques, and civilian homes into weapons-storage facilities, gunfire and rocket-launch sites, command and control centres, communications hubs, intelligence-collection sites, and covers for tunnel entrances. They also routinely conducted a range of military operations in close proximity to these structures.

124. Customary international law obligates parties to an armed conflict to take various steps to mitigate, to the extent feasible, the harm to the civilian population resulting from the dangers of military operations.²²¹ This basic precautionary requirement applies to a party to a conflict with respect to its own population, operating on a foundational assumption of the Law of Armed Conflict that parties are sufficiently concerned with sparing their own populations to act in their populations' best interests.²²² The embedding strategy employed by Hamas and these terrorist organisations defies this basic assumption. Not only did Hamas and other terrorist organisations in the Gaza Strip fail to take any precautions to mitigate harm to the civilian population, they went to great lengths to deliberately assimilate their military operations within civilian life, thus violating customary international law.

125. Aside from failing to take measures to protect Gazan civilians, Hamas and other terrorist organisations actively exploited civilian structures and civilians in and around these sites to shield

²²¹ This customary rule is also reflected in Additional Protocol I, art. 58 and Additional Protocol II, art. 13(1).

²²² The International Committee of the Red Cross Commentary to Additional Protocol I, art. 58, ¶ 2253.



their assets and operations from attack. A Hamas Izz al-Din al-Qassam Brigades urban-combat manual found by the IDF during the ground operation clearly attests to a deliberate strategy of exploiting Gazan civilians in order to impede IDF attack and shield military activities. The manual explains to militants that “the presence of civilians creates many pockets of resistance” that create “difficulties in opening fire” for the IDF.²²³ Another Izz al-Din al-Qassam Brigades combat manual found during the ground operation instructs militants “to lay ambushes in residential areas and to transfer combat from open areas to built-up, closed areas, which serves the ‘resistance’ and Jihad activities.”²²⁴ Using the presence of civilians to shield military targets from attack is prohibited by customary international law²²⁵ and constitutes a war crime.²²⁶

126. Hamas used its embedding strategy not just to obtain a military advantage, but to exacerbate its own civilians’ suffering for political gain. According to the Izz al-Din al-Qassam Brigades urban-combat manual, increasing damage to civilian property “raises the hatred of our citizens towards [the IDF] and increases their support of the city defender [Hamas].”²²⁷ The manual goes on to explain that fighting among civilians has the benefit of causing “difficulties” for the IDF in “provid[ing] medical and food assistance to [our] civilians.”²²⁸ Thus, paradoxically, Hamas took measures to

²²³ *Captured Hamas Combat Manual Explains Benefits of Human Shields*, IDF (Aug. 4, 2014), available at <http://www.idfblog.com/blog/2014/08/04/captured-hamas-combat-manual-explains-benefits-human-shields/> (quoting Hamas Izz al-Din al-Qassam Brigades instructional manual).

²²⁴ *Hamas Manual Calls for Hiding Bombs in Civilian Homes*, IDF (Aug. 25, 2014), available at <http://www.idfblog.com/blog/2014/08/25/hamas-manual-calls-for-hiding-bombs-in-civilian-homes/>.

²²⁵ This rule of customary law is also reflected in Additional Protocol I, art. 51(7). *See also* Additional Protocol II, art. 13(1).

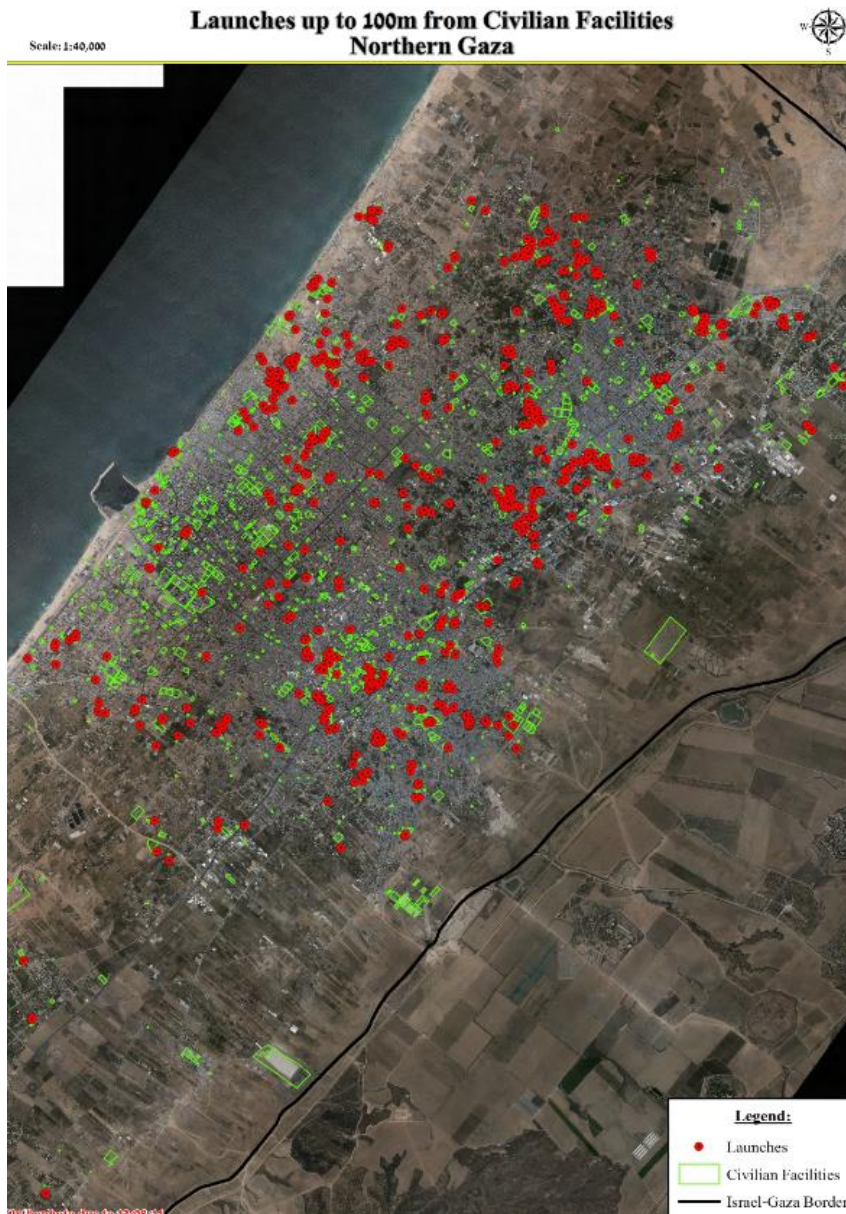
²²⁶ For international armed conflicts, *see also* Rome Statute, art. 8(2)(b)(xxiii).

²²⁷ *Captured Hamas Combat Manual Explains Benefits of Human Shields*, IDF, *supra* note 223. *See also* Chapter VI (IDF’s Conduct during the Conflict), Section C.

²²⁸ *Id.* Aside from this tactic, Hamas and other terrorist organisations in the Gaza Strip inhibited humanitarian assistance to Gazan civilians in various ways throughout the 2014 Gaza Conflict: first, through repeated breaches of humanitarian ceasefires; second, by pressuring civilians not to seek medical care at the IDF field hospital at the Erez Crossing set up specifically to care for sick and wounded Gazans, and even firing mortars towards the hospital on July 23; and third, by repeatedly firing rockets and mortars towards border crossings where humanitarian aid was being transferred into the Gaza Strip and where sick and wounded Gazan civilians were waiting to be transported to Israeli hospitals. For example, between July 8 and July 30, Hamas and other terrorist organisations in the Gaza Strip fired 69 rockets directly at Kerem Shalom crossing, where food, medicine and medical supplies and humanitarian supplies are transferred into the Gaza Strip. Due to the danger of rocket fire, on July 29, only 43 out of the 158 trucks scheduled to cross into the Gaza Strip arrived at the crossing. *Daily Report: Civilian Assistance to Gaza: Operation “Protective Edge”*, Israel Ministry of Defense, Coordination of Government Activities in the Territories (July 30, 2014), available at http://www.cogat.idf.il/Sip_Storage/FILES/3/4523.pdf. On August 24, a large rocket and a barrage of mortars were fired at Erez Crossing, where Israeli authorities facilitated the crossing into Israel of sick and wounded Gazan civilians seeking medical assistance. The mortar fire injured three Israeli-Arab taxi drivers waiting to transfer Gazan civilians to Israeli hospitals, placing two of them in serious condition. The incident forced the closure of the crossing on a day in which fifty people were scheduled to cross. Despite the danger, Israeli authorities made an exception for Gazan patients in life-threatening condition, who were evacuated to Israeli hospitals. *See Erez Crossing closed today due to mortar fire*, Israel Ministry of Foreign Affairs (Aug. 24, 2014),



harm its own civilian population in order to win its support for the military effort. Hamas’s disregard for the welfare of the civilian population in the Gaza Strip was further confirmed by an additional Izz al-Din al-Qassam Brigades pamphlet found by the IDF during the ground operation, which stated that “civilian deaths ... have no impact on our morale. To the contrary, this strengthens our commitment, in the knowledge that an increase in the number of civilian fatalities is likely to have negative ramifications on the enemy [the IDF], and he [the IDF] will act to shorten the length of the fighting.”²²⁹



Left: As is evident from this aerial image, rocket and mortar launch sites were tightly interwoven with civilian infrastructure in the northern Gaza Strip. The red dots indicate the location of rocket and mortar launches over the course of the 2014 Gaza Conflict, and the green boxes indicate civilian facilities within 100 metres of a launch site. (Source: IDF)

available at <http://mfa.gov.il/MFA/PressRoom/2014/Pages/Erez-Crossing-closed-today-due-to-mortar-fire-24-Aug-2014.aspx>. See also Chapter VI (IDF’s Conduct during the Conflict), Section E.

²²⁹ Unpublished Izz al Din al-Qassam Brigades pamphlet found by the IDF during the ground operation.



127. By conducting hostilities from within civilian property, Hamas and other terrorist organisations frequently turned those structures into military objectives, exposing them and their surroundings to risk. Moreover, when operating not within civilian structures, but in close proximity to them, these organisations exposed these structures and surrounding civilians to the risk of incidental damage from lawful IDF targeting of militant operations. In many cases in which the IDF was legally entitled to target a military objective situated within or near these structures, the IDF refrained from doing so because of the presence of civilian life and property.²³⁰ Where the IDF determined an attack to be necessary, it operated in accordance with the principle of proportionality, determining whether any expected incidental damage would be excessive, and took precautions to minimise the risk of civilian casualties and damage to civilian property. However, the terrorist organisations' conduct of operations within and nearby civilian structures in built-up areas significantly increased the likelihood of incidental damage to civilian life and property nearby, despite the IDF's best efforts to minimise damage.²³¹

128. The sub-sections that follow address the ways in which Hamas and other terrorist organisations in the Gaza Strip exploited various types of civilian objects for military purposes. As will be noted, some of these objects were entitled to special protection under customary provisions of the Law of Armed Conflict, compounding the unlawful nature of these organisations' embedding practice.

129. **Hospitals and Ambulances.** During the 2014 Gaza Conflict, Hamas and other terrorist organisations in the Gaza Strip exploited hospitals and ambulances to conduct military operations, despite the special protection afforded these units and transports under customary international law,²³² as well as the special protection afforded to the sick and wounded civilians often present in these facilities.²³³ Hamas and these organisations transformed hospitals into command and control centres, gunfire and missile launching sites, and covers for combat tunnels. For instance, Hamas used the Gaza Strip's main hospital, the Al-Shifa Hospital in Gaza City, as its de facto headquarters; as foreign correspondents reported, Hamas leaders openly occupied hospital offices, and the hospital was used as a command centre and as a site for security service interrogations.²³⁴ Further, projectiles

²³⁰ See Chapter VI (IDF's Conduct during the Conflict), Sections D.2.d and D.3.b.

²³¹ *Id.* at Sections D and E.

²³² This customary rule is also reflected in Additional Protocol I, art. 12(1), art. 21; Additional Protocol II, art. 11; Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949 (hereinafter: "Geneva Convention IV"), art. 18; Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949 (hereinafter: "Geneva Convention I"), art. 19.

²³³ This customary rule is also reflected in Additional Protocol I, art. 10, art. 21; Additional Protocol II, art. 8; Geneva Convention IV, art. 18, Geneva Convention I, art. 19.

²³⁴ William Booth, *While Israel held its fire, the militant group Hamas did not*, Washington Post (July 15, 2014), available at http://www.washingtonpost.com/world/middle_east/while-israel-held-its-fire-the-militant-group-hamas-did-not/2014/07/15/116fd3d7-3c0f-4413-94a9-2ab16af1445d_story.html. See also Daniel Bettini, *Foreign*



were launched from within the hospital's compound.²³⁵ Similarly, Al-Wafa Hospital in Shuja'iyyeh, was transformed into a sniper post, an anti-tank missile launch site, a weapons storage facility, a platform for operational surveillance devices, and a cover for tunnel infrastructure.²³⁶ The IDF discovered three tunnel shafts in the vicinity of the hospital, one leading to a cross-border tunnel, and intelligence indicates the presence of a tunnel directly beneath the hospital itself. IDF video footage from a July 23 operation shows militants firing on IDF troops from within Al-Wafa Hospital.²³⁷ IDF footage also depicts militants traveling in ambulances to evade IDF targeting.²³⁸

journalists reveal Hamas' false front, Ynetnews (Aug. 7, 2014), available at <http://www.ynetnews.com/articles/0,7340,L-4556016,00.html>. Despite the exploitation of Al-Shifa for military purposes, the IDF refrained from striking the hospital. The military use of Al-Shifa is not new. During the Gaza Operation 2008-2009, Hamas officials hid in the basement of the hospital, even while patients were being treated upstairs. Amos Harel, *Sources: Hamas leaders hiding in basement of Israel-built hospital in Gaza*, Haaretz (Jan. 12, 2009), available at <http://www.haaretz.com/print-edition/news/sources-hamas-leaders-hiding-in-basement-of-israel-built-hospital-in-gaza-1.267940>. See also *Al-Shifa's Hospital and Ambulances Used for Military-Terrorist Purposes in Operation Protective Edge*, Meir Amit Intelligence and Terrorism Information Center (July 23, 2014), available at <http://www.terrorism-info.org.il/en/articleprint.aspx?id=20683>.

²³⁵ *Finnish TV: Rockets from Gaza hospital*, Times of Israel (Aug. 2, 2014), available at <http://www.timesofisrael.com/finnish-tv-rockets-fired-from-gaza-hospital/> (video of Finnish eyewitness reporter confirming launch).

²³⁶ *Hamas Uses Hospitals and Ambulances for Military Purposes*, IDF (July 28, 2014), available at <http://www.idfblog.com/blog/2014/07/28/hamas-uses-hospitals-ambulances-military-purposes/>. See also *Decisions of the IDF Military Advocate General regarding Exceptional Incidents that Occurred during Operation 'Protective Edge' – Update No. 2*, IDF, MAG Corps (Dec. 7, 2014), available at <http://www.law.idf.il/163-6958-en/Patzar.aspx>.

²³⁷ *Id.* (video of Al-Wafa gunfire and strike). In the days preceding the IDF strike of Al-Wafa on July 23, the IDF provided a number of warnings, verbal and written, to official entities in the Gaza Strip and to the Palestinian Authority, as well as to international organisations operating in the Gaza Strip, warning to stop the military use of the compound. After these warnings went unheeded, the IDF made several phone calls in order to ensure that the premises were evacuated of patients and staff, and before conducting the strike, made a final phone call on July 23 and confirmed the hospital had been cleared of civilians. See Chapter VI (IDF's Conduct during the Conflict), Section C.

²³⁸ *Id.* (video of militants exploiting ambulances).



Above: Video footage of Al-Wafa Hospital captured by the Israeli Air Force. The shot shows militants' gunfire coming from inside the hospital. (Source: IDF)

Below: Video footage captured by the Israeli Air Force. The left-hand shot displays two militants, dressed in black, running towards the ambulance. The right-hand shot shows a third militant disguised in a white medic's coat who joined seconds later. (Source: IDF)



130. Furthermore, a combat tunnel was hidden underneath a health clinic in Khan Yunis owned by the Palestinian Authority Ministry of Health; the tunnel was rigged with a massive explosive device in order to facilitate the killing, and kidnapping via the tunnel, of IDF soldiers.²³⁹ Finally, according to statements gathered from militants of Hamas and other terrorist organisations arrested during the 2014 Gaza Conflict, it was well known that senior militants hid in hospitals, including the Al-Nasser

²³⁹ On July 30, while IDF soldiers were inside the clinic, the explosive was detonated manually by a surveillance squad, killing three and injuring an additional 14.



hospital in Khan Yunis and Al-Najjar hospital in Rafah. It was also stated that weapons were stored in schools and hospitals, including the Al-Nasser and Halal hospitals in Khan Yunis, and that tunnel construction had begun directly adjacent to a health clinic in Alfukhkhari, Khan Yunis.²⁴⁰

131. In addition to all these military uses, Hamas and other terrorist organisations in the Gaza Strip fired multiple rockets and mortars (hereinafter: projectiles) within 25 metres of hospitals and health clinics.²⁴¹ Examples include:

- On July 7 and 10, two projectiles were launched approximately 10 metres from the Indonesian Hospital in Beit Lahiya.
- On July 14, a projectile was launched approximately 10 metres from a day clinic for the mentally-disabled in Shuja'iyeh.
- On July 16, three projectiles were launched from within 25 metres of an ICRC clinic in Beit Lahiya.
- Between July 14 and August 2, a total of 19 projectiles were fired from within 25 metres of the Shuhada Health Centre in Al-Shati refugee camp.
- On July 18, a projectile was launched from within the Dar Al-Salaam Hospital in Khan Yunis.
- On July 25, two projectiles were launched towards the greater Tel Aviv area from within 25 metres of Al Karma Hospital in Sheikh Radwan.
- On August 1, a projectile was launched from the Al-Shifa Hospital parking lot.²⁴²
- On August 4, a projectile was fired approximately 10 metres from an ICRC facility in Beit Lahiya.

132. Indeed, two weeks after the 2014 Gaza Conflict ended, senior Hamas official Ghazi Hamad acknowledged that Hamas fired rockets near schools and hospitals.²⁴³

²⁴⁰ *Hamas' exploitation of civilian and medical facilities for terror*, Israel Ministry of Foreign Affairs, (Aug. 24, 2014), available at <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Pages/Hamas-exploitation-of-civilian-and-medical-facilities-for-terror-24-Aug-2014.aspx>. See statements of Muhammad Alqadra, Nafez Salouf and Muhammad Abu Daraz.

²⁴¹ The evidence that follows in this sub-section was provided by IDF intelligence, unless otherwise noted. In this sub-section and in the sub-sections that follow, where a launch has been specified as having occurred within 25 metres of a civilian facility, it has not always been explicitly noted when the distance between the launch and the facility was significantly smaller than that figure, or when the launch was conducted within the facility itself.

²⁴² *Finnish TV: Rockets from Gaza hospital*, *supra* note 235.



133. In utilising hospitals and ambulances for military operations, Hamas and other terrorist organisations in the Gaza Strip violated the customary international obligation under the Law of Armed Conflict to respect and protect medical units and transports.²⁴⁴ This practice also violated the customary prohibition against using medical units to shield military objectives from attack.²⁴⁵

134. Finally, customary international law recognises that by operating from medical units and transports, Hamas and other terrorist organisations frequently turned these facilities into legitimate military targets, stripping them of their special protection under international law and exposing them to the potential for lawful response by the IDF.²⁴⁶ When they conducted operations near these units and transports, Hamas and other terrorist organisations exposed them to incidental damage from lawful IDF strikes directed at the proximate military target. Both of these practices endangered not just the physical integrity of these facilities, but the wounded and sick civilians within or nearby these facilities.

135. **U.N. Schools and Other U.N. Facilities.** During the 2014 Gaza Conflict, Hamas and other terrorist organisations in the Gaza Strip intentionally located military assets and operations inside U.N. facilities, converting them into rocket-launching sites and weapons repositories, and also located military assets and operations in close proximity to such facilities.²⁴⁷ A U.N. investigation noted findings that indicated intentional launches from within U.N. facilities, including evidence from IDF video footage that recorded one such example.²⁴⁸ As John Ging, Director of the Operational Division at the U.N.'s Office for the Coordination of Humanitarian Affairs, confirmed: "The militants, Hamas, and the other armed groups, they are firing also their weaponry, the rockets,

²⁴³ Hamza Hendawi & Josef Federman, *Evidence growing that Hamas used residential areas*, Associated Press (Sept. 12, 2014), available at <http://bigstory.ap.org/article/evidence-growing-hamas-used-residential-areas> (quoting Ghazi Hamad).

²⁴⁴ This customary rule is also reflected in Additional Protocol I, art. 12(1), art. 21, Additional Protocol II, art. 11, Geneva Convention IV, art. 18, Geneva Convention I, art. 19.

²⁴⁵ This customary rule is also reflected in Additional Protocol I, art. 12(4).

²⁴⁶ This customary rule is also reflected in Geneva Convention I, art. 21; Geneva Convention IV, art. 19; Additional Protocol I, art. 13; Additional Protocol II, art. 11.

²⁴⁷ See *Summary by the Secretary General of the report of the United Nations Headquarters Board of Inquiry into certain incidents that occurred in the Gaza Strip between 8 July and 26 August 2014* (U.N. Doc. S/2015/286), at ¶¶ 55, 67, 70, 76, 80 and 82 (Apr. 27, 2015) ("U.N. Board of Inquiry Summary"), available at http://www.un.org/ga/search/view_doc.asp?symbol=s/2015/286. The U.N. Board of Inquiry was established by the U.N. Secretary General to identify any gaps in the U.N.'s procedures and assess any actions that may be taken to prevent the recurrence of similar events in the future. It did not constitute a judicial body nor make any findings of legal liability. The report of the U.N. Board of Inquiry was submitted to the U.N. Secretary General on February 5, 2015, and remains an internal U.N. document, not for public release. While Israel cooperated fully with the Board of Inquiry, it maintains reservations concerning some aspects of the Board of Inquiry's methodology and findings.

²⁴⁸ See *id.* at ¶¶ 70, 82.



into Israel from the vicinity of these [U.N.] installations and housing.... Yes, the armed groups are firing their rockets into Israel from the vicinity of U.N. facilities and residential areas. Absolutely.”²⁴⁹

136. Hamas and other terrorist organisations in the Gaza Strip launched multiple projectiles from within 30 metres of U.N. educational institutions during the 2014 Gaza Conflict, with the knowledge that the proximity of these facilities would likely deter or delay IDF counter-strikes. Examples of such launches include:²⁵⁰

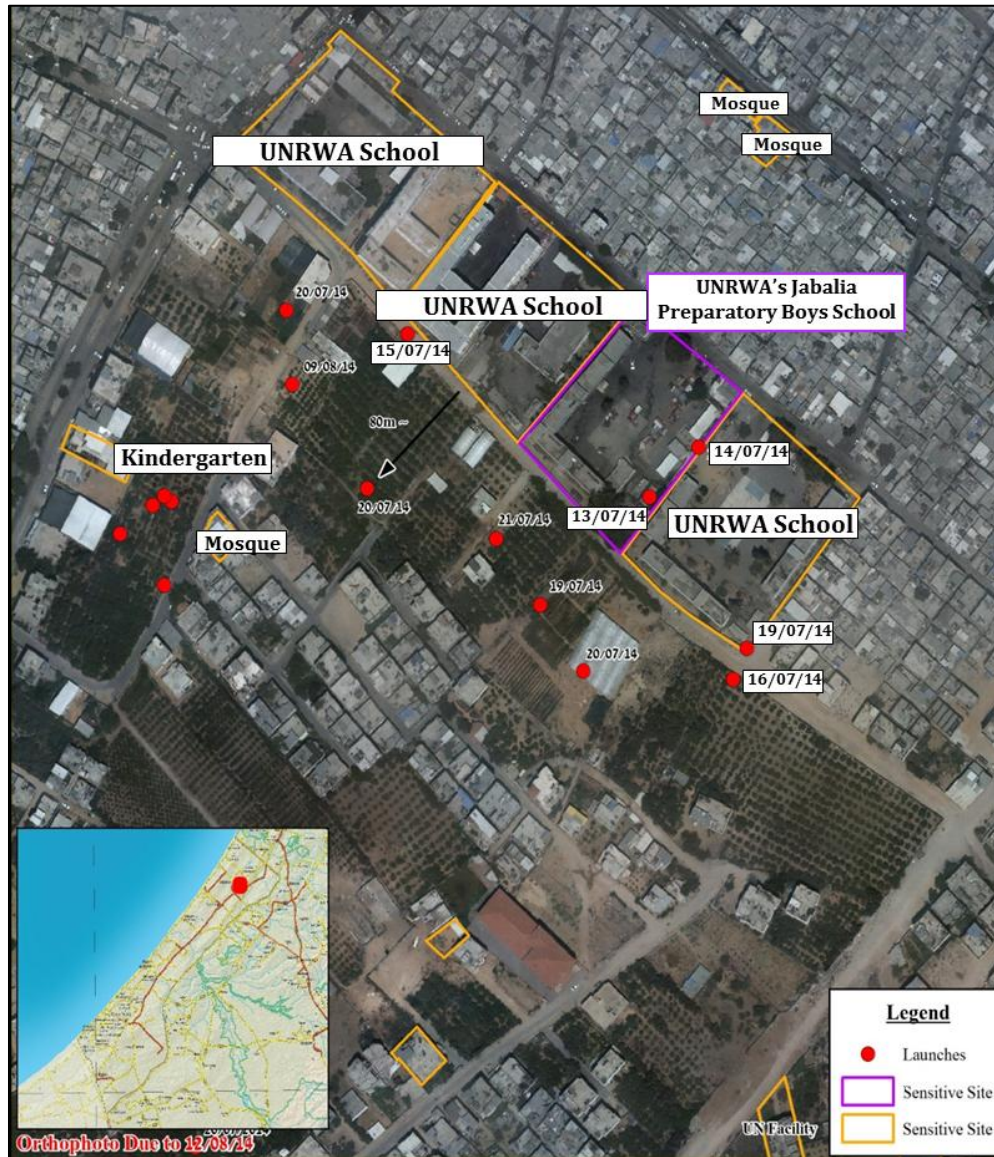
- On July 10, three projectiles were launched approximately 30 metres from an UNRWA kindergarten in Beit Hanun.
- On July 13 and 14, two projectiles were launched from within the UNRWA Jabalia Preparatory Boys School (see aerial map below). On July 15, a projectile was launched within 10 metres of the UNRWA compound in which that school, as well as three other UNRWA schools, were situated. On July 16, another projectile was launched approximately 20 metres from the UNRWA compound, and on July 19, a projectile was launched from the exterior wall of the compound, and likely from within the compound itself.²⁵¹
- On July 13, a projectile was launched approximately 15 metres from the UNRWA Nuseirat School for Boys, towards the greater Tel Aviv area.
- On July 14 and 23, eight projectiles were launched at other major Israeli cities from within 25 metres of the UNRWA Shuhada Primary School in central Gaza City.
- On July 21, a projectile was fired from within 25 metres of an UNRWA distribution centre situated near the UNRWA Jabalia Elementary Girls A and B School.
- On July 25, a projectile was fired from within 25 metres of the UNRWA Gaza Beach Elementary Co-Educational B School.
- On August 2, a projectile was launched approximately 10 metres from the UNRWA Jabalia Elementary Co-Educational School.
- On August 4, a projectile was launched approximately 20 metres from the UNRWA Nuseirat Preparatory Co-Educational B School.²⁵²

²⁴⁹ *U.N. Director on Gaza School Shelling* (interview with John Ging), CBC News (Jul. 30, 2014), available at <http://www.cbc.ca/player/News/Politics/Power+%26+Politics/ID/2479781349/> (at 4:19).

²⁵⁰ The evidence that follows in this sub-section was provided by IDF intelligence, unless otherwise noted.

²⁵¹ See U.N. Board of Inquiry Summary, *supra* note 247, at ¶¶ 65, 70 (finding that “it was highly likely that an unidentified Palestinian armed group could have used the school premises to launch attacks on or around 14 July” and that “[t]he area behind the [UNRWA Jabalia Preparatory Boys] school wall was known at the time for being used by militants, including for the firing of projectiles.”).

²⁵² See *id.* at ¶ 82 (finding that “it was likely that such a [Palestinian armed] group may have fired from within the premises of the [UNRWA Nuseirat Preparatory Co-Educational B] school.”).



Above: Aerial photograph of the UNRWA and civilian structures in Jabalia from which projectiles were fired at Israeli residential communities. Launches are marked with red dots, some of which represent more than one launch. Structures outlined in orange are UNRWA schools, mosques, and a kindergarten. As can be seen, two mortars were launched from directly within the UNRWA's Jabalia Preparatory Boys School, outlined in purple. As noted below, weapons were found in this same school on July 22. At the time the weapons were found, the UNRWA's Jabalia Preparatory Boys School sheltered approximately 300 Gazans, and another 3,000 were seeking shelter in the two UNRWA schools on either side of the school.²⁵³ (Source: IDF)

²⁵³ See UNRWA condemns placement of rockets, for a second time, in one of its schools, UNRWA (July 22, 2014), available at <http://www.unrwa.org/newsroom/press-releases/unrwa-condemns-placement-rockets-second-time-one-its-schools>. See also U.N. Board of Inquiry Summary, *supra* note 247, at ¶¶ 65-70.



Above: Aerial footage that displays a projectile launched from within the UNRWA's Jabalia Preparatory Boys School on July 14. (Source: IDF)²⁵⁴

137. Hamas and other terrorist organisations in the Gaza Strip also exploited the proximity of other U.N. facilities throughout the 2014 Gaza Conflict to stage and launch extensive attacks on Israel. The IDF recorded multiple instances of projectile launches within 25 metres of other U.N. facilities. Examples include:

- On July 11, a projectile was launched from within 25 metres of a U.N. food distribution centre in Khan Yunis.
- On July 26 and 28, and August 4, 9, and 20, six projectiles were launched from inside an UNRWA Packing Centre and Emergency Office in Rafah. On July 27 and 30, two launches were identified approximately 10 metres from the facility.
- On August 3, seven projectiles were launched from within 25 metres of a UNDP professional training centre in Al-Zaitoun.

²⁵⁴ *Id.*



138. Additional launches in close proximity to U.N. facilities included:

- On July 31, a rocket was launched right behind a journalist reporting from a civilian area, 100 metres from a U.N. building.²⁵⁵
- On August 2, 21, 22, and 25, twenty-four projectiles were fired from a compound in Shuja'iyyeh packed with civilian buildings such as the UNRWA Shuhadda Al-Manar Elementary "B" School, Al-Rahma medical clinic, Al-Salaah mosque, and three other schools (see aerial photograph below). Militants used a mobile launch pad to conduct launches from various points in the compound, including three launches on August 25 conducted from within 40 metres of the UNRWA school and the Al-Rahma government health clinic.



Above: Aerial photograph of the compound in Shuja'iyyeh from which 24 projectiles were fired at Israeli residential communities on August 2, 21, 22, and 25. Launch areas are marked with red dots, some of which represent more than one launch. (Source: IDF)²⁵⁶

139. United Nations schools were also used as weapons depots throughout the 2014 Gaza Conflict. UNRWA publicly stated that it discovered weapons caches in three different U.N. schools

²⁵⁵ *Hamis rocket launch pad lies near Gaza homes*, France24 (Aug. 7, 2014), available at <http://www.france24.com/en/20140805-exclusive-video-hamis-rocket-launching-pad-near-gaza-homes-un-building/> (video of July 31 rocket launch near U.N. facility).

²⁵⁶ For more information, see Chapter VI (IDF's Conduct During the Conflict), Section D.1.b.



in the span of two weeks.²⁵⁷ On July 16, UNRWA found weapons hidden in the UNRWA Gaza Beach Elementary Co-Educational B School.²⁵⁸ On July 22, UNRWA discovered weapons hidden by militants in the UNRWA Jabalia Preparatory Boys School.²⁵⁹ On July 23, U.N. Secretary General Ban Ki Moon expressed “outrage” that militants “are turning schools into potential military targets, and endangering the lives of innocent children,”²⁶⁰ yet the exploitation of U.N. facilities continued: on July 29 and on August 17, UNRWA found caches of hidden weapons in the UNRWA Nuseirat Preparatory Girls B School.²⁶¹



Above: Weapons found hidden in the UNRWA Gaza Beach Elementary Co-Educational B School on July 16. (Source: IDF)

140. In conducting military operations within U.N. buildings, Hamas and other terrorist organisations frequently caused them to lose the protections afforded to civilian objects under customary international law, and rendered them legitimate military targets.²⁶² Operating near these facilities further endangered these structures by drawing IDF counter-strikes towards their vicinity, increasing their susceptibility to incidental damage.

²⁵⁷ See U.N. Board of Inquiry Summary, *supra* note 247, at ¶¶ 55, 67, 76, 80.

²⁵⁸ *UNRWA strongly condemns placement of rockets in school*, UNRWA, (July 17, 2014), available at <http://www.unrwa.org/newsroom/press-releases/unrwa-strongly-condemns-placement-rockets-school>. The weapons found at the school were a 120 MM mortar tube, a mortar bipod and twenty 120 MM mortar-round containers, with ammunitions. See U.N. Board of Inquiry Summary, *supra* note 76, at ¶ 55.

²⁵⁹ *UNRWA condemns placement of rockets, for a second time, in one of its schools*, UNRWA, *supra* note 253.

²⁶⁰ Secretary-General Ban Ki-Moon Statement on Weapons at UNRWA School in Gaza (July 23, 2014), available at <http://www.un.org/sg/statements/?nid=7885>.

²⁶¹ For the July 29 finding, see, *U.N. says more rockets found at one of its Gaza schools*, Reuters (July 29, 2014), available at <http://af.reuters.com/article/egyptNews/idAFL6N0Q45TO20140729>. On 29 July, a 120 MM mortar tube, a 120 MM bipod and three 120 MM mortar containers were found; and on 17 August, a 120 MM mortar tube, a 120 MM mortar bipod and twenty 120 MM mortar containers were found. See U.N. Board of Inquiry Summary, *supra* note 247, at ¶¶ 76, 80.

²⁶² This customary rule is also reflected in Additional Protocol I, art. 52, Rome Statute, 8(2)(b)(ii and iii) and 8(2)(e)(iii).



141. **Other schools.** Hamas and other terrorist organisations in the Gaza Strip also exploited non-U.N. schools for military purposes, conducting multiple projectile launches directly inside or nearby these facilities. Examples of launches within, or in close proximity to, educational institutions include:²⁶³

- On July 7, two projectiles were fired from within 25 metres of a school in Beit Hanun.
- On July 7, a projectile was launched from within Beit Lahiya Middle School for girls.
- On July 7, a projectile was launched from within a school compound in Beit Lahiya (approximately 10 metres from the Indonesian Hospital).
- On July 9 and 12, two projectiles were launched towards central and southern Israel from within 25 metres of Al-Imam Al-Shafei'i elementary school in central Gaza City.
- Between July 11 and August 3, a total of nine projectiles were fired from the grounds of the Al-Awda Primary School for Boys in Sheikh Radwan, with an additional six projectiles launched from within 25 metres of the school.
- Between July 11 and August 2, a total of 24 projectiles were fired from within 25 metres of the Al-Hasameya school in Shuja'iyeh.
- On July 14, a projectile was launched from within 20 metres of the Gamal Abdel Nasser school in Shuja'iyeh (and approximately 50 metres from the Hassan Al-Harazeen Medical Centre).
- Between July 14 and August 2, a total of 34 projectiles were fired from within 25 metres of the Shohada'a Al-Shati school in Al-Shati refugee camp, some towards major Israeli cities such as Ashkelon and Ashdod.
- On July 14, three projectiles were launched approximately 10 metres from the Abu Ahmed Basic School in Khan Yunis, and on July 24, a projectile was launched from within the school.
- On July 17, 15 projectiles were fired at the Israeli cities of Gadera and Yavneh from within 10 metres of the wall of an agricultural school in Beit Hanun.
- On July 18, 30 and August 2, four projectiles were fired from within 25 metres of the Sefad school in Al-Zaitoun.
- On July 20, five projectiles were fired from within 35 metres of a kindergarten in Jabalia.

²⁶³ The evidence that follows in this sub-section was provided by IDF intelligence, unless otherwise noted.



- On July 20, at least three projectiles were fired from within Abu Nur school in Al-Shati refugee camp.²⁶⁴



Above: IDF video footage of rocket launches from within the Abu Nur school on July 20. (Source: IDF)

- On July 21 and 30, two projectiles were fired from within El-Fhheed Raied Kindergarten in Sheikh Radwan.
- On July 23, two projectiles were fired simultaneously from within Al Quds University in Beit Lahiya.

²⁶⁴ For video footage filmed by the IDF, see *IDF Special Report: Hamas' Illegal Use of Civilian Infrastructure During Operation Protective Edge*, IDF (Aug. 19, 2014), slide 13, available at <http://www.idfblog.com/blog/2014/08/20/new-declassified-report-exposes-hamas-human-shield-policy/>.



- On July 29, two projectiles were fired from within 25 metres of the Dalal al-Maghribi school in Al-Tuffah. On July 30, a projectile was fired from within the school itself.
- On August 3, three projectiles were fired 40 metres from a kindergarten in Jabalia.
- On August 3, one projectile was fired from within a school in Al-Darraj.
- On August 3, two projectiles were launched from within the Basheer Al-Riss Secondary School for girls in Sheikh Radwan.



Above: Visual evidence of exploitation of schools for weapons storage. (Source: IDF)

142. Hamas also situated its combat tunnels near Gazan schools, endangering these facilities and any children present inside. For example, a tunnel leading to a mosque ran underneath the Jema'at a-Salah school in the refugee camps of the central Gaza Strip; the school was also used to store weapons. Also, as the image below depicts, a tunnel entrance was found adjacent to a school in a residential neighbourhood of Gaza City.



Above: An aerial photograph depicting an entrance to a combat tunnel situated between a mosque and a school in a neighbourhood of Gaza City. (Source: IDF)

143. Furthermore, in the course of interrogations conducted by Israeli authorities during the 2014 Gaza Conflict, Hamas militants from Beit Lahiya revealed that Hamas dug a tunnel next to a kindergarten in the Gaza Strip.²⁶⁵ Another Hamas militant from Greater Abasan revealed that in the event of the successful kidnapping of an Israeli, militants were instructed to bring the captive to a kindergarten in Khuza'a before moving the captive elsewhere.²⁶⁶ That Hamas intentionally constructed these tunnels near educational institutions well before the 2014 Gaza Conflict began makes it clear that the military exploitation of these structures was premeditated.

144. As with other civilian structures, in conducting military operations within schools, Hamas and other terrorist organisations frequently caused them to lose the protections afforded to civilian

²⁶⁵ *Hamas' exploitation of civilian and medical facilities for terror*, Israel Ministry of Foreign Affairs, *supra* note 240 (detailing interrogations of Afif Jerajh and Amad Jerakj).

²⁶⁶ *Id.* (statement of Muhammad Abu Daraz).



objects under customary international law and rendered them legitimate military targets²⁶⁷ Operating near these schools further endangered these structures by drawing IDF counter-strikes, increasing their susceptibility to incidental damage.



Above: Aerial photograph of launches from within three schools and the Bin Marwan Cemetery in Shuja'iyyeh on July 11, 19, 28, and 30, and August 2, 21, and 23. Red dots indicate launches. Launches came from directly within the Ramlah School and Al-Zahra Secondary Female School, and adjacent to the Al-Falah school (these three schools are marked by the top "school" caption), and from directly within the Al-Hasameya elementary school (marked by the bottom "school" caption). (Source: IDF)

²⁶⁷ This customary rule is also reflected in Additional Protocol I, art. 52; Additional Protocol II; and Rome Statute, 8(2)(b)(ii and ix) and 8(2)(e)(iv).



145. **Places of Worship.** Hamas and other terrorist organisations in the Gaza Strip also turned many dozens of places of worship — especially mosques — into weapons storage facilities, sniper posts, and command and control centres. For example, video footage recorded by IDF troops during 2014 Gaza Conflict confirms that weapons were hidden in the basement of the Al-Tawheed mosque in Khuza'a, alongside the prayer room.²⁶⁸ Foreign correspondents saw militants moving rockets into a mosque during a humanitarian ceasefire.²⁶⁹ IDF troops found a command and control centre and tunnel entrances in the Sheikh Hasnain mosque in Shuja'iyeh, also used by militants as a surveillance post from which to watch IDF troops. On July 31, snipers shot at IDF troops from another mosque in Shuja'iyeh.²⁷⁰

146. Additionally, during the 2014 Gaza Conflict, Hamas and other terrorist organisations exploited places of worship for military cover by launching multiple projectiles within 25 metres of a mosque.²⁷¹ For instance:

- On July 21, 22, and 23, four projectiles were launched from within 25 metres of the Issa Murad mosque in Sheikh Radwan.
- On July 13, two projectiles were launched towards Ashkelon approximately 15 metres from the Abu Aisha mosque in Sheikh Radwan.
- On July 30 and 31, 11 projectiles were launched from within approximately 10 metres of a mosque in the crowded Al-Nasser compound in Sheikh Radwan. On those dates, a total of 50 projectiles were fired from the compound, which was packed with civilian buildings such as the Al-Nasser School, the Al-Nasser Children's Hospital, two additional schools and a cemetery.
- On August 4, a projectile was launched approximately 10 metres from the Haled al-Khatib mosque in Nuseirat.

147. Likewise, Greek Orthodox Archbishop Alexios reported that rockets were launched from his church compound in the Gaza Strip.²⁷²

²⁶⁸ IDF, *IDF Soldiers Find Mosque with Weapons and Tunnel Openings*, YouTube (July 31, 2014), <https://www.youtube.com/watch?v=aWkjwfkx-qM>.

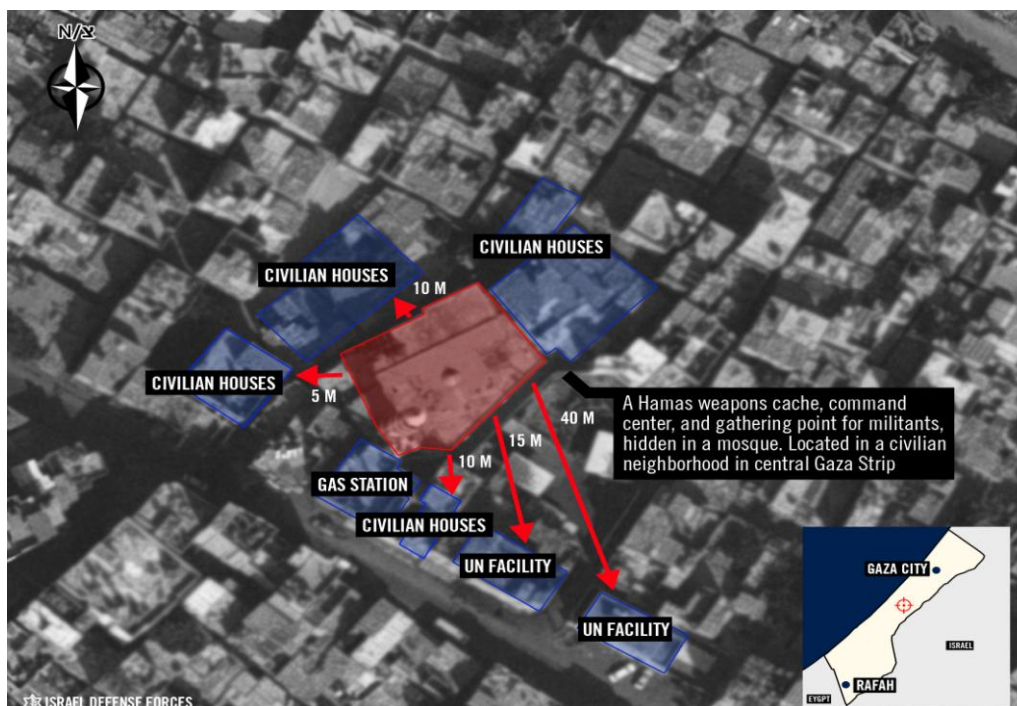
²⁶⁹ William Booth et al., *Israel launches ground invasion of Gaza*, Washington Post (July 17, 2014), available at http://www.washingtonpost.com/world/gaza-residents-scramble-to-make-most-of-five-hour-truce/2014/07/17/e5485fce-0d7e-11e4-8341-b8072b1e7348_story.html (eyewitness account of militants moving small rockets into mosque).

²⁷⁰ *Live Updates: Operation Protective Edge, day 24*, Haaretz (Aug. 1, 2014), available at <http://www.haaretz.com/news/diplomacy-defense/1.608121>.

²⁷¹ The evidence that follows in this sub-section was provided by IDF intelligence, unless otherwise noted.



148. Moreover, Hamas and other terrorist organisations built numerous tunnels leading into or near mosques.²⁷³ For example, a combat tunnel ran beneath the Hasan Al-Bana mosque in Al-Zaitoun, and two entrances to combat tunnels were situated in the Khalil Al-Wazir mosque in the coastal neighbourhood of Sheikh Ij'leen. IDF video footage of the Al-Tawheed mosque in Khuza'a depicts two entrances to a cross-border assault tunnel hidden in the basement of the mosque.²⁷⁴ Hamas also used mosques for military communications channels: a Hamas instructional presentation on urban warfare, discovered by the IDF during the 2014 Gaza Conflict, directed militants to use megaphones in mosques to send each other warnings.²⁷⁵



Above: Visual evidence of military exploitation of a mosque surrounded by civilian homes and U.N. facilities. (Source: IDF)

²⁷² George Thomas, *Gaza Bishop: Hamas Used Church to Fire Rockets* (Aug. 8, 2014), available at <http://www.cbn.com/cbnnews/insideisrael/2014/August/Gaza-Bishop-Hamas-Used-Church-to-Fire-Rockets-/>.

²⁷³ *Hamas Uses Holy Places in Gaza as Terrorist Facilities*, IDF (Aug. 1, 2014), available at <http://www.idfblog.com/blog/2014/08/01/hamas-holy-places-in-gaza-as-terrorist-facilities/> (video of tunnel openings into mosque).

²⁷⁴ IDF, *IDF Soldiers Find Mosque with Weapons and Tunnel Openings*, YouTube (July 31, 2014), <https://www.youtube.com/watch?v=aWkjwfkx-qM>. For further documentation of this finding, see IDF, *IDF Forces Find & Destroy Terror Tunnel in Gaza Mosque*, YouTube (July 30, 2014), <https://www.youtube.com/watch?v=5r6AYUy-uj0>.

²⁷⁵ Izz al-Din al-Qassam Brigades urban warfare instructional presentation found by IDF troops during ground maneuver. See Chapter VI (IDF's Conduct during the Conflict), Section C.



Above and to the left: Images of the Al-Tawheed mosque out of which Hamas militants operated, captured on video by IDF soldiers on July 30. The video displays weapons and two tunnel entrances hidden in the basement of the mosque, where the prayer room is located. (Source: IDF)

149. Statements gathered from militants of Hamas and other terrorist organisations arrested during the 2014 Gaza Conflict confirmed the extensive use of mosques as military sites during hostilities. For instance:

- Muhammad Alqadra from Khan Yunis confirmed that Hamas members used Khan Yunis mosques to hide RPGs, heavy PKC machine guns and AK-47s.
- Muhammad Abu Daraz from Greater Abasan said that Hamas's Izz al-Din al-Qassam Brigades militants monitored IDF movements from the Abd Al-Rahman mosque and that Hamas concealed two IEDs in the Al-Tawheed mosque.



- Iyad Abu Rida from Khuza'a stated that a Hamas-affiliated armed group called Jamaat Asnad operated from the second floor of the Al-Taqwa mosque in Khuza'a.
- Khatem Abu Rida from Khuza'a said that militants also used Khuza'a's Al-Taqwa mosque as a lookout and command centre for passing instructions to militants about where to plant IEDs.²⁷⁶

150. As with other civilian structures, in locating military operations and assets within mosques, Hamas and other terrorist organisations frequently caused them to lose the protections afforded to civilian objects under customary international law and rendered them legitimate military targets.²⁷⁷ Operating near these mosques further endangered these structures by drawing IDF counter-strikes towards their vicinity, exposing them to the possibility of incidental damage.

151. **Civilian Homes and Residential Buildings.** During the 2014 Gaza Conflict, Hamas and other terrorist organisations in the Gaza Strip made frequent use of civilian homes and residential buildings for military operations, jeopardizing Gazan civilians within or nearby. Homes and other residential buildings were transformed into weapons storage sites, command and control centres, military communications hubs, sites for activating rocket launches, including from underground tunnels connected to the structure, and operational planning centres. Well ahead of the 2014 Gaza Conflict, these homes and buildings were adapted to facilitate military activities, such as through the installation of mechanisms allowing for the communication between militants and concealed passages to other military sites. Tunnels were built in close proximity to civilian homes to provide swift access to underground weapons caches and cover.

152. Hamas and other terrorist organisations conducted military operations not just within, but directly adjacent to, civilian buildings, exploiting their proximity as cover from IDF response. On July 31, a rocket exploded right next to a journalist reporting from a civilian area, 50 metres from a hotel.²⁷⁸ On August 4, a reporter captured footage of militants setting up a rocket launcher just metres from a hotel in a residential area. According to the reporter: "This is an area that is very heavily built up, a lot of residential [buildings] and hotel buildings all around. And so if Hamas does fire a rocket from here, it will have immediate consequences for everyone around here."²⁷⁹ Militants

²⁷⁶ *Hamas' exploitation of civilian and medical facilities for terror*, Israel Ministry of Foreign Affairs, *supra* note 240.

²⁷⁷ This customary rule is also reflected in Additional Protocol I, art. 52, Rome Statute, 8(2)(b)(ii and ix) and 8(2)(e)(iv).

²⁷⁸ *Hamas rocket launch pad lies near Gaza homes*, France 24 (Aug. 7, 2014), *supra* note 255.

²⁷⁹ Sreenivasan Jain, *NDTV Exclusive: How Hamas Assembles and Fires Rockets*, NDTV (Aug. 5, 2014), available at <http://www.ndtv.com/article/world/ndtv-exclusive-how-hamas-assembles-and-fires-rockets-571033?pfrom=home-lateststories>.



indeed fired a rocket from that location the following day, despite the risk to civilian life and property.²⁸⁰



Above: Images of rocket launchers situated 50 metres from a hotel in a residential area where children play (see photo on left). Also nearby is a U.N. facility, evidenced by the U.N. flag in the photo on the right. These images were extracted from video footage recorded on August 5 by a French journalist who returned to the site of a rocket launch. (Source: France 24 News, August 7, 2014)

Below: Aerial photographs depicting a rocket manufacturing site and combat tunnel openings situated in close proximity to civilian homes. (Source: IDF)



²⁸⁰ *Id.*



153. Various Hamas instructional materials discovered during the 2014 Gaza Conflict confirmed the systematic and deliberate exploitation of civilian homes and residential buildings for military purposes. A Hamas presentation on urban warfare discovered by the IDF during the 2014 Gaza Conflict instructed militants how to utilise their homes for military purposes — for example, by hiding a wireless communications antenna next to the television antenna atop the house.²⁸¹ One of the Hamas combat manuals found during the 2014 Gaza Conflict instructed militants, in a section titled “Factors for Successfully Hiding Weapons in Buildings,” to hide weapons in homes; to use household items to smuggle weapons into residential areas; and even to “use residents of the area in order to place the equipment inside.”²⁸² The homes of militants were commonly used for military purposes. For example, the home of Marwan Issa, one of the heads of Hamas’s Izz al-Din al-Qassam Brigades, was used as a command and control centre. The residential home of Ibrahim al-Shawaf, a senior military figure in the Palestinian Islamic Jihad, had been used as a weapons depot, confirmed by the secondary explosions that followed an IDF strike on the house.²⁸³ In another example, another militant’s home in Shuja’iyeh was used as a sniper post to fire at IDF troops and as a cover for a combat tunnel.

154. As with other civilian structures, in locating military operations and assets within civilian homes and buildings, Hamas and other terrorist organisations frequently caused them to lose the protections afforded to civilian objects under customary international law and rendered them legitimate military targets.²⁸⁴ Operating near homes and residential buildings further endangered these structures by drawing IDF counter-strikes towards their vicinity, exposing them and civilians in the area to great risk.

155. **Summary.** Hamas and other terrorist organisations in the Gaza Strip systematically and deliberately used civilian buildings and facilities for military purposes throughout the 2014 Gaza Conflict, including hospitals and health clinics, U.N. facilities, schools, mosques, and civilian homes and residential buildings. In doing so, these organisations defied the customary international law obligation requiring a party to the conflict to take feasible measures to mitigate the harm to its civilian population resulting from the dangers of military operations. By exploiting civilian

²⁸¹ Izz al-Din al-Qassam Brigades urban warfare instructional presentation found by IDF troops during ground maneuver.

²⁸² *Hamas Manual Calls for Hiding Bombs in Civilian Homes*, *supra* note 224 (quoting Izz al-Din al-Qassam Brigades instruction manual on explosives recovered during the 2014 Gaza Conflict). Similarly, the Hamas presentation on urban warfare found by the IDF during the ground maneuver instructed militants to use civilians as “messengers, particularly youth and the elderly (women)” — notably, the most vulnerable of civilians — in order to maintain contact. Thus, aside from endangering civilian life and property by deliberately turning civilian buildings and homes into legitimate military targets, Hamas exploited and endangered civilians by recruiting them to assist in combat functions.

²⁸³ See Chapter VI (IDF’s Conduct during the Conflict), Sections B and D.1.b.

²⁸⁴ This customary rule is also reflected in Additional Protocol I, art. 52, Rome Statute, 8(2)(b)(ii).



structures for military operations, these organisations knowingly turned these structures into legitimate objects of attack, and greatly increased the risk of incidental damage to nearby civilians and civilian structures. Despite the extensive precautions taken by the IDF to avoid or minimise damage to civilian life and property, the strategy of conducting hostilities from densely-populated civilian areas significantly exacerbated damage.

156. This embedding strategy gave rise to additional violations of customary international law and war crimes. Specifically, on the many occasions in which these organisations exploited medical units and transports for military use and used these specially-protected facilities to shield their assets and operations from IDF attack, they violated norms of customary international law mandating respect and protection of these facilities²⁸⁵ and prohibiting the use of these facilities for shielding military objectives from attack.²⁸⁶ Moreover, on the many occasions in which Hamas and other terrorist organisations deliberately exploited the presence of civilians in and around the civilian sites in which they operated in order to shield their military assets from attack, they violated the prohibition under customary international law against relying on the presence of civilians to shield military targets from attack²⁸⁷ and committed war crimes.²⁸⁸

C. Hamas and other Terrorist Organisations in the Gaza Strip Directed the Movement of Civilians in Order to Shield Military Assets and Operations

157. Customary international law forbids parties to hostilities not only from exploiting the presence of civilians in order to shield military targets from attack, but also from taking active steps to ensure civilian presence for this end. Specifically, parties are forbidden from directing the movement of the civilian population and of individual civilians for the purpose of shielding military objects and military operations from attack.²⁸⁹ When such direction results in the use of civilians for shielding, such conduct constitutes a war crime.²⁹⁰

158. During the 2014 Gaza Conflict, Hamas and other terrorist organisations in the Gaza Strip took positive actions to ensure civilian presence in the densely-populated areas from which they operated by directing civilians either to remain in or return to sites or areas of impending IDF

²⁸⁵ This customary rule is also reflected in Additional Protocol I, art. 12(1), art. 21; Additional Protocol II, art. 11; Geneva Convention IV, art. 18; Geneva Convention I, art. 19.

²⁸⁶ This customary rule is also reflected in Additional Protocol I, art. 12(4).

²⁸⁷ This customary rule is also reflected in Additional Protocol I, art. 51(7). *See also id.* at Article 13(1).

²⁸⁸ This customary rule is also reflected in the Rome Statute, art. 8(2)(b)(xxiii).

²⁸⁹ This customary rule is also reflected in Additional Protocol I, art. 51(7). *See also id.* at Article 13(1).

²⁹⁰ This customary rule is also reflected in the Rome Statute, art. 8(2)(b)(xxiii).



activity. These organisations directed civilian movement for the purpose of shielding both by verbal means — by waging an official campaign pressuring civilians to disregard Israel’s evacuation warnings prior to impending IDF military activity — and by explicit intimidation and physical coercion.

159. **Directing the Movement of Civilians by Official Instruction.** In the early days of the 2014 Gaza Conflict, Hamas and other terrorist organisations embarked on a full-fledged campaign to pressure civilians to disregard Israel’s extensive warnings to evacuate rocket launch sites targeted for IDF airstrikes, as well as areas designated for entry by IDF ground troops. Official directives dismissed IDF evacuation warnings, delivered by leaflets, phone calls and text messages, as mere “psychological warfare,” manipulating civilians to remain in, or return to, these sites and areas. For example:²⁹¹

- On July 10, Hamas’s Ministry of Interior instructed the thousands of civilians who had received phone messages from the IDF warning them to evacuate, to ignore these warnings. The Ministry assured civilians that the messages were designed merely to frighten them and to “weaken the home-front.” This message was relayed repeatedly throughout the day on Hamas’s media outlets, including Al-Aqsa radio and television, as well as Al-Resalah news website.
- On July 12, Hamas’s Ministry of Interior spokesman Iyad Al-Buzum posted on the Ministry’s Facebook page an “important and urgent message: The Ministry of the Interior and National Security calls upon our honorable people in all parts of the Strip to ignore the warnings ... as these are part of a psychological warfare.”
- On July 13, responding to continued evacuations, Al-Buzum reiterated in the following directive: “We call upon all our people who left their homes to return to them immediately.”²⁹²
- On July 13, in a press conference broadcast on the Hamas TV channel Al-Aqsa, a representative of the Palestinian National and Islamic Forces, an umbrella organisation including representatives of Hamas and other terrorist organisations in the Gaza Strip, exhorted residents “not to obey what is written in the pamphlets distributed by the Israeli...army. We call on them to remain in their homes and disregard the demands to leave, however serious the threat may be.”²⁹³

²⁹¹ Information on these incidents was provided by the IDF. For more, see Chapter VI (IDF’s Conduct during the Conflict), Section D.2.b.

²⁹² See also *Israel’s protection and Hamas’ exploitation of civilians in Operation Protective Edge*, Israel Ministry of Foreign Affairs (July 24, 2014), available at <http://mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/Israel-protection-and-Hamas-exploitation-of-civilians-in-Operation-Protective-Edge-July-2014.aspx>.

²⁹³ *Hamas encourages civilians to act as human shields*, Palestinian Media Watch (July 14, 2014), available at http://palwatch.org/main.aspx?fi=157&doc_id=12019.



Above: Screen shots from the press conference described in preceding paragraph. (Source: Al Aqsa TV: July 13, 2014)

- On July 14, Adnan Okal, head of the Hamas-affiliated Popular Committee of Palestinian Refugees, called upon civilians in the northern Gaza Strip who had complied with IDF evacuation warnings to leave UNRWA shelters and return to their homes.²⁹⁴ The Committee called IDF warnings “psychological warfare” and demanded that the residents of the northern Gaza Strip “take responsibility” in resisting IDF activities by refraining from evacuating the border region in favor of U.N. shelters. The Committee also instructed UNRWA not to open shelters without consulting the Hamas authorities. In discussions with the IDF’s Gaza District Coordination and Liaison Administration, a senior UNRWA official confirmed that Hamas demanded that UNRWA close shelters, and that Hamas sent messages to Gaza residents, including via SMS, threatening them not to evacuate their homes or seek shelter in UNRWA facilities.
- On July 16, Hamas spokesman Mushir al-Masri instructed Gazan civilians not to leave their homes and to ignore the IDF’s warnings: “Stay in your homes.... Do not comply with the war of rumors that the Zionist enemy is waging upon you.”²⁹⁵
- Prior to the July 19 entry of IDF ground troops into Shuja’iyeh, neighbourhood mosques instructed civilians to remain in the area despite IDF warnings to evacuate, assuring civilians that Hamas was strong and no harm would befall them.
- International organisations reported to the IDF’s Coordination and Liaison Administration that Hamas had used megaphones to exhort residents of the northern Gaza Strip, particularly Shuja’iyeh, not to evacuate their homes.
- On July 16, Fatah officials reported to the Palestine Press News Agency that Hamas security services had placed Fatah members under house arrest in order to prevent them from assisting civilian evacuations.

160. The clear purpose of these official directives and exhortations by Hamas and other terrorist organisations was to direct Gazan civilians towards areas or sites where IDF activity was imminent, in an effort to shield military assets and operations from IDF attack.²⁹⁶

²⁹⁴ *Hamas’ use of civilians as human shields*, Israeli Ministry of Foreign Affairs (July 20, 2014), <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Pages/Hamas-use-of-civilians-as-human-shields-20-Jul-2014.aspx> (listing multiple sources supporting Hamas’s direction of the movement of civilians for the purpose of shielding military objectives).

²⁹⁵ *Id.*



161. **Directing the Movement of Civilians through Intimidation and Physical Force.** Hamas and other terrorist organisations in the Gaza Strip sometimes directed the movement of civilians by explicit coercion. This was confirmed by eyewitness testimony from a number of IDF officers present in the Gaza Strip during the ground maneuver.

162. One such account was provided by IDF Civilian Affairs Officer Lieutenant Kfir. According to Lt. Kfir, when IDF troops entered the Khan Yunis area during the first week of the ground operation, the IDF warned civilians to evacuate the area due to impending military activity. Following the warnings, Lt. Kfir came upon 17 Gazan civilians who had remained in a house in the area. When he asked why they had not evacuated despite the warnings, they relayed to him that Hamas had forced them to stay.²⁹⁷

163. According to additional eye-witness accounts of IDF officers, militants of Hamas and other terrorist organisations sometimes physically coerced civilians, including women and children, into providing them cover as they moved around the Gaza Strip. IDF Sgt. Aviv testified that:

A [militant] man about 40 years old walked out of a house nearby, and then I saw that he was holding a woman, and he was using her as a shield.... And I can see very clearly that the woman doesn't want to

²⁹⁶ Aside from issuing official directives, leaders of Hamas and other terrorist organisations also generally encouraged Gazan civilians to shield military assets and operations from IDF attack. On July 8, Hamas spokesperson Sami Abu Zuhri praised civilians for gathering on the roof of a house that the IDF had warned civilians to evacuate, stating: “The policy of people confronting the Israeli warplanes with their bare chests in order to protect their homes has proven effective ... We in Hamas call upon our people to adopt this policy.” *Video: Hamas Spokesman Encourages Gazans to Serve as Human Shields: It’s Been Proven Effective*, MEMRI (July 8, 2014), available at <http://www.memri.org/clip/en/0/0/0/0/0/4340.h>. Encouraging civilians to use their bodies as shields against IDF strikes was by no means unique to the 2014 Gaza Conflict, and has for years been a recurring mantra in official Hamas rhetoric. For example, in 2008, prior to the Gaza Operation 2008-2009, Hamas spokesman Fathi Hammad appeared on Hamas television and brazenly praised the practice of forming “human shields of the women, the children, the elderly, and the Mujahideen in order to challenge the Zionist bombing machine.” *Hamas MP Fathi Hammad: We Used Women and Children as Human Shields*, MEMRI TV (Feb. 29, 2009), available at <http://www.memritv.org/clip/en/1710.htm> (video from Al-Aqsa TV). During the Gaza Operation 2008-2009, senior Hamas militant Abu Bilal al’Jabeer testified on television that after receiving a telephone warning from the IDF that his house was being targeted for attack, rather than evacuating his family, “I immediately shut the cell phone and phoned some friends, who called the people via the loudspeakers, and they gathered on the roof of the house, and remained up until now to defend the roof of the house, until Allah so wants.” See *IDF, Hamas Terrorists Use Innocent Civilians as Human Shields*, YouTube (Jan. 19, 2009), <https://www.youtube.com/watch?v=giJIG3KXq8c#t=103>.

²⁹⁷ Civilian Affairs Officer Lt. Kfir, Unpublished Personal Testimony, collected by the IDF. Lt. Kfir then coordinated their evacuation, updating all the forces in the area that the group would be walking through the streets.



be there and he's pulling her with him. Only after he finally let go of the woman could we neutralise him.²⁹⁸

164. Another IDF officer, Lt. Adam, witnessed the use of a child to provide cover to a militant. He described how, as IDF troops were searching for a militant known to be hiding in a particular house, he saw the militant grab a small boy nearby and use him to shield his escape.²⁹⁹

165. **Summary.** These tactics — whether pressuring civilians to situate themselves in areas of imminent hostilities, or employing direct physical coercion — violated the prohibition under customary international law against directing the movement of civilians to shield military targets from attack.³⁰⁰ This prohibition applies with respect to directing the movement of the civilian population as a whole, as well as the movement of individual civilians. When the direction of civilians resulted in the actual use of civilians to shield military targets, such conduct amounted to war crimes under customary international law.³⁰¹

D. Hamas and Other Terrorist Organisations in the Gaza Strip Utilised Additional Unlawful Tactics

166. **Rigging Civilian Property and Residential Areas with Booby-Traps and IEDs.** Throughout the 2014 Gaza Conflict, Hamas and other terrorist organisations in the Gaza Strip rigged civilian structures, objects, and residential areas with thousands of hidden explosives in order to harm IDF forces. Rigging civilian areas and objects with booby-traps and IEDs was a systematic and deliberate Hamas combat strategy, as confirmed by a Hamas combat manual on explosives discovered by the IDF during the 2014 Gaza Conflict. In a section entitled “Hiding and Camouflage of Explosives,” the manual explained to militants that “the goal is to blend in [the explosives] with the environment, whether in natural areas or in civilian surroundings.”³⁰² The manual then detailed techniques for camouflaging explosives without damaging their potency.

167. As recounted by a senior IDF commander, “Entire houses were rigged to explode and collapse on our soldiers. There were all sorts of explosive devices. Some [were set to be] triggered by cell phones and other remote controls. Others were pressure activated and hidden under ordinary

²⁹⁸ *An IDF Soldier's Experiences in Gaza*, IDF (Sept. 21, 2014), available at <http://www.idfblog.com/blog/2014/09/21/an-idf-soldiers-experiences-in-gaza/>.

²⁹⁹ *A Soldier's Account from Gaza: How Hamas Used Human Shields*, IDF (Aug. 25, 2014), available at <http://www.idfblog.com/blog/2014/08/25/soldiers-account-gaza-hamas-used-human-shields/>.

³⁰⁰ This customary rule is also reflected in Additional Protocol I, art. 51(7). *See also id.* at Article 13(1).

³⁰¹ This customary rule is also reflected in Rome Statute, art. 8(2)(b)(xxiii).

³⁰² *Id.*



looking house tiles.”³⁰³ On July 23, a civilian home in Khan Yunis suddenly exploded, killing four IDF soldiers and wounding 14, as a result of the detonation of hidden explosives embedded in the front door.³⁰⁴ Video footage recorded by IDF troops depicts booby-trapped civilian homes, including a home adjacent to a U.N. school, and a village in which entire streets and surrounding civilian buildings were rigged with explosives.³⁰⁵ More IDF video footage depicts a booby-trapped civilian home in which explosive materials were planted near the front door, in the kitchen, in the window grates, and on the wall of one of the rooms.³⁰⁶

168. By rigging residential neighbourhoods and civilian buildings with thousands of hidden explosives, Hamas and other terrorist organisations in the Gaza Strip greatly increased the damage to civilian property and the physical environment, and often recklessly and indiscriminately endangered nearby Gazan civilians. The widespread placement of booby-traps exacerbated the damage to the Gaza Strip’s physical environment, as it forced IDF troops to use explosives to clear the areas in which they were operating in order to protect themselves from hidden explosives. Moreover, hidden explosives meant that any attack, whether by the IDF or by an errant Hamas rocket, could potentially trigger massive additional explosions, sometimes with lethal consequences for Gazan civilians. Such conduct violated the customary international law obligation requiring parties to an armed conflict to take steps to mitigate, to the extent feasible, harm to their own civilian populations resulting from the dangers of military operations.³⁰⁷

169. In some cases, this use of explosives also violated an additional norm of customary international law — specifically, the prohibition against the use of booby-traps and other explosive devices attached to or associated with certain types of objects or persons that enjoy special protection in this context, such as animals and medical facilities.³⁰⁸ For example, on July 18, Hamas sent a donkey laden with explosives towards IDF troops, who managed to identify the trap and thwart the attack.³⁰⁹ On July 30, a 300- to 400-kilogram explosive hidden directly underneath a Palestinian

³⁰³ Adam Ciralsky, *Did Israel Avert a Hamas Massacre?*, Vanity Fair (Oct. 21, 2014), available at <http://www.vanityfair.com/politics/2014/10/gaza-tunnel-plot-israeli-intelligence#> (quoting Colonel Ghassan Alian, commander of the Golani Brigade).

³⁰⁴ *An IDF Soldier’s Experiences in Gaza*, IDF, *supra* note 298 (eyewitness testimony of Sgt. Aviv, an IDF commander injured in the explosion).

³⁰⁵ See IDF, *IDF Soldiers Uncover House Rigged with Explosives*, YouTube (Explosives, published July 26, 2014), <https://www.youtube.com/watch?v=0fze6qHvzgQ>. See also IDF, *Gaza Streets and Homes Rigged with Explosives*, YouTube (July 27, 2014), <https://www.youtube.com/watch?v=OicIM2pM29k&list=UUawNWlihdgaycQpO3zi-jYg&index=4>.

³⁰⁶ *Hamas Manual Calls for Hiding Bombs in Civilian Homes*, IDF, *supra* note 224.

³⁰⁷ This customary rule is also reflected in Additional Protocol I, art. 58 and Protocol II, art. 13(1).

³⁰⁸ This customary rule is also reflected in Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on May 3, 1996, art. 7.

³⁰⁹ On this, and similar conduct in the past, see *Hamas Attacks Israeli Soldiers with Explosive Donkey*, IDF (July 19, 2014), available at <http://www.idfblog.com/blog/2014/07/19/hamas-using-animals-perpetrate-terror-attacks/>.



Authority Ministry of Health clinic in Khan Yunis was manually detonated by a surveillance squad observing IDF presence, killing three IDF soldiers and injuring 14 more.

170. In sum, the systematic and extensive rigging of civilian areas and objects with booby-traps and IEDs substantially increased damage to civilian life and property and violated norms of customary international law.



Above left: Explosive device hidden inside a kitchen in a civilian home. (Source: IDF)

Above right: Palestinian Authority health clinic under which an explosive device was hidden. Damage from the detonation is visible on the clinic's exterior. (Source: IDF)

171. **Disguising Militants As Civilians.** During the 2014 Gaza Conflict, militants of Hamas and other terrorist organisations frequently posed as civilians, as confirmed by eyewitness testimony of IDF soldiers as well as foreign journalists. For example, a journalist covering the July 20 battle in Shuja'iyeh reported that at least two militants had been seen disguised as female civilians with their weapons partially hidden beneath long skirts.³¹⁰ As reported by another journalist, "You can't differentiate the fighters from the civilians. They are not wearing uniforms. If there is someone coming into the hospital injured, you can't tell if that's just a shopkeeper or if this is someone who just fired a rocket towards Israel."³¹¹

172. The strategy of donning civilian clothes was primarily designed to impede the IDF's ability to identify militants and to produce significant tactical hesitation amongst IDF troops attempting to

³¹⁰ Patrick Martin, *Death tolls mount as Israel expands offensive, Hamas resistance hardens*, The Globe and Mail (July 20 2014), available at <http://www.theglobeandmail.com/news/world/thousands-flee-gaza-homes-as-israel-expands-ground-assault/article19683732/>.

³¹¹ See James Estrin, *Looking for the Enduring Photo in Gaza*, New York Times (Aug. 5, 2014), available at http://lens.blogs.nytimes.com/2014/08/05/looking-for-the-enduring-photo-in-gaza/?_php=true&_type=blogs&smid=tw-share&r=0.



comply with the principle of distinction between military and civilian objectives.³¹² Aside from demonstrating general disregard for the protection afforded to civilians under the principle of distinction, this tactic often directly violated customary international law. Specifically, where militants feigned civilian status in order to treacherously kill or injure the enemy, as militants of Hamas and other terrorist organisations did regularly, this tactic violated the customary prohibition against perfidy under the Law of Armed Conflict.³¹³

173. Disguising their militants in civilian clothes served another important purpose for Hamas and other terrorist organisations: it deliberately distorted assessments of the legality of IDF activity in the Gaza Strip. Because militants killed by IDF fire were often impossible to distinguish from civilians, these organisations were able to depict these casualties as civilian, intentionally inflating purported civilian casualties for propaganda purposes. Indeed, during the 2014 Gaza Conflict, Hamas's Ministry of Interior published official guidelines designed to inflate civilian casualty statistics for public consumption, instructing social media users: "Anyone killed or martyred is to be called a civilian from the Gaza Strip or Palestine, before we talk about his status in jihad or his military rank. Don't forget to always add 'innocent civilian' or 'innocent citizen' in your description of those killed in Israeli attacks on the Gaza Strip."³¹⁴

174. **Disguising Militants in IDF Uniforms.** During the 2014 Gaza Conflict, Hamas and other terrorist organisations also disguised militants in IDF uniforms. For example, on July 21, Hamas militants infiltrated Israel through a tunnel, killing four IDF soldiers while disguised in IDF uniforms.³¹⁵ As the 2014 Gaza Conflict continued, IDF forces repeatedly discovered IDF uniforms in hideouts belonging to Hamas and other terrorist organisations, indicating that the July 21 disguise tactic was not intended to be an isolated incident. For example, on July 23, IDF troops scanning a neighbourhood in the southern Gaza Strip found uniforms and helmets that looked exactly like those of the IDF.³¹⁶ On July 31, IDF troops again found IDF uniforms in the home of a Hamas militant.³¹⁷

³¹² This customary rule is also reflected in Additional Protocol I, art. 48 and Additional Protocol II, art. 13.

³¹³ This customary rule is also reflected in Additional Protocol I, art. 37(1)(c), Convention (IV) respecting the Laws and Customs of War on Land and its annex, the Hague, 18 October 1907, regulations: art. 23(b).

³¹⁴ *Hamas Interior Ministry To Social Media Activists: Always Call The Dead 'Innocent Civilians'; Don't Post Photos Of Rockets Being Fired From Civilian Population Centers*, MEMRI (July 17, 2014), available at <http://www.memri.org/report/en/0/0/0/0/0/8076.htm> (quoting Hamas guidelines). See also Annex: *Palestinian Fatality Figures in the 2014 Gaza Conflict*, also available at <http://mfa.gov.il/ProtectiveEdge/Documents/PalestinianFatalities.pdf>.

³¹⁵ For IDF video footage, see IDF, *IDF Thwarts Terrorist Infiltration to Israel*, YouTube (July 22, 2014), <https://www.youtube.com/watch?v=6pkhUyEOXXE> (video at 00:40).

³¹⁶ IDF, *Gaza Streets and Homes Rigged with Explosives*, *supra* note 305 (video at 00:44).

³¹⁷ IDF, *IDF Paratroopers Expose Weapons and Tunnel Openings*, YouTube (Aug. 1, 2014), https://www.youtube.com/watch?v=3INp6vho_jM (video of search of Hamas hideout revealing weapons cache and IDF uniforms).



The improper use of the uniforms and insignia of the adversary while engaging in attacks, as occurred in the July 21 tunnel infiltration, is a violation of customary international law.³¹⁸

E. Conclusion

175. Throughout the 2014 Gaza Conflict, as in the past, Hamas and other terrorist organisations in the Gaza Strip made systematic use of blatantly unlawful military strategies that were designed to heighten civilian suffering both in Israel and in the Gaza Strip. Hamas and other terrorist organisations in the Gaza Strip intentionally attacked and terrorised Israeli civilians by way of rocket and mortar fire, causing civilian deaths, injuries, lasting psychological trauma, and civilian property damage. Hamas extended its assaults against civilians to an additional battlefield, this one subterranean, sending militants through cross-border assault tunnels to attack residents of Israeli border towns. By deliberately targeting Israeli civilians and the civilian population in these ways, as part of a widespread and systematic policy, Hamas and other terrorist organisations in the Gaza Strip violated customary norms of the Law of Armed Conflict and committed war crimes and crimes against humanity.

176. The unlawful military strategies utilised by Hamas and other terrorist organisations in the Gaza Strip also gravely endangered Palestinian civilians and civilian property in the Gaza Strip, contradicting a fundamental assumption of the Law of Armed Conflict whereby parties are motivated to act in their own populations' best interests. To further their own military ends, these organisations chose to situate hostilities within densely-populated civilian areas; to exploit civilian facilities for military operations, including medical facilities specially protected under international law; to disguise militants as civilians and as IDF soldiers; and to rely on the presence of civilians, and even actively direct their presence, to shield their military operations and assets from IDF attack. The extensive placement of booby-traps and IEDs in residential structures and areas also seriously endangered Gazan civilians. By employing these strategies, Hamas and other terrorist organisations in the Gaza Strip acted in contempt of their duty to take even basic measures to protect the civilian population in the Gaza Strip from the dangers of military operations, as required by customary international law, and even actively exploited civilian presence, for tactical advantage and political gain.

³¹⁸ This rule of customary law is also reflected in Additional Protocol I, art. 39(2).

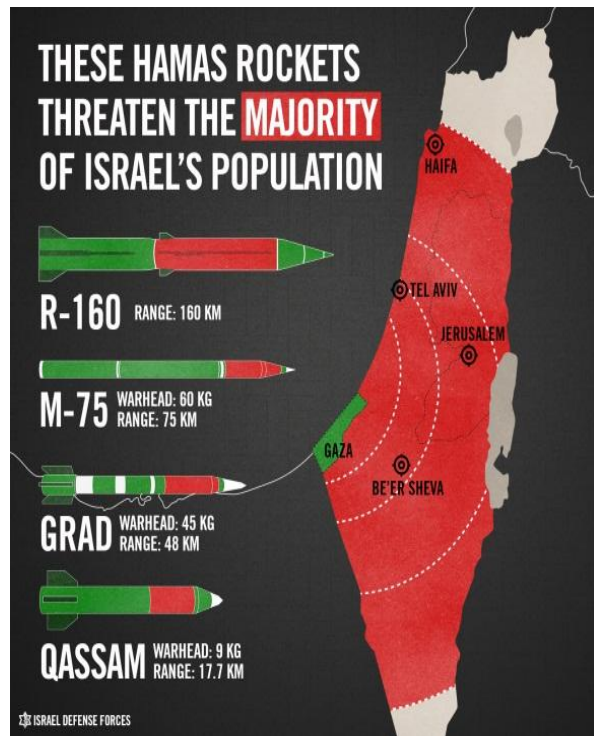


V. The Threat to Israel’s Civilian Population and Israel’s Civil Defence Measures

177. During the 51 days of the 2014 Gaza Conflict (from July 7 to August 26, 2014), Hamas and other terrorist organisations operating from the Gaza Strip fired thousands of rockets and mortars at Israel’s civilian population, at ranges that threatened most of the country. These attacks resulted in significant harm to civilian life and property. However, the civil defence measures that Israel has invested in over many years and that were employed during the 2014 Gaza Conflict substantially reduced the harm that otherwise would have resulted to Israel’s civilian population from these unlawful armed attacks. This Chapter describes the armed attacks against Israel’s civilian population during the Conflict; the extensive steps Israel has taken to reduce the harm inflicted by such attacks; and the harm that nevertheless resulted to Israel’s civilian population, despite Israel’s precautionary efforts.³¹⁹

A. Life under the Threat of Terrorist Rocket Fire and Cross-Border Tunnel Attacks

178. Over the last 14 years, Hamas and other terrorist organisations operating in the Gaza Strip have fired rockets and mortars at Israel and its civilians, with increasing range and frequency.³²⁰ Between 2001 and the outset of the 2014 Gaza Conflict, rocket and mortar attacks from the Gaza Strip killed 41 and injured thousands of Israeli civilians. During the same time period, Hamas and other terrorist organisations fired more than 15,200 rockets and mortars at Israel (more than 11,600 of which came after Israel’s military and civilian withdrawal from the Gaza Strip in 2005).



³¹⁹ For more on the precautions taken by the IDF during the 2014 Gaza Conflict in order to avoid civilian harm and minimise the suffering of the civilian population in the Gaza Strip, see Chapter VI (IDF’s Conduct during the Conflict), Section D.2.

³²⁰ See Chapter II (Background to the 2014 Gaza Conflict), Section C (showing diagrams).



179. During the 2014 Gaza Conflict, which lasted 51 days, Hamas and other terrorist organisations fired more than 4,500 rockets and mortars, with approximately 90% of them directed at Israel’s civilian population, reaching as far as the population centres of Be’er Sheva in southern Israel, Tel Aviv in central Israel, Jerusalem in eastern Israel, and even Haifa in northern Israel (over 150 kilometres from the Gaza Strip), and bringing about six million Israelis (almost 70% of Israel’s population) within the range of attack. Notwithstanding Israel’s civil defence measures, these attacks from the Gaza Strip killed six civilians, including a child, and injured over 1,600 civilians. Seventeen percent of the casualties were children under the age of 18.

180. In Israeli towns and residential communities bordering the Gaza Strip (known in Hebrew as the “Otef Aza” communities), the constantly increasing lethality of rocket and mortar attacks over the past 14 years has greatly harmed and disrupted daily life for the civilians who reside there. These Israeli communities have also been terrorised by the proliferation of covert cross-border assault tunnels from the Gaza Strip. Cross-border assault tunnels began to appear soon after Israel’s withdrawal from the Gaza Strip in 2005, and in the two years leading up to the 2014 Gaza Conflict, the IDF uncovered four such tunnels with openings in close proximity to civilian residential communities in Israel. The discovery of these tunnels — which were used to infiltrate Israeli territory during the 2014 Gaza Conflict — has greatly undermined any sense of security for Israelis living in the Otef Aza border region.³²¹

B. Israel’s Civil Defence Measures against Rocket and Mortar Attacks

181. Given the severity of the threat to Israel’s civilian population posed by rocket and mortar fire from the Gaza Strip (not to mention from Lebanon and Syria to the north), Israel has invested substantial resources over the years to develop civil defence systems and implement public safety measures in order to defend its civilian population. While these civil defence measures cannot fully protect against attacks from the Gaza Strip, they have helped to limit the death and destruction.

1. Passive Defence Measures

182. The main pillars of Israel’s “passive” defence methods are (1) early warning systems; (2) campaigns to instruct the public how to respond to a warning siren; and (3) construction and planning regulations aimed at building protective infrastructure (*e.g.*, underground bomb shelters and security

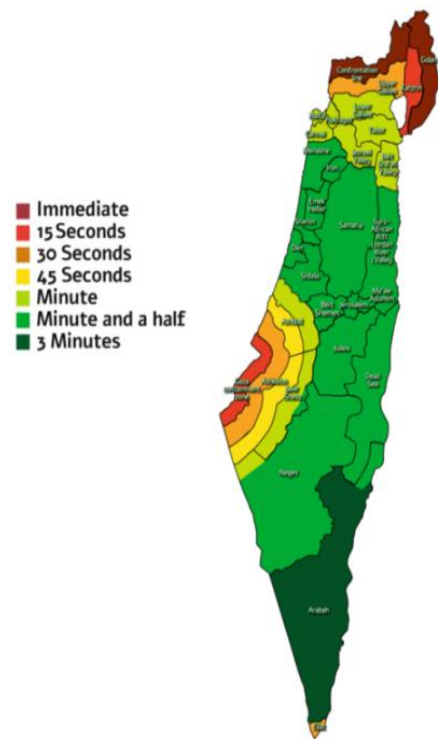
³²¹ See Chapter IV (Hamas’s War Crimes), Section A; *see also* Chapter III (Objectives and Phases of the Conflict).



rooms within homes, offices, schools and public buildings, and bomb shelters near public open areas).

183. **Early Warning Systems and Sirens.** The IDF has developed an early warning system that sounds sirens when a rocket or mortar is fired towards Israel. The current system is able to calculate where a rocket is likely to land and set off a siren or a “Code Red” alert in the at-risk area. Israel has invested significant resources in recent years to develop this system and to make it more precise. During the 1991 Gulf War, for instance, every Iraqi Scud missile directed towards Israel set off warning sirens in the whole country. Today, Israel’s early warning system divides the country into hundreds of geographical areas (known as “polygons”) that receive individualised warnings. The IDF is striving to add more polygons, to make warnings even more precise and thereby also encourage greater public adherence. In the last decade, Israel has invested more than 545 million NIS (approximately 140 million USD) in developing and deploying early warning systems and sirens.

184. **Public Safety Guidance.** Israel has launched numerous public campaigns to raise awareness about how to respond to a warning siren. For example, the public is told the amount of time available to find shelter, which varies (as shown by the map to the right) based on proximity to where the rockets or mortars are fired. Thus, the residents of the Otef Aza border region need to reach shelter within 15 seconds, while the residents of Tel Aviv and Jerusalem have about 90 seconds. There are also specific instructions about the best places to take cover, what to do if driving a car, and what to do if there is no cover available nearby.³²² The IDF has instructed that when the sirens are sounded, civilians must immediately run to the nearest protected area. Those who are outdoors and cannot run to a closed space are advised to lie on the ground, with their hands covering their heads. The instructions stipulate that civilians should take cover for at least ten minutes after a siren, in order to avoid falling debris and shrapnel. The



Above: Map of early warning alerts (Source: IDF). The areas in Northern Israel are in the “immediate” warning alert due to the threat of rockets from Lebanon and Syria.

³²² For the full instructions, see The Home Front Command, *What Do I Do When I Hear a Siren or A “Red Alert” (“Tzeva Adom”)*, available at http://www.oref.org.il/Sip_Storage/FILES/9/2689.pdf.



instructions have been translated into Amharic, Arabic, English, French and Russian. Moreover, Israel has directed a special campaign at the disabled population.³²³



Above: Civilians in an Israeli Street adhering to IDF instructions, July 20, 2014. (Source: David Avikar / MFA)

185. As an additional precautionary measure to protect the civilian population in Israel, during most of the 2014 Gaza Conflict, the IDF Home Front Command prohibited all gatherings of over 300 people within seven kilometres of the Gaza Strip border; all gatherings of over 500 people in areas between seven and 40 kilometres of the Gaza Strip border; and outdoor gatherings of over 1,000 people in areas between 40-80 kilometres of the Gaza Strip border.³²⁴ These public safety restrictions necessitated the cancellations of weddings, cultural events, and sports games, among many other things. In addition, civilian train service from the southern cities of Ashkelon to Sderot was suspended from July 18 to August 28, after IDF intelligence determined that terrorist organisations in the Gaza Strip were planning to target the train service with anti-tank missiles.³²⁵

³²³ See *Information for People with Special Needs*, The Home Front Command, available at <http://www.oref.org.il/10660-en/Pakar.aspx>.

³²⁴ These instructions were issued pursuant to Civil Defence Law - 1951.

³²⁵ In 2011 Palestinian terrorists in the Gaza Strip also fired an anti-tank missile at a school bus in Israel. See *Teen hit by anti-tank missile dies of wounds*, Ynetnews (Apr. 18, 2011), available at <http://www.ynetnews.com/articles/0,7340,L-4058157,00.html>.



186. Residents of the Otef Aza border region received special instructions for situations when terrorists infiltrated (or were suspected to be attempting to infiltrate) Israeli territory through cross-border tunnels. The instructions included, *inter alia*, remaining indoors until the IDF announced that the area is safe. Public adherence to the safety instructions is crucial for reducing deaths and injuries; and constant efforts are made by the Government of Israel to increase public awareness.



Above: Drivers take refuge from rockets in Tel Aviv's major freeway, July 9, 2014. (Source: IDF)



Above: Mother protects her child during a red alert siren on a main road in central Israel, July 20, 2014. (Source: MFA)

187. **Reinforcement of Domestic Infrastructure.** As part of Israel's commitment to protecting its citizens, domestic legislation requires all homes, residential buildings and industrial structures to have and maintain bomb shelters. The primary responsibility to construct shelters rests with the property owners, while tenants and municipalities may also shoulder some responsibility.³²⁶ Given the high costs of these protective measures, the Government subsidises the construction of shelters in the areas of the country that are most at risk from mortar and rocket attacks. Since 2004, for example, Israel has invested approximately 384 million USD to protect schools and civilian homes in

³²⁶ See also *Bomb Shelters*, The Home Front Command, available at <http://www.oref.org.il/10625-en/Pakar.aspx>. The municipalities are responsible for supervising the maintenance of private bomb shelters and for the maintenance of public bomb shelters within their jurisdiction.



Israel — most of which has gone to the Otef Aza border region, which is subject to particularly frequent and intense rocket and mortar attacks (during the 2014 Gaza Conflict alone, more than 2,500 rockets and mortars exploded within 14 kilometres from the border with the Gaza Strip).³²⁷

188. Unfortunately, despite this vast investment in protective infrastructure, due to the large number of older buildings constructed without bomb-shelters and limited resources, approximately 27% of the population in Israel still lacks ready access to bomb shelters and other safe areas in the event of a rocket or mortar attack.

2. Active Defence Measures (the Iron Dome System)

189. In addition to its “passive” defence measures, Israel has developed, and continually strives to improve, various “active” defence systems. The most well-known is the Iron Dome. Since 2007, Israel has invested approximately 1.5 to 2 billion USD in this system, which has played a significant part in reducing the extent of casualties and civilian damage caused by rocket attacks, including during the 2014 Gaza Conflict.

190. Iron Dome is designed to intercept rockets and artillery shells. The system is able to estimate a projectile’s point of impact and then decide, based on whether the point of impact is likely to cause damage (for example, whether it will land in an open or populated area), if the projectile should be intercepted. While the Iron Dome has helped protect millions of Israelis, it does not provide complete protection to the civilian population. Furthermore, even when the system successfully intercepts a projectile, the resulting debris and shrapnel can still cause great harm. Therefore, civilian adherence to the public safety instructions, as well as reinforcing domestic infrastructure, mentioned above, remains essential for minimising casualties and injuries.

191. Despite all the resources and efforts invested in protecting Israeli civilians and civilian property, rocket and mortar attacks from the Gaza Strip (as well as dozens of cross-border assault

³²⁷ For example, on December 7, 2008, the Government of Israel decided to approve a special budget to fortify existing shelters in localities within a 4.5-kilometre range of the Gaza Strip border at a cost of approximately 81 million USD. In October 2012, the Government decided to expand the range of the 2008 fortifying plan from 4.5 to 7 kilometres from the Gaza Strip border, at a cost of approximately 67 million USD. More recently, in May 2013, the Government allocated more than 102 million USD for additional home-front defence projects, including reinforcing social welfare institutions in certain threatened areas, reinforcing educational institutions up to 15 kilometres from the Gaza Strip border, reinforcing sensitive infrastructure (*e.g.*, electricity, water, and fuel), building a national radio network for first-responders, and upgrading IDF Home Front Command warning systems and sirens. See more on these governmental measures at <http://www.pmo.gov.il/English/MediaCenter/Spokesman/Pages/spokehomefront080714.aspx>.



tunnels) continue to terrorise Israel’s civilian population, cause considerable damage, and expose the majority of Israel’s population to dangers that no country could be expected to tolerate.



Above: A house in Be’er-Sheva after a direct hit from a rocket from the Gaza Strip on July 12, 2014. (Source: IDF)

C. Harm Caused to Israel’s Civilian Population by Rocket and Mortar Attacks

192. Rocket and mortar attacks against Israel have already caused extensive civilian harm, including deaths, injuries, and damage to infrastructure, private property, and a variety of economic activity. The growing number of high-trajectory weapons arsenals situated in the Gaza Strip poses an increasingly dangerous, multi-layered threat to Israel’s national sovereignty and the Israeli Government’s ability to protect its population, their property, and the larger economy.

1. Civilian Deaths and Injuries

193. During the 2014 Gaza Conflict, six civilians in Israel were killed directly by mortars and rockets from the Gaza Strip: Dror Hanin,³²⁸ Ouda Lafi al-Waj,³²⁹ Daniel Tregerman,³³⁰ Ze’ev Etzion,

³²⁸ On Tuesday, July 15, at 19:30, Dror Hanin, a 37-year-old father of three was killed by a mortar near the Erez Crossing, which serves as a humanitarian crossing point between Israel and the Gaza Strip.

³²⁹ On Saturday, July 19, at around 13:00, Ouda Lafi al-Waj, 32, was killed, and members of his family were injured (including his three-month-old baby, his five-year-old nephew, his sister, and his wife) when a rocket fired from the Gaza Strip struck a small Bedouin community near Dimona.



Shahar Melamed,³³¹ and Narakorn Kittiyangkul.³³² In addition, two elderly women died as a result of heart failure while trying to seek cover from rocket attacks aimed at Haifa and Jerusalem, respectively.³³³

194. In a September 3, 2014 letter to the United Nations (“U.N.”) Secretary-General, Daniel Tregerman’s parents described the incident in which their four-year old son was killed by mortar fire:

Then, last Friday, Daniel was killed. All the precautions that we have taken have failed. Daniel, 4.5 years old, was killed in our House, while playing with Yoval in a tent built indoors and not outside, because it’s dangerous. He was killed from a mortar shell that was shot by terrorists from Gaza, he died in our hands. Daniel died in front of his little sister and his best friend Yoval, 3.5 years old; he died in front of Uri, only four months old and right before our eyes, his mother and father.³³⁴

195. According to the Ministry of Health, more than a thousand Israeli civilians sought hospital treatment for physical injuries during the 2014 Gaza Conflict. Hundreds more sought hospital treatment for shock suffered, usually as a result of being in close proximity to a rocket or mortar explosion.³³⁵ At least 270 of those hospitalised were children.

Footnote continued from previous page

³³⁰ On Friday, August 22, at 18:30, Daniel Tregerman, 4, was killed by a mortar inside his home in Kibbutz Nahal Oz. Hamas claimed responsibility for the attack. See *Daniel Tregerman, 4, killed by mortar fire*, Israel Ministry of Foreign Affairs (Aug. 22, 2014), available at mfa.gov.il/MFA/ForeignPolicy/Terrorism/Victims/Pages/Daniel-Tregerman.aspx.

³³¹ At around 18:00 on August 26, the last day of the 2014 Gaza Conflict, a mortar fired at Kibbutz Nirim killed Ze’ev Etzion, 55, and Shahar Melamed, 43, and injured four (one person was taken to the hospital in critical condition).

³³² On Wednesday, July 23, at around 13:00, a mortar fired from the Gaza Strip killed Narakorn Kittiyangkul, 36, an agricultural worker from Thailand. At the time of his death, Kittiyangkul was working in a greenhouse in one of the Israeli communities in the Ashkelon Coast Regional Council.

³³³ On Friday, July 11, a 70-year-old woman collapsed and died as a result of heart failure while running to shelter in Wadi Nisnas, a neighbourhood in downtown Haifa. See *Israeli, 61, badly injured by rocket hit in Ashdod*, Jewish Telegraphic Agency & Times of Israel (July 11, 2014), available at www.timesofisrael.com/elderly-man-seriously-injured-in-rocket-hit-near-ashdod/#ixzz3LPYknsxX. On Sunday, July 13, a 75-year-old woman died as a result of heart failure after seeking safety following a warning siren activated in Jerusalem. See Moshe Weisberg, *Silent victims of war - Mrs. Finkel OBM*, Behadrey Haredim (July 14, 2014), available at http://www.bhol.co.il/Article_EN.aspx?id=70944&cat=18.

³³⁴ The letter from Daniel Tregerman’s parents to the U.N. Secretary-General is available at embassies.gov.il/san-francisco/Newsandevents/Pages/Letter-from-Mother-of-Daniel-Tregerman.aspx.

³³⁵ These figures do not include the number of military IDF personnel injured, both in the State of Israel and in the Gaza Strip.



Above: A rocket hits an oil truck in Ashdod on July 11, 2014. (Source: IDF)

196. There are many examples of injuries from rocket attacks. On July 11, a rocket hit a gas station in the coastal city of Ashdod, setting fire to an oil tank and causing an explosion. The gas station was located near a home for the elderly. As a result, a 61 year-old disabled man, who was in his car at the gas station and was unable to reach a protected area in time, sustained burns and other serious injuries. In addition, seven civilians were wounded.³³⁶ On July 13, at around noon, a rocket fired from the Gaza Strip hit an urban area in Ashkelon. A 16 year-old was severely wounded from shrapnel, a 50-year-old man was injured, and seven others were treated for anxiety.³³⁷ On July 14, a rocket fired from the Gaza Strip hit Lakiya, located near Be'er Sheva, wounding two girls aged 10 and 13. One girl was seriously injured and the other sustained moderate injuries.³³⁸ Earlier that day, an eight year-old boy was lightly wounded from shrapnel when a rocket fired from the Gaza Strip struck Ashdod.³³⁹ On July 31, in the afternoon, a 30 year-old man was wounded from a rocket that landed in an apartment building in Kiryat Gat. A teenage girl and a 60-year-old man were also lightly hurt from shrapnel, and vehicles in the parking lot of the building were set aflame.³⁴⁰ On August 2, at 19:00, an Israeli civilian, 70 years old, was seriously wounded in the Eshkol Regional

³³⁶ See Video: *Documentation: The rocket explosion at the gas station*, Ynetnews (July 7, 2014), available at www.ynet.co.il/articles/0,7340,L-4541715,00.html; see also *Israeli, 61, badly injured by rocket hit in Ashdod*, *supra* note 333.

³³⁷ See <http://www.jdn.co.il/news/372024> (in Hebrew).

³³⁸ See Yoav Zitun, *Rocket hit Eilat amid reports of ceasefire*, Ynetnews (July 15, 2014), available at <http://www.ynetnews.com/articles/0,7340,L-4543164,00.html>.

³³⁹ *Id.*

³⁴⁰ See Matan Zuri, *Eight wounded in the mortar attack on Eshkol after three hurt in Kirya Gat*, Ynetnews (Aug. 1, 2014), available at <http://www.ynetnews.com/articles/0,7340,L-4552636,00.html>.



Council by a mortar fired from the Gaza Strip.³⁴¹ On August 21, in a rocket barrage directed at Kibbutz Nir Oz in the Eshkol Regional Council, one man was moderately wounded when a rocket exploded in a nursery filled with children between the ages of 3 and 4. The man had come to celebrate his son's third birthday, and shielded the children from the explosion with his body.³⁴² On August 22, nine civilians were wounded in rocket attacks, including from rockets that hit a synagogue in Ashdod, hit a home in Sderot, landed in close proximity to a pre-school in Be'er Sheva, and struck a road in Gan Yavne. The direct hit on the synagogue injured three persons, including one woman who was moderately injured; several additional persons were treated for shock, and the rocket also caused extensive property damage.³⁴³ On August 24, three Israeli taxi drivers waiting at the Erez Crossing to pick up Gazan residents who were entering Israel in order to receive medical treatment were wounded — two of them seriously — by mortars. As a result, the Erez Crossing was closed.³⁴⁴ On August 26, at 6:30, a rocket hit an Ashkelon home. The family members were on their way to the safe-room when the siren sounded and the rocket hit. The rocket impact left the bedroom and living room in ruins. More than 60 people were lightly wounded, including six young children. Twelve surrounding buildings were damaged as a result of the rocket.³⁴⁵

³⁴¹ See Itamar Sharon, *70-year-old seriously hurt by mortar shell*, Times of Israel (Aug. 2, 2014), available at <http://www.timesofisrael.com/70-year-old-seriously-hurt-by-mortar-shell/>.

³⁴² See Ilana Curiel, *Hamas keeps up rocket pressure on Israel; man seriously hurt along Gaza border*, Ynetnews (Aug. 21, 2014), available at <http://www.ynetnews.com/articles/0,7340,L-4561539,00.html>.

³⁴³ See Ben Hartman, *71st Israeli fatality of Gaza war: Man succumbs to wounds from rocket attack*, JPost (Aug. 29, 2014), available at <http://www.timesofisrael.com/70-year-old-seriously-hurt-by-mortar-shell/>.

³⁴⁴ See *Erez crossing closed today due to mortar fire*, Israel Ministry of Foreign Affairs (Aug. 24, 2014), available at <http://mfa.gov.il/MFA/PressRoom/2014/Pages/Erez-Crossing-closed-today-due-to-mortar-fire-24-Aug-2014.aspx>.

³⁴⁵ See Matan Zturi and Raanan Ben-Zur, *'Our lives are a gift', says woman whose house was hit with rocket*, Ynetnews (Aug. 26, 2014), available at <http://www.ynetnews.com/articles/0,7340,L-4564195,00.html>.



Above: Cars destroyed in Ashdod caused by a rocket from the Gaza Strip, July 10, 2014. (Source: IDF)

197. Magen David Adom (“MDA”), Israel’s national emergency medical service, treated more than 800 civilians who were injured as a result of rocket and mortar fire from the Gaza Strip. For example, MDA paramedics treated the six civilians who were killed by rocket and mortar fire, and the two civilians who died while running for shelter. In addition, MDA paramedics treated civilians who were injured by mortars, rockets, falling shrapnel, shattered glass, building debris, and traffic accidents in the turmoil triggered by warning sirens. In total, MDA teams treated 159 people injured as a result of falls and trauma while running to shelter, and 581 people suffering from documented anxiety attacks.

198. An MDA paramedic who arrived at the scene of the August 26, 2014 mortar attack that killed two civilians and injured two others in Kibbutz Nirim, reported that:

Near one of the buildings in the Kibbutz we found several wounded people lying on the floor, one of them a 50 year old male in critical condition with multiple shrapnel wounds all over his body. We attempted advanced treatments and resuscitation under heavy mortar fire but were unfortunately forced to declare his death. We also provided treatment to one more critically injured patient with shrapnel wounds to his back and limbs and to another two seriously injured patients suffering from similar wounds. All the treated patients were evacuated by helicopter to Soroka Hospital for further treatment. At the scene were another three lightly injured patients who were



treated by another MDA team and were evacuated by a MICU to the ER at Soroka Hospital.³⁴⁶

199. Gadi Yarkoni, a 47-year-old civilian who suffered serious injuries in the mortar attack, had to have both of his legs amputated below-the-knee. He recalled the incident in an interview:

There was a Code Red and I didn't make it to cover in time. The mortar exploded right by us. When I was lying on the ground, I could tell that my legs were injured; I had no idea of the extent of the injury; I simply shouted that I was hurt so that they would come to take care of me.... I was in excruciating pain. I didn't care about what happened to my legs; I just wanted a tablet to take away the terrible pain and make me feel nothing.³⁴⁷



Above: A rocket hits an oil truck, July 11, 2014.
(Source: Sivan Afriat)

³⁴⁶ See *The 50th Day of Operation Protective Edge ONE CASUALTY & 6 WOUNDED AS A RESULT OF A MORTAR SHELL IN THE ESHKOL REGIONAL COUNCIL*, Magen David Adom in Israel (Aug. 27, 2014), available at www.mdais.com/316/7002.htm; Anat Meidan, *Casualties of War*, Ynetnews (Sept. 20, 2014), available at www.ynetnews.com/articles/0,7340,L-4573154,00.html.

³⁴⁷ Anat Meidan, *Casualties of War*, *supra* note 346.



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Above: Civilians at a bus stop in Tel Aviv, adhering to IDF instructions, during a Gaza Strip rocket attack, July 9, 2014. (Source: IDF)

2. Effects on Children, Teenagers and College Students

200. During the 2014 Gaza Conflict, children were especially vulnerable. All residents living within 40 kilometres of the Gaza Strip were instructed to remain close to protected areas. Many parents stayed home and did not go to work because they were afraid to leave their children alone. Children living within a range of up to seven kilometres from the Gaza Strip often remained in bomb shelters for the entire day in order to ensure they would not be in open areas during a rocket or mortar attack. The situation required the entire Israeli population to take precautions, such as the “missile drills” conducted by nursery school children in the picture on the right.³⁴⁸



Above: Israeli children, aged one-and-a-half to three years taking cover during a missile drill in a nursery in Hod Hasharon, July 16, 2014. (Source: IDF)

201. Out of concern for children’s safety, the IDF prohibited school activities and summer camps within 40 kilometres of the Gaza Strip, unless there was an adequate shelter nearby.³⁴⁹ Some high school students had their exams disrupted by rocket

³⁴⁸ For a video of the reality faced by kindergarten children during the 2014 Gaza Conflict, see Itay Blumenthal and Michal Margalit, *Watch the kindergarten's kids flattened on the floor: “for the whole world to see”*, Ynetnews (July 28, 2014), available at www.ynet.co.il/articles/0,7340,L-4551010,00.html.

³⁴⁹ The IDF’s actions were taken pursuant to Civil Defence Law - 1951.



fire. Others were forced to take their baccalaureate exams in bomb shelters. Moreover, classes and exams at Sapir College in Sderot and Ben-Gurion University in Be'er Sheva were cancelled.

202. Children's education facilities in Israel were under constant threat during the 2014 Gaza Conflict. In many cases, it was the defensive measures initiated by civilians or the IDF instructions to cancel certain public activities that prevented great physical harm. In other instances, only pure luck prevented a major catastrophe. For example, on July 3, during an escalation of rocket and mortar attacks by Hamas and other terrorist organisations in the days before the 2014 Gaza Conflict began, a children's day-camp in Sderot suffered a direct hit; miraculously, no children were injured.³⁵⁰ On July 9, a projectile hit a building near a kindergarten in the Sha'ar HaNegev Regional Council;³⁵¹ on July 10, a rocket hit a pre-school in Netivot;³⁵² on July 15, a rocket hit a year-round school for children with special needs in Rishon LeZion (in the centre of Israel);³⁵³ on July 16, a rocket exploded in a school in Ashdod (30 kilometres from the Gaza Strip); on July 18, a rocket exploded in a kindergarten in Gan Yavne, damaging the building and the neighbouring synagogue;³⁵⁴ on July 20, rocket fragments and shrapnel fell in a kindergarten yard in Rishon LeZion (fortunately, at the time, the children participating in the summer camp in the kindergarten were in the camp's bomb shelter);³⁵⁵ on July 31, a mortar fell near a school in Sderot, where 30 children and their parents were meeting, injuring the school's head teacher from the force of the blast; and on August 26, a rocket exploded in the playground of a kindergarten in Ashdod, severely damaging the playground. The municipality of Ashdod worked intensively to make repairs before the school year began only days later, on September 1, 2014.³⁵⁶

³⁵⁰ *Sderot children's miraculous escape from rocket*, Israel Today (July 3, 2014), available at www.israeltoday.co.il/NewsItem/tabid/178/nid/24715/Default.aspx?archive=article_title. Sderot is located approximately 10 kilometres from the Gaza Strip.

³⁵¹ Sha'ar HaNegev Regional Council is located on the border of the Gaza Strip.

³⁵² See *Heavy Gaza rocket barrage: Direct hit on vehicle in Ashdod*, Ynetnews (July 10, 2014), available at www.ynetnews.com/articles/0,7340,L-4540871,00.html. Netivot is located approximately 20 kilometres from the Gaza Strip.

³⁵³ See Rio Avitayler, *Watch: Rocket debris fell on Rishon Lezion School, damage caused*, JerusalemONLINE (July 16, 2014), available at www.jerusalemonline.com/news/in-israel/local/watch-rocket-debris-fell-on-rishon-lezion-school-damage-caused-6485. Rishon LeZion is located approximately 60 kilometres from the Gaza Strip.

³⁵⁴ Gan Yavne is located approximately 30 kilometres from the Gaza Strip.

³⁵⁵ See Tova Dvorin, *'Miracle' After Rocket Shrapnel Narrowly Misses Kindergarten*, Arutz Sheva (July 20, 2014) available at www.israelnationalnews.com/News/News.aspx/183107#.VIWB-NJdWIk; www.mako.co.il/news-israel/local/Article-6ab44c3d8135741004.htm.

³⁵⁶ Yael Klein, *Children Play in Rocket-hit Kindergarten*, JerusalemONLINE (Sept. 1, 2014), available at www.jerusalemonline.com/news/in-israel/local/children-play-in-rocket-hit-kindergarten-7822.



Above: Children seeking shelter in Ashkelon, July 9, 2014. (Source: Kobi Gideon / GPO)

203. **The lasting impact of the rocket and mortar attacks on children.** Because of the constant threat of rocket and mortar fire for the last 14 years, children raised in the Gaza Strip's border communities have essentially spent their entire lives under attack. According to the Israeli Trauma Coalition ("ITC"), the effects on children "vary, from refraining from specific activities, such as refusing to walk to school along a route where a rocket once fell, to intrusive thoughts where you feel like you're re-experiencing the traumatic event, as well as hyper-vigilance, where everything makes you jump." The ITC has reported that parents from the Gaza Strip border communities (as well as from other communities, including the Tel Aviv metropolitan area) frequently call hotlines run by ERAN (Hebrew acronym for "Emotional First Aid") and NATAL (The Israeli Centre for Victims of Terror and War) to seek help with children crying, vomiting, shaking uncontrollably, wetting the bed or suffering from stomach pains, as a result of rocket and mortar attacks.³⁵⁷

204. During the 2014 Gaza Conflict, over 20,000 children from communities in southern Israel were sent north by their families, to reduce their risk from rocket and mortar attacks (though rockets fired from the Gaza Strip did reach some northern parts of Israel). Some educational facilities temporarily relocated from the area bordering the Gaza Strip. For example, over 50 children with special educational needs were transferred from Kibbutz Ein HaShlosha to a safer location farther from the Gaza Strip border. Moreover, during the 2014 Gaza Conflict, stress-treatment facilities

³⁵⁷ Avigayil Kadesh, *Israel Trauma Coalition reports on emotional toll of conflict*, Sderot Media Centre (July 16, 2014), available at <http://sderotmedia.org.il/bin/content.cgi?ID=1070&q=3>.



received thousands of calls for help. The “HOSEN” trauma centres³⁵⁸ and “MATAN” regional stress centres averaged 600-700 calls per day, many of which dealt with children. Over 100 children visited these centres for treatments.



Above: A rocket from the Gaza Strip severely damaged a children’s health clinic in Ashkelon, July 16, 2014. (Source: IDF)

3. Effect on the Elderly and People with Disabilities

205. The 2014 Gaza Conflict was especially difficult for the elderly and disabled populations, who struggled to seek shelter in the short time available between the sounding of warning sirens and the explosions from the rocket and mortar attacks. Although the IDF Home Front Command issued

³⁵⁸ During the 2006 conflict with Hezbollah (which is also known as the “Second Lebanon War”), many trauma victims flooded emergency rooms as a result of the massive rocket attacks. Because hospitals were not able to provide optimal treatment to both the physically and mentally injured, Israel decided in November 2006 to found trauma centres, called HOSEN centres (“strength,” “power” or “resilience” in Hebrew). There are a number of HOSEN centres in the Otef Aza border region communities which are active throughout the year, offering psychological and psychiatric treatment to residents, including children, suffering from traumatic stress disorders. According to the HOSEN centre in Sderot, “70% of Sderot’s residents suffer from Traumatic Stress Disorders (TSD) and are in need of psychological help.” *Resilience is built in times of peace and tested in times of crisis*, Gvanim Association, available at <http://www.gvanim.org.il/pics/mercazhahosen/mercazhahosen-001.htm>. When the rocket and mortar attacks become more frequent, the centres open emergency rooms for civilians who suffer from anxiety attacks.



instructions designed to protect the elderly,³⁵⁹ more than 25% of the civilians injured were above 65 years old. Many of these elderly civilians suffered injuries in their hurried attempt to seek shelter from an attack.

206. The rocket and mortar attacks are even more difficult for the mentally and physically disabled. For example, on July 6, prior to the 2014 Gaza Conflict, a Grad rocket fired from the Gaza Strip struck the ALEH Negev rehabilitation village, which is home to 160 residents, including children, teens, and adults with severe disabilities. These residents had to deal with the threat of rockets and mortars throughout the 2014 Gaza Conflict. The most severely disabled residents were confined to protective shelters that had to be fitted with beds and essential medical and paramedical equipment.³⁶⁰

207. In addition, approximately 40 medical clinics within 40 kilometres of the Gaza Strip were forced to close due to rocket and mortar attacks. About 25 family health centres had to close for the same reason. The Ministry of Health has reported further difficulties in serving vulnerable populations. For example, many dialysis patients in southern Israel were forced to travel north for life-saving treatment.

4. Internal Displacement

208. During the 2014 Gaza Conflict, Israeli civilians living in the Otef Aza border region faced a particularly grave threat from rocket and mortar attacks.³⁶¹ In that period, more than 2,500 rockets and mortars exploded within 14 kilometres from the border with the Gaza Strip. The residential communities of Zikim and Kerem Shalom, for example, each suffered landings of between 200 to 250 rockets during the 2014 Gaza Conflict, and as many as 100-150 rockets and mortars landed in each of the following Otef Aza border region communities: Be'eri, Kissufim, Kfar Aza, Nirim, Nativ Ha'Asara, Netivot, Ein HaShlosha, and Sderot. The maps on pages 123 and 124 below illustrate the extent to which rocket and mortar attacks from the Gaza Strip deliberately targeted residential areas

³⁵⁹ For example, the IDF recommended that if they cannot get to the nearest shelter in time, individuals with limited mobility should consider creating an alternative shelter or turning their sleeping area into one. It also recommended that the path to cover be cleared in advance to avoid tripping on obstacles, and that the wheelchair bound have spare batteries on hand just in case their motors run out of power. In the event that they are unable to use an elevator to reach the nearest shelter, the Home Front Command recommended they prepare themselves to be carried by others.

³⁶⁰ For more information see *Keeping special populations safe from missiles*, Israel Ministry of Foreign Affairs (July 16, 2014), available at mfa.gov.il/MFA/AboutIsrael/Spotlight/Pages/Keeping-special-populations-safe-from-missiles-16-July-2014.aspx.

³⁶¹ More than 60% of the rockets launched from the Gaza Strip were directed towards areas lying within 20 kilometres of the border with the Gaza Strip. The rest, launched beyond the 20 kilometre range, targeted cities and densely populated areas, including Israel's biggest metropolitan areas of Tel Aviv, Jerusalem, and Haifa.



(in Kfar Aza, Saad, Kissufim, Ein HaShlosha, Nirim, Nir Oz, Kerem Shalom, Holit, Sufa, Sdei Avraham, Yated, Sderot, Ibbim and Nir Am).

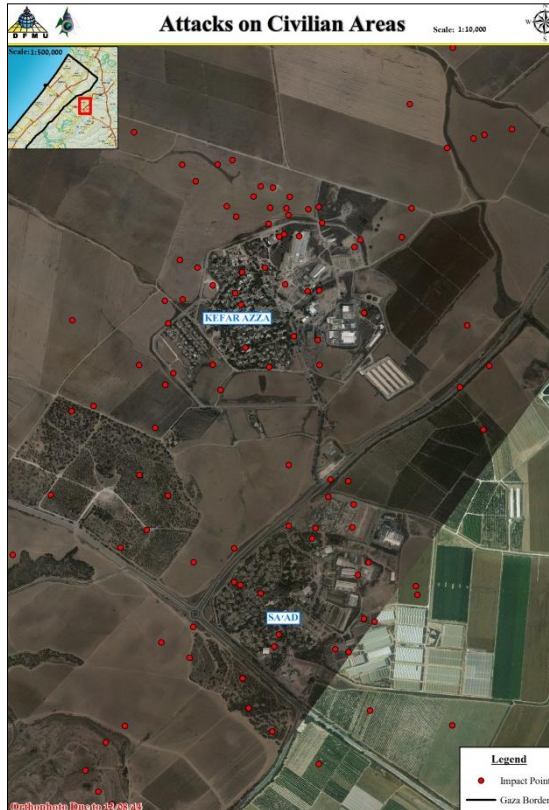
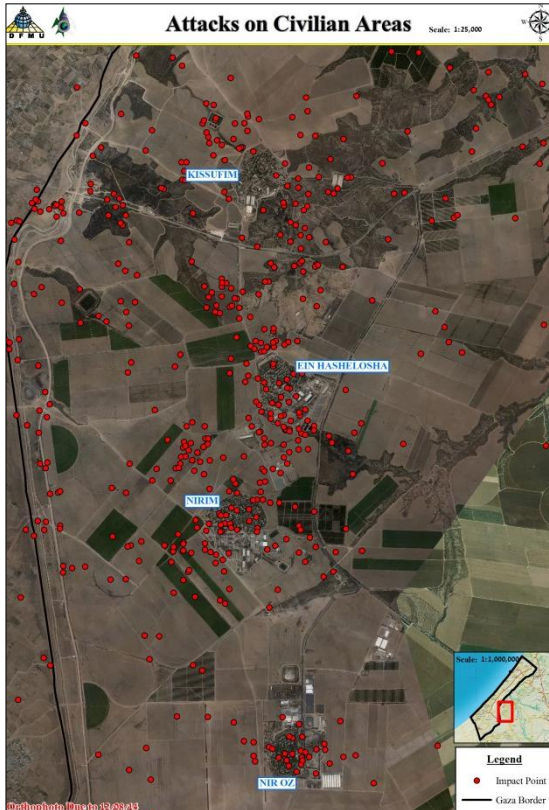
209. Added to the rocket and mortar threat to residential communities in the Otef Aza border region was the danger of terrorist infiltrations via cross-border assault tunnels. In order to protect towns and cities in Israel from attempted incursions through cross-border assault tunnels, the IDF was also deployed to search for and detect tunnel openings in Israeli territory and to patrol Israeli territory around the fence-line with the Gaza Strip. These efforts prevented incursions by Hamas from resulting in Israeli civilian casualties during the 2014 Gaza Conflict.

210. While most Israelis in these areas remained in their home communities (including for the purposes of localised farming and agriculture), many Otef Aza residents determined that the threat required them and their families to relocate to other areas in Israel. The Israeli government's best estimation, based on information received from local authorities, is that approximately 10,000 civilians evacuated their homes.³⁶² For example, in Sdot Negev Regional Council, it is estimated that between 1,400 to 1,800 residents evacuated (20% of the residents); in Kibbutz Sa'ad, approximately 800 residents evacuated (80% of residents); in the Hof Ashkelon Regional Council, approximately 4,800 residents evacuated (30% of residents); and in the Eshkol Regional Council, approximately 70% of residents of the kibbutz communities bordering the Gaza Strip evacuated, and approximately 40% of residents of other communities evacuated. In Sha'ar HaNegev Regional Council, approximately 950 residents evacuated (13% of residents).

³⁶² Since these decisions were made on an individual and voluntary basis, there is no precise data on how many residents of the Otef Aza border region evacuated.

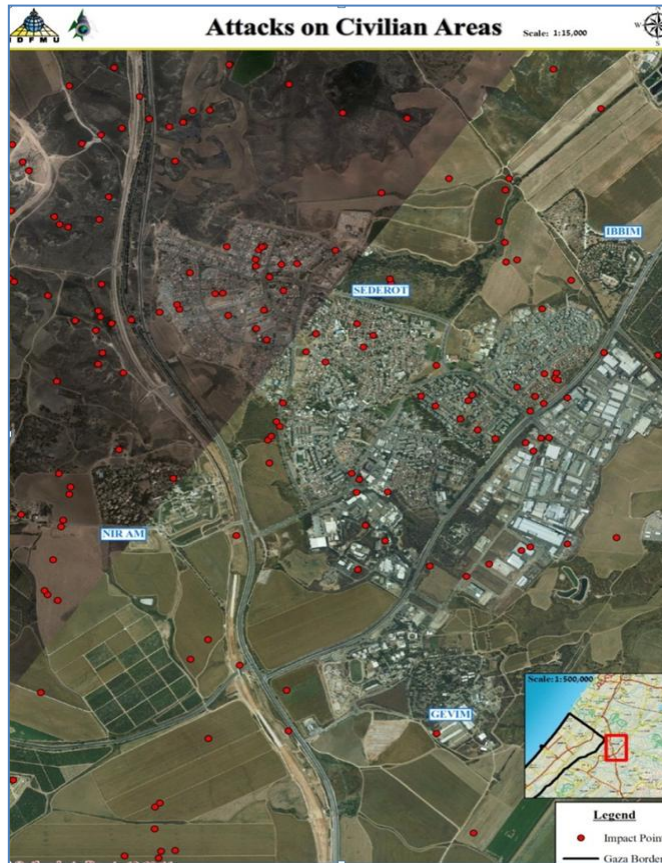


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5. Psychological Damage

211. Rocket and mortar fire from the Gaza Strip, as well as fear of terrorist cross-border tunnel attacks, have both a short- and long-term psychological impact. While it is still too early to evaluate fully the psychological harms caused by the 2014 Gaza Conflict, the effects of the rocket and mortar attacks from the last 14 years have been devastating, and there are strong indications that the effects from the 2014 Gaza Conflict are severe. More than 500 Israelis required medical treatment for anxiety.³⁶³ Mental health organisations, such as ERAN (Emotional First Aid), reported tens of thousands of requests for assistance during the 2014 Gaza Conflict.³⁶⁴

³⁶³ 544 people were hospitalised for anxiety, while MDA reported that 581 people were treated across the country for anxiety attacks.

³⁶⁴ See <http://www.ynet.co.il/articles/0,7340,L-4555271,00.html> (in Hebrew). ERAN reported that calls directly relating to the security situation were as much as five times the norm and that there was an overall increase of 20% in the rest of the calls. The ITC reported that its centres in the Israeli towns and villages in the Otef Aza border

Footnote continued on next page



212. The psychological consequences of conflict can be personal, social and occupational, varying from manageable distress to more serious and longer-lasting post-traumatic stress disorder (“PTSD”). Psychologists have documented the severe psychological consequences of Hamas rocket and mortar attacks on the Israeli civilian population.³⁶⁵ A major symptom is constant anxiety (*i.e.*, constantly being “on edge”). The physical effects of anxiety may include heart palpitations, muscle weakness and tension, fatigue, nausea, chest pain, shortness of breath, stomach aches, or headaches. The emotional effects of anxiety may include feelings of apprehension or dread, trouble concentrating, feeling tense and jumpy, anticipating the worst, irritability, restlessness and more. Both physical and emotional effects may cause long-term harm and create major obstacles to daily functioning.³⁶⁶ The slightest sound — such as the revving of a motorcycle engine, or some other noise reminiscent of a warning siren — can trigger serious anxiety. For persons subject to such anxiety, each trigger revives their traumatic experience. Children suffer especially serious psychological effects, including regression, bedwetting and fear of sleeping alone.³⁶⁷

Footnote continued from previous page

region provided assistance to more than 2,000 civilians with anxiety, and answered more than 1,500 calls a day to its emergency hotlines. The Sderot Resilience Centre published that during the month of July 2014, they received a total of 437 requests for assistance.

³⁶⁵ See Professor Danny Brom on the impact of rocket fire on Israeli civilians, BICOM (July 30, 2014) available at <http://www.bicom.org.uk/analysis-article/21777/> (interview with Professor Danny Brom, founding director of the Israel Centre for the Treatment of Psychotrauma at the Herzog Hospital in Jerusalem). For an article regarding the psychological consequences of the Hamas attacks on the Israeli civilian population, by a clinical psychologist, see Irwin J. (Yitzchak) Mansdorf, *Unseen Scars of War: Psychological Consequences of the Hamas Attacks on the Israeli Civilian Population*, Jerusalem Centre for Public Affairs (July 20, 2014), available at <http://jcpa.org/article/unseen-scars-of-war-psychological-consequences/>.

³⁶⁶ Melinda Smith, et al., *Anxiety Attacks and Anxiety Disorders: A Guide to the Signs, Symptoms, and Treatment Options* (last updated Dec. 2014), available at http://www.helpguide.org/mental/anxiety_types_symptoms_treatment.htm.

³⁶⁷ See Alona Ferber, *Five-year-olds know the siren drill, while Tel Aviv parents try to keep calm*, Haaretz (July 14, 2014), available at www.haaretz.com/news/national/.premium-1.605117; Alan Johnson, *Hamas Rockets Traumatize Israeli Children*, World Affairs (July 25, 2014), available at <http://www.worldaffairsjournal.org/blog/alan-johnson/hamas-rockets-traumatize-israeli-children>; Eli Ashkenazi and Mijal Grinberg, *Study: Most Sderot kids exhibit post-traumatic stress symptoms*, Haaretz (January 17, 2008), available at www.haaretz.com/news/study-most-sderot-kids-exhibit-post-traumatic-stress-symptoms-1.237438.



Above: Israeli civilians on the train during a Gaza Strip rocket attack, July 9, 2014. (Source: IDF)

213. Sderot, a city of approximately 22,000 residents, serves as a case study for the psychological implications of sustained rocket and mortar attacks.³⁶⁸ A 10-year study published in 2014 (based on findings prior to the 2014 Gaza Conflict) found that 44% of mothers in Sderot and the Otef Aza border region suffered from various forms of emotional distress, depression and/or PTSD — four times the rate among the general population in Israel. The most common symptoms reported were sleep disorders (nightmares, insomnia, inability to sleep alone), depression, anxiety and fears, aggression, and physical ailments such as stomach aches. The study also demonstrated the long-term effects of the constant rocket threat, as more than 70% of the children suffering from behavioral and emotional problems in 2004 as a result of rocket and mortar attacks continued to display such symptoms in 2011. Moreover, the study found that the rate of aggressive behavior displayed by children in southern Israel was three times higher than in the general population.³⁶⁹

³⁶⁸ Eli Ashkenazi and Mijal Grinberg, *Study: Most Sderot kids exhibit post-traumatic stress symptoms*, *supra* note 367.

³⁶⁹ *Children from the South Suffer Four Times the Rate of Post-Traumatic Stress*, Ynetnews (July 7, 2014), available at www.magbitcanada.org.il/page.asp?pid=170 (in translation). Another study, conducted in 2003 found that 45% of Sderot's children under the age of six suffer from PTSD, which is expressed through developmental regression, sleeping disorders or aggression. In addition, 41% of Sderot mothers and 33% of Sderot fathers are suffering from PTSD, often experience flashbacks from difficult experiences, and avoid places that remind them of rocket attacks. The parents reported that about 60% of infants refuse to sleep alone. The study also found that children to parents who are suffering from PTSD were twice as prone to suffer themselves. A study examining 1,200 children, aged 10-18, in Sderot and the surrounding towns found that 13% of the students in the area suffered from PTSD, 24%

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214. Another study published in June 2014 evaluated the psychiatric and psychological state of nearly 9,000 Israeli teens (aged 12-17) over a 14-year period from 1998 to 2011. The findings show that Israeli teens suffered from much higher rates of psychological distress than their American peers and that exposure to the armed conflict correlates with a variety of mental health issues such as anxiety, depression, phobias, and paranoia.³⁷⁰

215. A 2008 research study by NATAL (The Israeli Centre for Victims of Terror and War),³⁷¹ identified variables associated with trauma and resilience in Sderot, such as a sense of threat, helplessness, social cohesiveness, community belonging, and optimism. The study clearly demonstrated a high level of exposure to rocket and mortar fire: 91.9% of Sderot residents had experienced a rocket or mortar explosion close to their home (either on their street or a nearby street); 55.8% had experienced a direct or indirect hit to either their home or a neighbour's home; 65.3% knew someone injured by rocket or mortar fire; and 48.4% knew someone killed by rocket or mortar fire. The study found that 30% of children and 28% of adults in Sderot suffer from PTSD, that school-age children had severe symptoms of anxiety, and that there was a correlation between parent and child anxiety. In addition, the study found that between 75% and 94% of Sderot children aged 4-18 exhibited symptoms of post-traumatic stress. At the time of the study, 120 children in Sderot were undergoing long-term therapy for anxiety. Between May 2007 and January 2008, NATAL found an additional 105 children identified as suffering from trauma, 70% of whom needed extended psychological treatment.³⁷²

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suffered social harm, and 19% reported that the functioning of their families was harmed. See Meital Yasur-Beit Or, *Study: Half of Sderot toddlers suffering from PTSD*, Ynetnews (June 30, 2009), available at www.ynetnews.com/articles/0,7340,L-3739071,00.html.

³⁷⁰ See Andrew Tobin, *Israeli teens' mental health worsens when Arab-Israeli conflict does*, Times of Israel (Aug. 4, 2014), available at www.timesofisrael.com/long-conflict-wears-on-teen-psyche-14-year-study/; Michelle Slone & Anat Shoshani, *Psychiatric Effects of Protracted Conflict and Political Life Events Exposure among Adolescents in Israel: 1998-2011*, 27 JOURNAL OF TRAUMATIC STRESS, 353-360 (2014).

³⁷¹ NATAL conducted a comprehensive study on the effects of terrorist rocket attacks on the community in Sderot. The study examined levels of exposure to rocket fire and the frequency of PTSD and other post-traumatic symptoms in Sderot, compared to nearby cities that suffered fewer rocket attacks. *NATAL's research in Sderot*, NATAL, available at www.natal.org.il/English/?CategoryID=244&ArticleID=282. See also Eli Ashkenazi and Mijal Grinberg, *Study: Most Sderot kids exhibit post-traumatic stress symptoms*, supra note 367; Ilana Curiel, *Study: Over half of Sderot residents are Qassam casualties*, Ynetnews (Oct. 24, 2008), available at www.ynetnews.com/articles/0,7340,L-3627943,00.html; *Israel-Opt: Relentless rocket attacks take psychological toll on children in Sderot*, IRIN (Jan. 27, 2008), available at www.irinnews.org/report/76438/israel-opt-relentless-rocket-attacks-take-psychological-toll-on-children-in-sderot.

³⁷² Another study conducted in 2007-2008 found that 43.5% of a sample of 154 seventh- and eighth-grade students in Sderot have a likely diagnosis of PTSD. See Rony Berger, et al., *A Teacher-Delivered Intervention for Adolescents Exposed to Ongoing and Intense Traumatic War-Related Stress: A Quasi-Randomized Controlled Study*, 51 JOURNAL OF ADOLESCENT HEALTH 453-461 (2012); Dan Even, *Israeli survey: Almost half of Sderot*

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216. According to the Ministry of Education, 38% of children in the Otef Aza border region have been diagnosed as suffering from full or partial symptoms of PTSD and are undergoing therapy. Moreover, the Ministry of Education reports that professionals continue to identify additional children in need of psychological support. Following the 2014 Gaza Conflict, the Ministry of Education has allocated 29 million NIS (approximately 7 million USD) for mental-health treatment and related assistance for the staff and children in the public education system.³⁷³

217. **The terror and fear caused by the cross-border assault tunnels.** As mentioned above, in addition to rocket and mortar attacks, assaults through cross-border tunnels have terrorised residents of the Israeli communities that are closest to the Gaza Strip.³⁷⁴ During the 2014 Gaza Conflict, the IDF uncovered fourteen cross-border assault tunnels penetrating Israeli territory, along with eighteen unfinished tunnels approaching the border with Israel. On four separate occasions during the 2014 Gaza Conflict, Hamas militants emerged from cross-border assault tunnels onto Israeli territory, in or near civilian residential communities, in attempts to attack, kidnap, and kill Israeli civilians and soldiers.³⁷⁵ As a mother of four from southern Israel attested, “We used to look up to the sky in fear, but now we are looking down at the ground.”³⁷⁶

218. Many civilians who left their homes in the Otef Aza border region did so out of an extreme fear of cross-border tunnel infiltrations and attacks. According to one Sderot resident:

Here in the neighbourhood everyone only talks about the tunnels. Since the event in Nir-Am we are not yet relaxed. Everyone thinks they hear noises from the ground and are certain that they have a tunnel underneath their house. There is a great fear to deal with now.³⁷⁷

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preteens show symptoms of PTSD, Haaretz (Nov. 20, 2014), available at www.haaretz.com/news/diplomacy-defense/israeli-survey-almost-half-of-sderot-preteens-show-symptoms-of-ptsd.premium-1.479113.

³⁷³ Due to the steep rise in the need for treatment, the Ministry of Education has developed new programs incorporating psychological treatment into the everyday routines of certain schools.

³⁷⁴ See Inna Lazareva, *Gaza conflict: Israelis living in fear of Palestinian tunnel attacks*, Telegraph (July 21, 2014), available at www.telegraph.co.uk/news/worldnews/middleeast/israel/10979467/Gaza-conflict-Israelis-living-in-fear-of-Palestinian-tunnel-attacks.html; AFP news agency, *Fear of Gaza tunnels emptied kibbutz of children*, YouTube (Aug. 5, 2014), available at <https://www.youtube.com/watch?v=PE0mqXHCMD0>; www.telem.org.il/uploads/24H.pdf (in Hebrew). In addition to cross-border assault tunnels, Hamas built tunnels that started and ended within the Gaza Strip which were designed to facilitate military operations there. For more on the different types of tunnels see Chapter III (Objectives and Phases of the Conflict).

³⁷⁵ See Chapter IV (Hamas’s War Crimes), Section A; see also Chapter III (Objectives and Phases of the Conflict).

³⁷⁶ See Melanie Lidman, *They thought it was rockets they had to be scared of*, Times of Israel (Aug. 6, 2014), available at <http://www.timesofisrael.com/they-thought-it-was-rockets-they-had-to-be-scared-of/>.

³⁷⁷ Shirly Seidler, *After three weeks of fighting, the residents of southern Israel and the Gaza Strip feel the respite*, Haaretz (July 28, 2014), available at <http://www.haaretz.com/news/politics/.premium-1.2389865> (in Hebrew).



219. Liraz Levi, a resident of Kibbutz Nirim in the Otef Aza border region and a mother of three, left the Kibbutz during the 2014 Gaza Conflict. She explained:

This is the 21st day that I am out of my house. We packed a suitcase after a mortar fell in our neighbourhood.... I am not coming home until someone looks into my eyes and tells me that there is no threat any more, no tunnels, and that I am able to come back to my pastoral life in my peace and quiet kibbutz, without terrorists popping out from a dining room or a kindergarten.³⁷⁸

220. Dana Bar-On, an Israeli living near the border with the Gaza Strip, reported:

[T]hey found a tunnel outside our Kibbutz.... I can see it from here, it's a space right near our Kibbutz where we go for picnics.... They just came out of this hole and started walking around.... They have found a way into our homes now and that is scary.... [T]hey are just digging their way up from Gaza into our country and it's a whole new threat and it's a very scary threat - to walk around your own home and be afraid.³⁷⁹

³⁷⁸ *Residents of Otef Aza: "contempt for cease fire, how can we return home?"*, Nana10 (July 28, 2014), available at <http://news.nana10.co.il/Article/?ArticleID=1072048> (in Hebrew).

³⁷⁹ Dana Bar-On, *10 minutes about living on the Gaza border*, YouTube (July 21, 2014), available at <http://www.youtube.com/watch?v=zqonroORsSA> (at 5:30).



Above: Damage from rocket fired at Ashdod, July 14, 2014. (Source: Kobi Gideon / GPO)



Above: Rocket hits house at Kfar Aza, in southern Israel, August 3, 2014. (Source: Emily Damari)



6. Economic Damage

221. The intense rocket and mortar attacks against Israel's civilian population during the 2014 Gaza Conflict caused significant damage to Israel's economy.³⁸⁰ Businesses around the country, especially in the south, suffered major economic losses. Many businesses, shops and restaurants closed, as people remained home with their families near shelters.³⁸¹

222. Under Israeli law, the State compensates its citizens for damages caused directly or indirectly by military operations.³⁸² While the amount of compensation does not reflect the full economic harm caused to Israel and its civilians by the rocket and mortar attacks from the Gaza Strip, these figures are indicators of the extent of the damages.

223. **Direct Damages.** The Israel Tax Authority reported that as of May 29, 2015, a total of 4,572 claims had been filed for compensation for such damages (which includes damage caused to buildings and vehicles by rockets and mortars during the 2014 Gaza Conflict), and that over 31 million USD had already been paid in compensation.³⁸³ As of May 29, 2015, The Israel Tax Authority estimated that the final direct damage will be approximately 150 million NIS (over 39

³⁸⁰ See Excerpt from the "Bank of Israel – Annual Report for 2014" to be published soon: *The effect of military conflicts on economic activity*, (Mar. 15, 2015), available at <http://www.boi.org.il/en/NewsAndPublications/PressReleases/Pages/16-03-2015-MilitaryConflicts.aspx>.

³⁸¹ The Israeli Chamber of Commerce, a private sector organisation, estimated in September 2014, that the damage to the commercial sector as a result of the 2014 Gaza Conflict was approximately 1.6 billion NIS (410,000 USD). This included a 50% decrease in sales. The Israeli Industry and Manufacturers Association estimated that the damage to the industrial sector from the 2014 Gaza Conflict was approximately 1.3 billion NIS (330 million USD). According to the Israeli Restaurant Association, damage to the restaurant sector was as much as 400 million NIS (102 million USD).

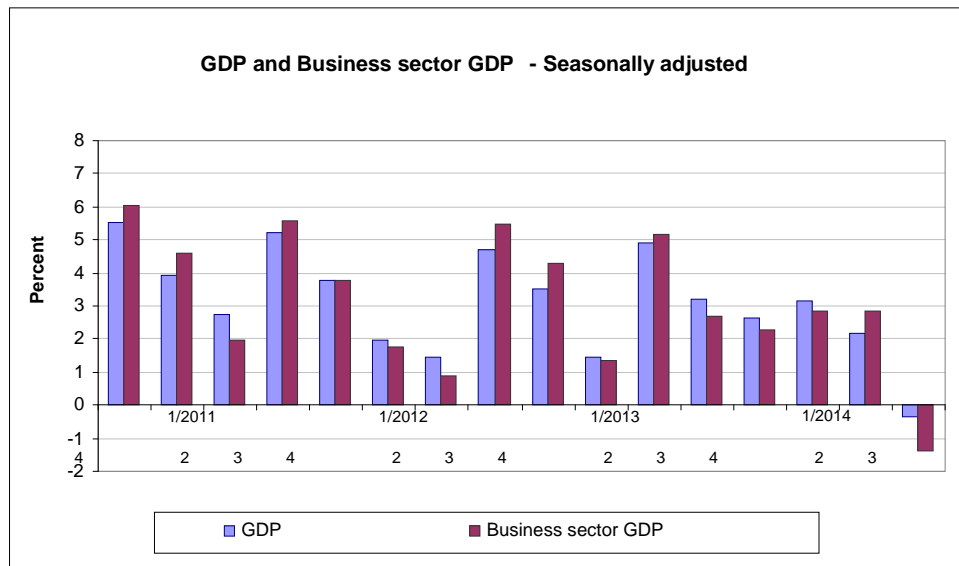
³⁸² Israel compensates its citizens by law. As written in the Tax Authority's guide, compensation is provided by law "for damages caused to buildings as a result of War operations. This is aimed at restoring the situation to its former state as quickly as possible." Domestic objects, vehicles, and business equipment, among other things, may be also eligible for compensation. See *Guide to Citizens Whose Property Was Damaged in War Operations*, Israel Tax Authority (Aug. 5, 2014), available at <http://ozar.mof.gov.il/ita2013/eng/mainpage.htm>. The compensations are paid out of The Tax Authority Compensation Fund, founded in accordance with Israeli law. The Minister of Finance has the discretion to compensate civilians for indirect damages caused by war, in accordance with Israeli law. In cases where the Minister approves compensation for indirect damages, the Government enacts designated regulations, which are to be approved by the Israeli parliament (the Knesset). For more details regarding the compensation procedure, see *id.*

³⁸³ Out of the 4,572 claims, 2,596 were filed in compensation for damage to buildings as a result of the 2014 Gaza Conflict; 1,635 claims were filed for compensation for damage to vehicles; 245 claims were filed for compensation for damage to agriculture; and 96 additional claims for various other damages. According to the Tax Authority, of the over 1.4 billion NIS in total compensation for direct and indirect damage given through May 29, 2015, only approximately 30 million NIS (over 7 million USD) was attributable to damage caused by IDF military activities in the Otef Aza border region.



million USD).³⁸⁴ Moreover, the state has allocated 60 million NIS (over 15 million USD) to repair public infrastructure (e.g., electricity, roads) directly damaged during the 2014 Gaza Conflict.

224. **Indirect Damages.** The Tax Authority Compensation Fund thus far has paid almost 1.3 billion NIS (over 334 million USD) for indirect damages³⁸⁵ and estimates that the final amount will be approximately 1.7 billion NIS (approximately 443 million USD).³⁸⁶ The Ministry of Economy also has approved special loans to small and medium-sized businesses that suffered economic damage in southern Israel during the 2014 Gaza Conflict. The total amount approved as of December 8, 2014 was 157 million NIS (almost 40 million USD).³⁸⁷



Above: The chart shows the decrease in GDP and Business Sector GDP in third quarter of 2014, In sharp contrast to the increases in the preceding quarters going back to the fourth quarter of 2010.

³⁸⁴ Additional photos of direct damage caused by rockets can be found at the MFA flickr site. Israel MFA, *Rockets fired at Israel from Gaza*, Flickr, available at <https://www.flickr.com/photos/israel-mfa/sets/72157645617361945/>.

³⁸⁵ Indirect damages includes lost income from missed work days, loss of business income, damage to agriculture, and other losses resulting from the threat of rocket and mortar fire.

³⁸⁶ By May 29, 2015 a total of 25,240 claims had been filed for compensation due to indirect damages resulting from the 2014 Gaza Conflict, and the Israel Tax Authority had compensated civilians for over 334 million USD in indirect damages. As of the date of publication, approximately 13% of claims for indirect damage were still being processed.

³⁸⁷ 1,028 requests for loans were made.



225. As shown in the chart above, according to Israel's Central Bureau of Statistics, economic indicators for the June-August 2014 period point to decreases of 14.2% in export of goods, 7% in import of goods, 6.2% in the Industrial Production Index, and 5.5% in the Revenue Index for all sectors of the economy.³⁸⁸ In the third quarter of 2014 (which corresponds with the 2014 Gaza Conflict and its immediate aftermath), Israel's GDP decreased at an annual rate of 0.4%. This decline reflects, *inter alia*, a decrease in exports and in investments and an increase in expenditures. Business-sector GDP decreased at an even greater annual rate of 1.4%.³⁸⁹

226. In addition, past experience suggests that the effects of the 2014 Gaza Conflict on the tourism sector could last for years. The months of July and August are the peak months for tourism in Israel. The Ministry of Tourism estimates that the direct damage to the tourism sector was 750 million NIS (over 190 million USD) and that additional indirect damage was two billion NIS (over 500 million USD). This includes damage to the hotel sector (which experienced cancellations of rooms, conferences, and other events through the end of 2015), travel agents, tour guides, transportation systems, and cancellations by cruise-ship companies, as well as damages caused after several international airlines cancelled their flights to Israel because of rocket fire directed at Israel's international airport.³⁹⁰

³⁸⁸ Main Economic Indicators June - August 2014, Israel Central Bureau of Statistics (Sept. 30, 2014), available at http://www.cbs.gov.il/reader/newhodaot/hodaa_template.html?hodaa=201422266 (in Hebrew).

³⁸⁹ National Accounts - In the Third Quarter of 2014: GDP decreased at Annual Rate of 0.4%, Israel Central Bureau of Statistics (Nov. 16, 2014), available at http://www.cbs.gov.il/reader/newhodaot/hodaa_template.html?hodaa=201408310 (in Hebrew).

³⁹⁰ See e.g., Elad Benari, *U.S. Condemns Hamas for Threatening Ben Gurion Airport* (Aug. 22, 2014), Arutz Sheva, available at <http://www.israelnationalnews.com/News/News.aspx/184298#.VMtvhJv9m1s>.



Above: Cattle killed by rocket attack in Be'er Tuvia (more than 30 kilometres from the Gaza Strip). (Source: ICBA)

227. The agriculture sector also has suffered greatly. During the 2014 Gaza Conflict, the IDF prohibited agricultural activity within three kilometres of the Gaza Strip border. Farmers and others in the agricultural sector filed 231 claims for compensation for direct damage. Many more claims were filed for indirect damages. These claims involved damage to southern Israel's key agricultural products, such as potatoes, peanuts and sunflowers, as well as damage to farmland, to livestock,³⁹¹ and to income because of the inability to work the land for an extended period.

³⁹¹ For example, on July 9, at 23:30, a rocket directly hit a cowshed in Be'er Tuvia. The rocket killed 11 cows and landed near the owner's house, where the parents were staying with their children. See David Kurzweil, *A Rocket hit a barn in Be'er Tuvia - 11 cows were killed and a shed was damaged*, Kol Chai (93 FM) (July 10, 2014), available (in Hebrew) at <http://www.93fm.co.il/radio/121172/>. On July 15, a rocket hit a cowshed in a kibbutz in the regional council of Eshkol near the Gaza border, killing 30 cows, injuring 20 cows, and causing severe property damage. See *Rocket Kills 30 Cows at Gaza-Border Kibbutz*, Arutz Sheva (July 15, 2014), available at <http://www.israelnationalnews.com/News/News.aspx/182947#.VXHMRtJVimU>. On July 19, a chicken coop in the Hof Ashkelon Regional Council suffered a direct rocket hit. See *Man killed near Dimona as southern Israel comes under heavy rocket fire from Gaza*, KosherPress (July 19, 2014), available at www.kosherpress.com/man-killed-near-dimona-as-southern-israel-comes-under-heavy-rocket-fire-from-gaza/. On August 24, at 16:00, a mortar hit a cowshed in Kibbutz Nirim, killing 6 cows and injuring 40; severe damage was caused to infrastructure, including water and electricity. For coverage of this incident in the Hebrew-language press, see israel.agrisupportonline.com/news/csv/csvread.pl?show=5073&mytemplate=tp2; www.ihaklai.org.il/%D7%A8%D7%90%D7%A9%D7%99/%D7%9B%D7%AA%D7%91%D7%95%D7%AA/tabid/56/ctl/ArticleView/mid/368/articleId/9722/----6--40--.aspx.



D. Conclusion

228. During the last 14 years, Israel has been subjected to increasingly deadly threats and terrorist attacks from the Gaza Strip, and has been required to invest vast resources in developing and deploying civil defence systems to protect its civilian population.

229. The 2014 Gaza Conflict and the period immediately preceding it represented the most intense period of rocket and mortar fire against Israel's civilian population in the nation's history, during which approximately 4,000 rockets and mortars were launched against Israel's civilian population, at ranges threatening about six million Israelis (approximately 70% of Israel's population). The 2014 Gaza Conflict also exposed an extensive network of cross-border assault tunnels built by Hamas for the purpose of infiltrating Israel and carrying out terrorist attacks.

230. Israel's extensive civil defence measures, including the Iron Dome and the early-warning systems, assisted in reducing the civilian harm that was ultimately caused during the 2014 Gaza Conflict. Nevertheless, despite the substantial investment in defense measures, the deliberate attacks and threats to Israel's civilian population have caused death, injury and trauma to the Israeli civilian population, as well as extensive long-term damage to infrastructure, agriculture and the economy of Israel. Hamas and other terrorist organisations are continuously developing methods and means to evade Israel's civil defence systems in order to carry out their terror attacks, requiring ongoing investment, improvement and development in order to protect Israel's civilian population.



VI. IDF Conduct of Operations during the 2014 Gaza Conflict

231. Israel is fully committed to respecting all applicable international legal obligations, including the Law of Armed Conflict. Israel has demonstrated this commitment through the comprehensive integration of the Law of Armed Conflict into every phase of training, planning, and execution of military operations.

232. Consistent with this commitment, during the 2014 Gaza Conflict, Israel targeted only lawful military objectives, and went to great lengths — in many cases above and beyond that required by international law — to mitigate risk to civilians and civilian property. This Chapter analyses the Law of Armed Conflict and how it applies to the Israel Defense Force's ("IDF") conduct over the course of the 2014 Gaza Conflict, including with reference to specific incidents.³⁹²

A. Applicable International Legal Framework

233. **Existence of an Ongoing Armed Conflict.** In recent years, an armed conflict has existed between Israel and Palestinian terrorist organisations operating in the Gaza Strip.³⁹³ The classification of this conflict under international law has been a matter of debate. On the one hand, in 2006 Israel's Supreme Court (sitting as the High Court of Justice) had determined that the armed conflict was an international armed conflict, referring to its trans-boundary nature.³⁹⁴ On the other hand, this classification is not without difficulty (as the Court itself acknowledged in a later case),³⁹⁵ and various courts, states and legal experts have in fact characterised armed conflicts of the kind existing between Israel and the Palestinian terror organisations in the Gaza Strip as non-international armed conflicts. Under these circumstances, Israel conducted its military operations during the 2014 Gaza Conflict in accordance with the rules of the Law of Armed Conflict governing both international and non-international armed conflicts, including the rules relating to distinction, precautions and proportionality.

³⁹² This Chapter does not constitute an exhaustive discussion of the IDF's conduct but rather focuses on many of the central issues relating to the 2014 Gaza Conflict. Although certain information that is classified or the subject of ongoing examination cannot be published, this Chapter provides an unprecedented level of detail regarding the actions and policies of the IDF.

³⁹³ For a discussion of Israel's ongoing armed conflict with Hamas and other terrorist organisations, see Chapter II (Background to the Conflict).

³⁹⁴ See *Public Committee against Torture in Israel v. Government of Israel*, HCJ 769/02, ¶¶ 16, 21 (Dec. 14, 2006), available at http://elyon1.court.gov.il/files_eng/02/690/007/A34/02007690.a34.pdf.

³⁹⁵ See *Physicians for Human Rights v. Prime Minister of Israel*, HCJ 201/09 (Jan. 19, 2009), available at http://elyon1.court.gov.il/files_eng/09/010/002/n07/09002010.n07.htm.



234. **Law of Armed Conflict.** Under international law, the Law of Armed Conflict (also known as International Humanitarian Law) regulates the conduct of hostilities. Israel is party to many international conventions that form part of the Law of Armed Conflict³⁹⁶ and abides by all rules of customary international law, including rules embodied in conventions to which it is not party.³⁹⁷ Israel has incorporated these rules into all aspects of military operations, from legal training to operational procedures to target selection to tactical decision-making. Accordingly, throughout the 2014 Gaza Conflict Israel applied and enforced the rules of the Law of Armed Conflict, including the rules relating to distinction, precautions and proportionality.

B. Integration of the Law of Armed Conflict into IDF Operations

235. Israel has developed strict procedures and oversight for compliance with the Law of Armed Conflict and seeks to ensure that all commanders have the information necessary for compliance. Israel trains IDF personnel in Israel's policies and procedures implementing the Law of Armed Conflict and provides them with access to legal advice before, during, and after operations. Indeed, the Military Advocate General Corps deploys specially trained military lawyers at various levels of command in order to improve access to legal advice and enhance the implementation of international law during operations, as well as to assist with "lessons-learned" processes following operations.³⁹⁸

236. **Training.** The IDF provides in-house educational programs on the Law of Armed Conflict to military personnel of various positions and ranks. This legal training includes not only lectures by military lawyers on the rules of international law, but also case-study analyses and practical simulations. Many IDF personnel — including those involved in target planning, target research, or overseeing civilian affairs — receive specialised instruction on the Law of Armed Conflict during their professional training. Moreover, advanced training in the Law of Armed Conflict is an essential

³⁹⁶ Israel is a party to the Four Geneva Conventions (1949), the Convention for the Protection of Cultural Property in the Event of Armed Conflict and its First Protocol (1954), the Third Additional Protocol to the Geneva Conventions of 12 August 1949 (2005), the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (1925), and the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (1980) and three of its Protocols – Protocol I on Non-Detectable Fragments (1980), Amended Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (1996), and Protocol IV on Blinding Laser Weapons (1995).

³⁹⁷ For example, although Israel is not party to the 1907 Hague Convention IV respecting the Laws and Customs of War on Land, it views the Convention as reflecting customary international law and thus its provisions are binding on Israel. Although Israel is also not a party to the 1977 Additional Protocols I and II to the 1949 Geneva Conventions, it abides by their provisions inasmuch as they reflect rules of customary international law.

³⁹⁸ Law enforcement in the IDF is discussed separately in this document. For more information, see Chapter VII (Israel's Investigations of Alleged LOAC Violations).



component of operational courses for junior and senior commanders alike.³⁹⁹ Officers thus receive legal training that increases in depth and scope as they progress through the ranks and acquire additional command responsibilities. In addition, the IDF works with external academics and practitioners who run educational programs, ranging from individual lectures to full-length courses, for IDF commanders.⁴⁰⁰

237. The IDF's combat training also covers the Law of Armed Conflict. For example, prior to and during the 2014 Gaza Conflict's ground operation, the IDF operated training simulators in assembly and staging areas in Israel that were designed to prepare infantry and other forces for combat in urban terrain, and included exercises involving the presence of civilians and operations in the vicinity of sensitive sites. Similar training also regularly takes place at the Urban Warfare Training Centre, which runs a variety of simulations (as well as hosts visits from foreign militaries).⁴⁰¹



Above: IDF simulators in the Assembly and Staging area outside the Gaza Strip. (Source: IDF)

³⁹⁹ These courses include Basic Officers Courses (for Lieutenants) and a Sea Captains Course (for Lieutenants), Tactical Command Course (for Captains), Company Commanders Course (for Captains and Majors), Air Force Operational Planning Course (for Captains and Majors), Advanced Intelligence Officers Course (for Majors), Staff and Command Course (for Lieutenant-Colonels), Battalion Commanders Course (for Lieutenant-Colonels), Brigade Commanders Course (for Colonels) and Division Commanders Course (for Brigadier-Generals).

⁴⁰⁰ For example, in March 2015, the IDF facilitated the Air Missile Warfare Program of Legal Education (AMPLE) in Israel. This multi-day educational program, run by some of the world's leading academics and ex-practitioners of the Law of Armed Conflict, was attended by approximately 50 IDF operational commanders.

⁴⁰¹ *Special Training: U.S. Marines v. Givati Special Forces*, IDF (Aug. 15, 2013), available at <http://www.idfblog.com/blog/2013/08/15/special-training-u-s-marines-vs-givati-special-forces/>; *U.S. Marines Visit Israel for Training with IDF*, IDF (Aug. 14, 2011), available at <http://www.idfblog.com/blog/2011/08/14/european-based-us-marines-visit-israel-for-training-with-idf/>.



Above: The IDF's Urban Warfare Training Centre. (Source: IDF)

238. **Legal Advice.** IDF military lawyers regularly provide advice on international law at all levels of command. These lawyers belong to the Military Advocate General Corps and are not subordinate to the commanders they advise, because the Military Advocate General (“MAG”) has an independent status outside the military hierarchy in relation to all legal issues.⁴⁰² The MAG is appointed by the Minister of Defence (a civilian authority), not by the IDF Chief of General Staff.⁴⁰³ IDF High Command Orders explicitly state that the MAG is “subject to no authority but the law.”⁴⁰⁴ By positioning military lawyers in this manner within the IDF, Israel ensures that they can provide frank and professional advice. Legal opinions of the MAG Corps are binding upon the IDF, including with regard to the legality of individual attacks.⁴⁰⁵

239. Within the MAG Corps, the International Law Department provides international law advice to all levels of command and incorporates Israel's international law commitments into the IDF's activities. Legal advisors in the International Law Department are specialists in international law (particularly the Law of Armed Conflict) and have expertise on a range of issues, including targeting, weapons and detention.

⁴⁰² This status is reflected in the Attorney General's Directives No. 9.1002, which states that “[w]hen exercising his or her authority under Article 178 of the Military Justice Law as legal advisor [for the IDF Chief of General Staff and other IDF authorities] ... the Military Advocate General operates independently, and is not subordinate to the Chief of the General Staff or any other command authority; and is guided by considerations pertaining to the rule of law – and these considerations only – when fulfilling his or her role.” Attorney General's Directives No. 9.1002, section 3 (last updated April 2015), available at

<http://index.justice.gov.il/En/Units/AttorneyGeneral/Documents/AGDirectiveMilitaryAdvocateGeneral.pdf>.

⁴⁰³ Military Justice Law, 5715–1955, LA §§ 177(a), 178(1).

⁴⁰⁴ IDF Supreme Command Order 2.0613, The Military Advocate General Corps (March 5, 1976).

⁴⁰⁵ See Attorney General's Directives No. 9.1002, *supra* note 402, at section 2(b) (“The opinion of the Military Advocate General with respect to a legal matter determines the state of the law for all IDF authorities, and the Military Advocate General's interpretation of the law is the authoritative interpretation for all IDF authorities.”).



240. Since 2007, in times of active hostilities the International Law Department has been expanded by dozens of additional Law of Armed Conflict experts who serve both in active and reserve duty. This specially-designed mechanism is called the Operational Law Apparatus and is run by the Head of the International Law Department. Members of the Operational Law Apparatus advise the General Staff Command and also are assigned to pre-determined units at the outbreak of active hostilities. Moreover, they are deployed to provide legal advice on the Law of Armed Conflict to commanders at the Regional Command and Divisional levels.⁴⁰⁶ Among other things, they examine the legality of decisions regarding rules of engagement, targeting, use of weapons, detainee treatment, and humanitarian efforts. The IDF thus devotes substantial resources to the integration of lawyers into operational activities, in a manner that exceeds the requirements of customary international law.

241. The MAG Corps' legal advice is subject to civilian oversight. The MAG is guided on professional matters by Israel's Attorney General, who may also review the MAG's decisions and policies.⁴⁰⁷ Further, the MAG's legal advice is subject to judicial scrutiny by the civilian judicial system. Israel's Supreme Court has adopted doctrines of standing and justiciability that readily allow for petitions regarding IDF activity. Indeed, on numerous occasions the Supreme Court has reviewed the legality of IDF operational conduct, including while active hostilities were taking place.⁴⁰⁸ The extent of judicial review over the IDF's activity is internationally recognised and unique.

242. **Operational Regulations, Directives and Orders.** The IDF regularly issues a range of binding operational regulations, directives and orders (hereinafter: "IDF directives") that implement applicable rules of the Law of Armed Conflict. Military lawyers participate in the formulation of these documents to ensure that they reflect Israel's legal obligations and that they are well understood by IDF forces. IDF directives address, among other things, the circumstances in which individual persons may be targeted, the types of weapons that may be used, the delivery of warnings before an

⁴⁰⁶ Commanders who do not have legal advisers specifically deployed to their command continue to rely on their legal training and education, as well as IDF orders and regulations, in order to ensure that their actions accord with the Law of Armed Conflict. Such commanders are also able to request legal advice from representatives of the Operational Law Apparatus at any time, by way of a MAG Corps situation room which operates 24/7 and receives requests for legal advice from throughout all ranks and units of the IDF.

⁴⁰⁷ See Attorney General's Directives No. 9.1002, *supra* note 402, at section 2(b) (stating that "the Military Advocate General must... adopt the interpretation of the law given by the Attorney General"); *id.* at section 9(a) (stating that "[t]he Attorney General will review decisions made by the Military Advocate General ... after hearing the Military Advocate General's position on the matter," in situations where, *inter alia*, the Attorney General believes that the MAG's decision is of "special importance to the public" or has "implications [that] go beyond the IDF," including "decisions regarding policy aspects of the application of military force, where it is alleged that such policy is unlawful and constitutes a serious violation of international humanitarian law").

⁴⁰⁸ See, e.g., *Public Committee against Torture v. Government of Israel*, H CJ 769/02 (Dec. 14, 2006), available at http://elyon1.court.gov.il/files_eng/02/690/007/A34/02007690.a34.pdf; *Physicians for Human Rights v. Prime Minister of Israel*, H CJ 201/09 (Jan. 19, 2005), available at http://elyon1.court.gov.il/files_eng/09/010/002/n07/09002010.n07.htm.



attack, the capture and treatment of detainees, and the steps required to be taken in response to kidnapping attempts.⁴⁰⁹ For example, IDF directives regarding the attack of individuals enumerate the specific conditions required for such attacks to be lawful. In a similar fashion, the IDF directive on the delivery of warnings explains when warnings must be given, when warnings are considered sufficiently effective under the Law of Armed Conflict, and how commanders must consider related legal obligations, such as the rule of proportionality.

243. Orders and commands issued for specific operations also incorporate Israel's international legal obligations, including through a legal annex that contains an overview of applicable legal rules. In this regard, the IDF's primary operational order for the 2014 Gaza Conflict explicitly required compliance with the Law of Armed Conflict. It stated, for example, that attacks were "strictly limited to military objectives (including dual-use targets), with strict adherence to the rules of distinction and proportionality." The order mandated compliance with other important legal rules, such as those relating to the protection and treatment of civilians and the delivery of warnings. Before ground forces entered the Gaza Strip, the IDF printed hundreds of pocketbooks with legal guidelines on issues such as targeting, detention and humanitarian welfare, for use by commanders in the field.



Left: The pocketbook printed at the beginning of the 2014 Gaza Conflict. Its title reads: "Rules of Conduct in Warfare – A Pocketbook for Commanders." (Source: IDF)

244. **Operational Processes.** The IDF has established comprehensive processes to ensure implementation of the Law of Armed Conflict during active hostilities. Two such examples are the processes dealing with targeting structures and the treatment of sensitive sites.

245. *Targeting Objects and Structures.* The IDF has a highly-regulated, multi-tiered process for approving pre-planned attacks against military objectives. This process is designed to ensure that senior commanders have all reasonably available information and professional advice that will ensure compliance with the Law of Armed Conflict. First, the procedures call for the collection of

⁴⁰⁹ For a discussion of the General Staff Directive for Contending with Kidnapping Attempts (widely referred to as the "Hannibal Directive") and its adherence to the Law of Armed Conflict, see *infra* Section D.3.d.



intelligence about the nature of a potential target (whether it is a military compound, a residence, or a mosque used for military purposes, etc.) and its physical characteristics. This information is relied upon to confirm that the potential target constitutes a military objective under the Law of Armed Conflict, and is used to assist commanders with conducting a proportionality assessment. The intelligence also collects information regarding the surroundings of the target, paying special attention to civilians and civilian objects, including sensitive sites, potentially in harm's way during an attack. Using this information, commanders determine the objectives with regard to the target, such as partial or total destruction, attack only when militants are present, and so on. On the basis of the objectives of the attack and the intelligence information, operational planners assess the optional means and methods for carrying out a potential attack, including assessing what precautions could be taken during the attack process. Operational planners may provide different options for carrying out an attack, taking into consideration different options for minimising the risk of collateral damage and the effect that this may have on achieving the objective of the attack. At this stage, officers from relevant units examine all the available information and provide their professional views and advice regarding the target. This input includes a legal adviser's binding opinion regarding the legality of an attack, plus any stipulations for its execution. Beyond the legal input, commanders may add additional conditions for carrying out the attack. The input provided by the different entities — including the intelligence and operational planning entities — undergoes timely re-evaluation and re-validation according to IDF procedures. On the basis of all the professional opinions received, as well as any new information that becomes available, a senior commander may (i) approve the attack (where appropriate, subject to certain conditions), (ii) suspend the attack (for instance, because more information about potential collateral damage is necessary), or (iii) abort the attack altogether.

246. During the planning of attacks on military objectives, the IDF typically uses what is referred to as a “Target Card,” which pulls together key intelligence (such as aerial footage of the target and its surroundings as well as information concerning the military use of the object), the military value sought in an attack, potential operational plans for the attack, and a binding legal opinion regarding the lawfulness of the attack. Below is an example of a “Target Card” (translated from the original Hebrew) that was used during the 2014 Gaza Conflict in connection with an arms cache and operational-planning site located in the house of Ibrahim al-Shawaf, a senior commander in the Palestinian Islamic Jihad (further information on this target can be found below on pages 159-160).⁴¹⁰

⁴¹⁰ Although “Target Cards” may take different forms in different IDF units, their subject matter and purpose remain the same.



- Top Secret -

Target ID: [REDACTED]

Intelligence	Operational Directives	Legal Review		
<p>Type of Target: Arms cache in the house of a senior military commander.</p> <p>Function: The target is an arms cache in the house of a Palestinian Islamic Jihad's Khan Younis Battalion commander. The house is both an arms cache, and an operational planning site for Palestinian Islamic Jihad operatives for the coordination of impending attacks.</p> <p>Location: Abasan Al-Kabir, coordinates: [REDACTED]</p> <p>Affiliation: Palestinian Islamic Jihad</p> <p>Presence at target: The military commander, his family, and Palestinian Islamic Jihad operatives</p> <p>Description: The target is part of a residential compound, 23*23m in size. The target is a single-storey concrete structure measuring 13*13m in size ('Element 1'). On the roof of the structure is located: [REDACTED], a concrete structure measuring 4*4m in size, 2 water tanks, 2 solar panels, and the frame for erecting a small shack.</p> <p>Weaponry located at the target: Kalashnikovs, steel pipes [REDACTED] (materials for the manufacture of projectiles), and Grad missiles.</p> <p>Sensitive sites: There are no sensitive sites within a 100m radius of the target.</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>Objective: Strike by fighter jet – destruction of the weapons store at the target (Element '1'), whilst avoiding harm to civilians.</p> <p>[REDACTED]</p> <p>Conditions: Real-time visual surveillance, Night-time strike, individualized effective advance warning (including "roof knocking").</p> <p><input type="checkbox"/> Approved <input checked="" type="checkbox"/> Conditional <input type="checkbox"/> Not Approved</p>	<p>Status: Conditional</p> <p>Military Objective: Arms cache and operational meeting place in a residential building</p> <p>Conditions: the provision of an effective advance warning.</p> <p>Recommendations: Real-time visual surveillance</p> <p>Reviewed by [REDACTED] on [REDACTED]</p>		
	Operational Planning		Conditions	
	Option 1	Option 2	Option 3	<input checked="" type="checkbox"/> Real-time visual surv. <input checked="" type="checkbox"/> Nighttime <input checked="" type="checkbox"/> Indiv. warning to civilians in target <input type="checkbox"/> Indiv. warning to civil. in surrounding structures <input checked="" type="checkbox"/> Legal conditions <input type="checkbox"/> [REDACTED]
Strike to be carried out by:	Fighter jet			[REDACTED]
Elements targeted:	Element 1			[REDACTED]
Munitions:	[REDACTED]			[REDACTED]
Number of bombs:	One.			[REDACTED]
Projected Outcome:	Objective fully achieved.			[REDACTED]
Intelligence by [REDACTED]	Aerial footage taken on [REDACTED]	Intelligence confirmed on [REDACTED]		

Above: A "Target Card" (translated from the original Hebrew with some classified information redacted for security reasons) that was used during the 2014 Gaza Conflict in connection with an attack on an arms cache and operational-planning site located in the house of Ibrahim al-Shawaf, a senior commander in the Palestinian Islamic Jihad. As described above, the target planning process begins with the collection of intelligence information regarding the potential target as well as its surroundings, reflected above in the left hand column of the Target Card titled "Intelligence." Using this information, commanders determine the objectives with regard to the target, included in the Target Card under the block titled "Operational Directives" in the middle of the Target Card. On the basis of the objectives in attack and the intelligence information, operational planners assess the optional means and methods for carrying out a potential attack, including assessing what precautions could be taken during the attack process; these options are included under the block titled "Operational Planning" below. As part of the process, legal advisers provide their binding opinion as to the legality of an attack, plus any stipulations for its execution (including concerning precautions in attack); this appears in the right of the Target Card, under the title "Legal Review." Beyond the legal input, commanders may insert additional conditions, which are included in the "Operational Directives" block. Finally, all the conditions are centralised in the bottom right block of the Target Card titled "Conditions." In this regard, where the legal advisers have included stipulations for the attack, a box titled "Legal Conditions" is marked, so that commanders may be aware that there are conditions which are part of the binding legal review, and are not additional proposals put forward by other professional entities. Thus, in this case, the legal advisers conditioned their approval on the provision of an effective advance warning; thus, the box titled "Legal Conditions" under the "Conditions" block is marked. Further, the legal advisers recommended real-time visual surveillance. The commander added to these conditions, requiring that the attack be conducted at night and adopting the recommendation for real-time surveillance. Such steps could be taken due to the fact that the objective was the structure (and the weaponry therein) and not any persons inside; thus, it was considered feasible to provide advance warning and to undertake additional precautions in order to ensure that no persons would be harmed as a result of the attack. Indeed, the IDF is unaware of any claim of fatality or harm as a result of the attack. The manner in which the Target Card is structured, the entities involved, and the process required in filling out such a document, reflects the integration of the Law of Armed Conflict within the IDF's targeting procedures.



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- Top Secret -

Target ID: [REDACTED]

A - Greenhouse
 C,H,I,J,K,L,U - tin shacks
 D,R,T - Concrete structures used for residential purposes.
 E - concrete structure, under construction.
 G - frame for the erection of a shack.
 K,Q,V - concrete structures with tin roofs
 S - shipping container
 Y - structure under construction
 Z - nylon tent

Distances from Target:

A - 83m	O - 77m
C - 31m	P - 72m
D - 43m	Q - 43m
E - 41m	R - 18m
F - 59m	S - 40m
G - 50m	T - 54m
H - 73m	U - 46m
I - 73m	V - 42m
J - 75m	W - 25m
K - 70m	X - 30m
L - 71m	Y - 17m
M - 71m	Z - 25m
N - 75m	Ab - 32m

Date taken: [REDACTED]

Above: The second page of the above Target Card, with additional intelligence information used for operational planning purposes.

247. Of course, the exigencies of combat do not always allow for a targeting process involving this level of deliberate pre-planning and pre-approval. In certain situations, targets will be highly time sensitive — particularly in dynamic, fast-moving ground combat — and certain input, such as fact-specific legal advice, will not be available in real time. (This may be the case, for example, when an IDF platoon commander operating within the Gaza Strip is required to take immediate action in response to coming under fire.) Even in the most time-sensitive situations, however, IDF regulations emphasise that commanders and soldiers must still comply with the Law of Armed Conflict. In such cases, commanders rely on the training they have received, as well as directives that specify the checks and authorisations required prior to carrying out attacks.

248. *Sensitive Sites.* The IDF has put in place detailed regulations for dealing with “sensitive sites,” *i.e.*, objects that receive special protection from attack under the Law of Armed Conflict, as well as other objects that warrant special consideration for policy reasons. “Sensitive sites” include,



for example, hospitals, educational facilities, cultural property, religious sites, large food factories, power stations and United Nations (“U.N.”) facilities.⁴¹¹



Above: Examples of military objectives situated in the vicinity of marked sensitive sites. (Source: IDF)

249. All levels of command receive notice of the location and nature of sensitive sites, and the IDF routinely reviews, updates, and disseminates information about their location and status.⁴¹² As illustrated above, information pointing to the sensitive nature of a given site is also included in

⁴¹¹ U.N. facilities in the Gaza Strip include not only official headquarters, but also hundreds of other buildings, including schools and medical clinics that bear U.N. insignia.

⁴¹² The IDF works closely with other countries and international organisations to ensure that information regarding sensitive sites is up-to-date and sufficiently detailed. This cooperation continues during active hostilities themselves (indeed, during the 2014 Gaza Conflict, approximately 230 sensitive sites were added to the already existing list of approximately 2,000 sensitive sites). For more details, see *infra* Section E (Humanitarian Efforts).



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relevant Target Cards. Moreover, IDF regulations detail the limited circumstances in which sensitive sites may be damaged (either incidentally as expected harm from an attack on a site nearby or directly, where they are military objectives because they have lost their protection from attack). These regulations also require certain precautionary measures and specific approval by a high-ranking officer, whenever appropriate.



State of Israel

מס' 1

המפקדה
מרכז
המל"ט
המ"ד
מס' 13
אוגוסט
2014

הגדרת אתרים רגישים בחזית רצועת עזה

1. כללי

א. חז"ל נמצא ביממה ה-37 למבצע צוק איתן.

ב. במסגרת היערכות להמשך הלחימה יש לבצע **הקפדה על אי פגיעה באתרים רגישים, לרבות מתקנים מהווים מחסה זמני לאזרחים המתגנים מבתיים.**

ג. הרשימה המוצגת הינה עדכון לשכבת האתרים המנוהלת ע"י [redacted] וכוללת את דיווחי המג"שים על מיקומי המחסות.

2. מטרה: עדכון שכבת אתרים רגישים במערכות השוי"ב.

3. דגשים והנחיות:

א. סימון האתרים יתבצע ע"פ הוראות [redacted]

ב. באחריות [redacted] יודכן את רשימת האתרים הרגישים המתווספים במהלך הלחימה.

ג. באחריות [redacted] תג"ב מיידי

ד. ידועותם וטיפולם, [redacted] תג"ב שוטף

בברכה,

מס' 1

מס' 1

נספח א - רשימת האתרים הרגישים

מס' י"ד	תיאור	נ.צ. צבאית X	נ.צ. צבאית Y
1	בניין בית האנון	[redacted]	[redacted]
2	בניין בית האנון	[redacted]	[redacted]
3	בניין בית האנון	[redacted]	[redacted]
4	בניין בית האנון	[redacted]	[redacted]
5	בניין 1 בבית לאחיה	[redacted]	[redacted]
6	בניין 2 בבית לאחיה	[redacted]	[redacted]
7	בניין בית האנון	[redacted]	[redacted]
8	בניין בג'בליה	[redacted]	[redacted]
9	בניין בב'וריני	[redacted]	[redacted]
10	בניין ב'יר אל באלאח	[redacted]	[redacted]
11	בניין ח'אן יוס	[redacted]	[redacted]
12	בניין ח'אן יוס	[redacted]	[redacted]
13	בניין ח'אן יוס	[redacted]	[redacted]
14	בניין ח'אן יוס	[redacted]	[redacted]
15	בניין בג'בליה	[redacted]	[redacted]
16	בניין בג'בליה	[redacted]	[redacted]
17	בניין בג'בליה	[redacted]	[redacted]
18	בניין בג'בליה	[redacted]	[redacted]
19	בניין בג'בליה	[redacted]	[redacted]
20	בניין בג'בליה	[redacted]	[redacted]
21	בניין בע'ה	[redacted]	[redacted]
22	בניין בע'ה	[redacted]	[redacted]
23	בניין בע'ה	[redacted]	[redacted]
24	בניין בע'ה	[redacted]	[redacted]
25	בניין בע'ה	[redacted]	[redacted]
26	בניין בע'ה	[redacted]	[redacted]
27	בניין בע'ה	[redacted]	[redacted]
28	בניין בע'ה	[redacted]	[redacted]
29	בניין בע'ה	[redacted]	[redacted]
30	בניין בע'ה	[redacted]	[redacted]
31	בניין בע'ה	[redacted]	[redacted]
32	בניין בע'ה	[redacted]	[redacted]
33	בניין בע'ה	[redacted]	[redacted]
34	בניין בע'ה	[redacted]	[redacted]
35	בניין בע'ה	[redacted]	[redacted]
36	בניין בע'ה	[redacted]	[redacted]
37	בניין בע'ה	[redacted]	[redacted]

מס' 1

From: General Staff Command Operations Room
[redacted]
Document Reference Number: [redacted]
[Hebrew Calendar Date]
13 August 2014

Distribution List

Subject: Sensitive Sites in the Gaza Strip – Update No. [redacted]

1. General

a. The IDF is in the 37th day of Operation 'Protective Edge'.

b. In preparation for the continuation of the hostilities, a **scrupulous effort must be made on avoiding harming sensitive sites, including facilities that constitute temporary shelters for civilians who have evacuated their residential areas.**

c. The attached list is an update for the command and control systems maintained by [redacted] and includes reports from the Coordination and Liaison Administration concerning the locations of civilian shelters.

2. Purpose: To update the information within the command and control systems with respect to sensitive sites.

3. Instructions:

a. Marking the sensitive sites will be carried out in accordance with the [redacted] Directive.
Entity Responsible: [redacted] **Timeframe:** Immediate

b. [redacted] is responsible for updating [redacted] in the consolidated list of sensitive sites during the hostilities, [redacted].
Entity Responsible: [redacted] **Timeframe:** Ongoing

4. For your information and implementation,

[redacted]

Annex A – List of the Sensitive Sites

Number	Description	Coordinates (X)	Coordinates (Y)
1	School in Beit Hanoun	[redacted]	[redacted]
2	School in Beit Hanoun	[redacted]	[redacted]
3	School in Beit Hanoun	[redacted]	[redacted]
4	School in Beit Hanoun	[redacted]	[redacted]
5	School 1 in Beit Lahiya	[redacted]	[redacted]
6	School 2 in Beit Lahiya	[redacted]	[redacted]
7	School in Beit Hanoun	[redacted]	[redacted]
8	School in Beit Hanoun	[redacted]	[redacted]
9	School in Bureij	[redacted]	[redacted]
10	School in Dir al-Balah	[redacted]	[redacted]
11	School in Khan Yunis	[redacted]	[redacted]
12	School in Khan Yunis	[redacted]	[redacted]
13	School in Khan Yunis	[redacted]	[redacted]
14	School in Khan Yunis	[redacted]	[redacted]
15	School in Jebalia	[redacted]	[redacted]
16	School in Jebalia	[redacted]	[redacted]
17	School in Jebalia	[redacted]	[redacted]
18	School in Jebalia	[redacted]	[redacted]
19	School in Jebalia	[redacted]	[redacted]
20	School in Jebalia	[redacted]	[redacted]
21	School in Gaza City	[redacted]	[redacted]
22	School in Gaza City	[redacted]	[redacted]
23	School in Gaza City	[redacted]	[redacted]
24	School in Gaza City	[redacted]	[redacted]
25	School in Gaza City	[redacted]	[redacted]
26	School in Gaza City	[redacted]	[redacted]
27	School in Gaza City	[redacted]	[redacted]
28	School in Gaza City	[redacted]	[redacted]
29	School in Gaza City	[redacted]	[redacted]
30	School in Gaza City	[redacted]	[redacted]
31	School in Gaza City	[redacted]	[redacted]
32	School in Gaza City	[redacted]	[redacted]
33	School in Gaza City	[redacted]	[redacted]
34	School in Gaza City	[redacted]	[redacted]
35	School in Gaza City	[redacted]	[redacted]
36	School in Gaza City	[redacted]	[redacted]
37	School in Gaza City	[redacted]	[redacted]

Above: Example of notice distributed by the IDF during the 2014 Gaza Conflict providing details of newly identified sensitive sites to be incorporated into IDF systems. (Source: IDF)



250. **Constant Development and Enhancement.** The IDF regularly develops, reviews and revises its operational directives as part of an ongoing lessons-learned process that helps prepare for future potential conflicts.

251. Based on lessons learned from past operations, the IDF has established new mechanisms and procedures, such as those relating to sensitive sites and to the deployment of Civilian Affairs Officers, intended to enhance the protection of the civilian population during hostilities.⁴¹³ The IDF has also amended existing directives for the same purpose. For instance, in 2010 the IDF amended its directive regulating the use of flechette munitions, in light of lessons learned from the 2008-2009 Gaza Conflict (also known as “Operation Cast Lead”). Although the IDF directive and the instructions that forces were required to follow during the 2008-2009 Gaza Conflict accorded with the rules of the Law of Armed Conflict, the IDF undertook efforts to define even more clearly where flechette munitions could and could not be used, and to emphasise a preference for munitions that are equally effective yet expected to cause the least collateral damage to civilians and civilian property.⁴¹⁴

252. The IDF also revises its directives to conform with policies that are not mandated by the applicable law. One example is the IDF’s restrictive policy regarding the use of smoke-screening shells containing white phosphorous.⁴¹⁵ Generally, the IDF employs such shells for screening purposes, particularly in order to obscure and protect its ground forces during hostilities. The use of these shells is an accepted practice among other militaries in the world, including the armed forces of the U.S., U.K. and many other countries, including within the framework of NATO operations. Such use — including in urban areas — is lawful under the Law of Armed Conflict, subject to compliance with its basic rules. Nevertheless, in 2011, following the 2008-2009 Gaza Conflict, the IDF voluntarily adopted a policy that significantly restricts the usage of these shells in urban areas. In July 2013 Israel’s Supreme Court (sitting as the High Court of Justice) dismissed a petition to ban the use of these shells in urban areas, concluding that the petition was superfluous in light of the IDF’s above-mentioned policy.⁴¹⁶ For the sake of clarity, it should be noted that during the 2014 Conflict, the IDF did not employ smoke-screening shells (or any other munitions) containing white phosphorous.

⁴¹³ For more information on Civilian Affairs Officers, see *infra* Section E.1.

⁴¹⁴ For information on the use of flechette munitions during the 2014 Gaza Conflict, see *infra* Section D.4.a.

⁴¹⁵ *The Supreme Court Dismisses the Petition against the use of IDF Shells containing White Phosphorous for Smoke-screening Purposes in Urban Areas*, International Law Department, IDF MAG Corps (Apr. 23, 2014), available at <http://www.law.idf.il/163-7103-en/Patzar.aspx?pos=30>.

⁴¹⁶ For a more detailed report on the case, see *id.*



C. The Nature of Urban Warfare in the Gaza Strip

253. The vast majority of the combat during the 2014 Gaza Conflict took place in an urban environment. The IDF conducted both aerial and ground operations against military targets located within and underneath the urban terrain of the Gaza Strip. Carrying out operations in urban terrain is particularly challenging for two main reasons: (1) the existence of dense physical infrastructure and (2) the dynamic presence of the civilian population. Military missions in environments where these two factors are present inevitably involve significant risk of harm to the civilian population and a measure of harm to the physical infrastructure.



Left: IDF ground forces entered the outskirts of the Gaza Strip, including the neighbourhood of Shuja'iyeh (located in this aerial photograph to the west of the Israel-Gaza fence line, marked with a dotted line), in order to locate and neutralise cross-border tunnel infrastructure embedded within densely populated urban areas and leading towards Israeli population centres such as Nahal Oz (located in this aerial photograph to the right of the Israel-Gaza fence line). (Source: Google Maps)

254. More specifically, the challenges faced by the IDF, or any military, in conducting operations in urban areas include:

- Physical infrastructure conceals the movement and presence of the adversary, not only making it difficult for a military to locate adversaries and execute attacks, but also necessitating damage to infrastructure in order to reach adversaries operating within such structures. Adversaries may utilise civilian sites for military purposes, such as weapons caches, firing positions, surveillance posts, command and control centres, tunnel entrances, and digging infrastructure. Militaries therefore are required to temper their employment of force in an effort to differentiate between legitimate military targets and civilians.
- At the same time, physical infrastructure conceals the movement and presence of the civilian population. This complicates decisions regarding whether to employ force against a particular structure or person.
- The density of urban infrastructure typically results in close-quarter combat. Fighting is often conducted house to house and street to street, and as result, the employment of force by both sides is concentrated in a small area, with a multiplied effect on civilians and



infrastructure in the immediate surroundings. A compounding concern is that close-quarter combat substantially reduces the time available for commanders to consult and make decisions. Thus, commanders often face threats that require immediate decisions in a short timeframe.

- Physical infrastructure multiplies the surface areas from where adversaries may direct attacks against a military. In a single small space, adversaries may attack from within and from on top of buildings, as well as from subterranean positions. This increases the level of risk to a military and, in turn, increases the need to exercise force in order to repel attacks. Such circumstances also increase uncertainties that are inherent in all warfare, such as locating the point of origin of an attack and discerning between the positions and activity of adversary and friendly forces.
- Tunnels with multiple openings in and around civilian structures undermine one of the fundamental tenets of ground warfare: the capacity to ensure that areas of operation are clear of enemy presence. A military clearing and securing an area so as to allow for forward movement remains susceptible to an adversary emerging from tunnels dug underneath structures already cleared. As a result, urban warfare is 360 degrees in nature. This further increases the potential space in which combat (and thus damage) may occur. It also necessitates the demolition of structures that house tunnel openings and exit points.
- The existence of physical infrastructure allows adversaries to predict, or even intentionally channel the movement of the advancing military, given that the options for movement may be restricted to pre-existing roads and other routes. For instance, adversaries may lay mines, IEDs, and other explosives, as well as prepare ambushes, on the expected routes of travel. In some cases, the only option for advancing forces to avoid such traps may be to create alternative avenues for movement, including by damaging or demolishing physical infrastructure.
- The urban terrain also severely restricts the freedom of movement for mechanised and armoured forces, which play a crucial role in striking the adversary and protecting infantry and other military personnel in the area (such as engineers operating on tunnel infrastructure). Moving armoured forces through an urban terrain may require damage to existing structures.
- Urban terrain limits the capacity for a military to rely upon certain weapons platforms to protect its ground forces. If aerial support is needed, requests must be relayed back to command, and significant time may elapse before the aerial support arrives. Aerial support is also difficult to provide when used in close proximity to friendly forces. Meanwhile, ground forces are restricted in the type of weaponry available for their use in an urban environment.

255. These challenges — relevant to any context of urban warfare — were all the more prevalent during the 2014 Gaza Conflict. Hamas and other terrorist organisations in the Gaza Strip are acutely aware of the operational and strategic challenges created by dense physical infrastructure and the presence of a civilian population. These organisations have developed a strategy of operating from within the urban terrain and thus drawing the combat into these areas, and subsequently exploiting the infrastructure and civilian population for their own advantage. This exploitation has been directly



responsible for much of the harm and damage in the civilian environment. In particular, Hamas and other terrorist organisations have adopted a *modus operandi* of actively — and unlawfully — using the civilian population to shield their military operations. Embedding their military operations within the civilian environment is not ancillary to their main military objectives; nor is it an inevitability of combat within the Gaza Strip. Rather, it is a deliberate and systematic strategy designed to draw IDF forces into combat inside densely populated areas where civilian casualties and damage will be blamed on Israel and produce international sympathy for Hamas.⁴¹⁷ The longer Hamas has controlled the Gaza Strip, the more it has invested in embedding its military operations within and under the urban terrain.⁴¹⁸

256. The mission of the IDF ground forces during the 2014 Gaza Conflict was to operate in a limited and defined area of the Gaza Strip, primarily the easternmost suburbs, in order to search for, and neutralise, cross-border assault tunnels originating from these areas. The IDF did not employ ground forces beyond the areas with tunnel infrastructure. At the same time, the IDF did not impose a “buffer zone” or “no-go zone” in the areas in which it did operate. As part of its mission, IDF ground forces were required to search areas thoroughly for tunnel openings, which were often located within structures that were also of a civilian nature. Once IDF forces uncovered a tunnel opening, they remained in that location in order to protect engineering and specialised forces working to neutralise the tunnels. Remaining in static positions exposed these forces to increased attacks, especially because Hamas and other terrorist organisations had predetermined positions from which to attack IDF forces. In turn, when IDF forces came under increased and heavy fire, they required additional support to repel the attacks. Thus, firefighting with militants, as well as the efforts to uncover tunnel openings that lay beneath physical infrastructure, resulted in the intensive use of force in static positions, thereby greatly increasing the potential for significant damage to the specific areas where tunnels were located. Satellite imagery from after the 2014 Gaza Conflict displays the concentrated nature of the damage caused.

257. Hamas training and doctrinal materials found by IDF forces during the Operation attest to Hamas’s intentional efforts to draw the IDF into combat in densely populated areas and to actively use the civilian population in order to obstruct the IDF’s military operations. A PowerPoint document on a laptop containing training materials for terrorist organisations, recovered by IDF forces in the Gaza Strip, provides a detailed overview of the tactical advantages from conducting

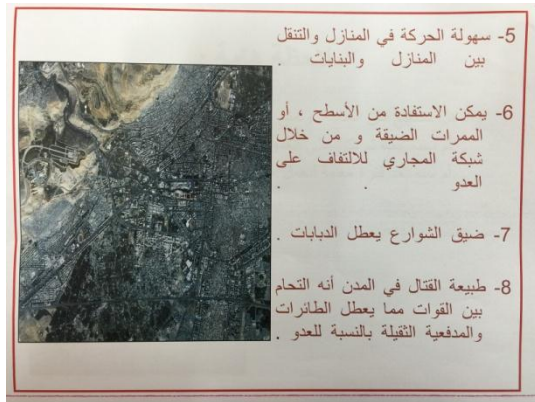
⁴¹⁷ Indeed, the Gaza Strip contains many open areas. Hamas maintains many separate and clearly identifiable military bases and training areas in such open spaces. As part of Hamas’s strategy, these areas are abandoned at the start of the hostilities in favour of predetermined positions within the civilian environment. These positions are often embedded within or under civilian structures, and fitted for commanding and conducting the Hamas’s military operations.

⁴¹⁸ For detailed information regarding the *modus operandi* of Hamas and the other terrorist organisations in the Gaza Strip, see Chapter IV (Hamas’s War Crimes).



military operations within built-up areas. The document, titled “Characteristics of Warfare in Populated Areas,” stated (in Arabic) that:

- 1) *An urban area provides better conditions for defending it with fewer forces.*
- 2) *It is easy to hide within buildings.*
- 3) *Buildings make it difficult for the enemy to employ artillery.*
- 4) *Basements and ground levels provide protection and can be taken advantage of.*
- 5) *It is easy to move within houses and between houses and buildings.*
- 6) *It is possible to take advantage of roofs or narrow passages, as well as the sewers, to flank the enemy.*
- 7) *Narrow streets disrupt tanks.*
- 8) *The nature of combat in urban areas finds expression in forces being intertwined, thus disrupting aircraft and heavy artillery.*



Above: Excerpts from a PowerPoint document, recovered by IDF forces operating within the Gaza Strip during the 2014 Gaza Conflict, containing training materials that promote the advantages of conducting military operations within built-up areas. (Source: IDF)

258. Similarly, IDF forces operating in Shuja’iyeh recovered a military doctrine manual titled “A Chapter in Urban Combat,” published by the Training Unit of the Shuja’iyeh Battalion of Hamas’s Izz al-Din al-Qassam Brigades.⁴¹⁹ The manual describes, among other things, how co-opting the civilian presence into military operations constrains IDF forces:

The soldiers and commanders [of the enemy] must limit their use of weapons and tactics that lead to the harm and unnecessary loss of people and [destruction of] civilian facilities. It is difficult for [the enemy] to get the most use out of their firearms, especially of supporting fire in some areas.

⁴¹⁹ See *Captured Hamas Combat Manual Explains Benefits of Human Shields*, IDF (Aug. 4, 2014), available at <http://www.idfblog.com/blog/2014/08/04/captured-hamas-combat-manual-explains-benefits-human-shields/> (quoting Hamas’s Izz al-Din al-Qassam Brigades doctrinal manual).

The presence of civilians creates many pockets of resistance against the approaching forces. This poses difficulties [to the enemy] such as

- *Difficulties in opening fire.*
- *Difficulties in controlling the civilians during and after the missions.*
- *[The enemy's] need to provide medical and food assistance to [our] civilians.*

The damage to houses raises the hatred of our citizens towards [the IDF] and increases their support of the city defender [Hamas].



Above: Excerpts from Hamas’s “A Chapter in Urban Combat” military doctrine manual, recovered by IDF forces operating within the Gaza Strip during the 2014 Gaza Conflict. (Source: IDF)

259. The widespread and systematic implementation of the practices described in these documents was evident throughout the 2014 Gaza Conflict. In exploiting the civilian presence in order to impair the IDF’s ability to operate, Hamas and other terrorist organisations significantly increased the risk of harm to Gaza’s civilians. Hamas and other terrorist organisations increased the risk of harm to civilians by conducting military operations in civilian areas and by encouraging — and even coercing — civilians to ignore IDF warnings and remain in the zone of hostilities. This risk was exacerbated by Hamas and other terrorist organisations donning civilian garb and disguising militants as medical personnel — practices that made the IDF’s efforts to discern militants from civilians more difficult and further endangered civilians unwillingly present in the zone of hostilities.⁴²⁰

260. On top of all the dangers inherent in urban warfare is the natural fog of war. Inevitable uncertainties exist in combat. Despite the best efforts of military forces, there is always the possibility that forces may not be aware of the full picture, technology may suffer malfunctions, and the employment of force may result in unintended consequences. Intelligence is never perfect. For example, unpredictable secondary explosions may result from operations involving hidden weapons

⁴²⁰ Hamas’s practice in using the civilian environment as a mask for its military activities is also reflected in its efforts to conceal the identities of militants killed during the 2014 Gaza Conflict. For more information on this issue, see Annex: *Palestinian Fatality Figures in the 2014 Gaza Conflict*, also available at <http://mfa.gov.il/ProtectiveEdge/Documents/PalestinianFatalities.pdf>.



caches or booby-trapped buildings. Commanders are not infallible. When combat must take place in an urban environment — and particularly, in a densely populated area — harm to civilians and civilian structures may be inevitable.

261. This is the environment in which the IDF had to operate during the 2014 Gaza Conflict, and any analysis of the IDF’s conduct during the Conflict must take this challenging environment into account.

D. IDF Conduct during the 2014 Gaza Conflict

262. The increasing rocket and mortar attacks, as well as the increasing threat of tunnel infiltrations from the Gaza Strip, created an imperative necessity for Israel to launch Operation Protective Edge. In planning and carrying out this Operation, the IDF exercised great care to mitigate the harm to civilians, particularly in the Gaza Strip’s urban areas. As detailed below, the IDF devoted significant resources to ensuring compliance with the Law of Armed Conflict, including the rules relating to distinction, precautions, proportionality, means and methods of warfare, detention and humanitarian relief.⁴²¹

1. Distinction

263. In accordance with the Law of Armed Conflict, the IDF scrupulously observed the principle of distinction, only targeting persons where there was reasonable certainty that they were members of organised armed groups or civilians directly participating in hostilities, and only targeting structures where there was reasonable certainty that they qualified as military objectives. The IDF did not deliberately target civilian objects or civilians not directly participating in hostilities.

a. Targeting of Persons

264. **Members of Organised Armed Groups.** Organised armed groups are organised entities that operate on behalf of a party to a conflict and that are charged with conducting hostilities against

⁴²¹ This commitment to compliance with international law was reflected in statements made by senior commanders in the IDF and by members of the Government of Israel. For example, on January 9, 2015, the (then) IDF Chief of General Staff remarked that “The IDF. . . are the forces of a democratic and lawful country. . . . We operate according to international law. . . . We [make] huge effort[s] to prevent . . . civilian casualties as much as we can.” *Video: GEN Dempsey and Israeli Lt Gen Gantz hold Press Conf[er]ence*, Defense Video & Imagery Distribution System (Jan. 9, 2015), available at <http://www.dvidshub.net/video/386207/gen-dempsey-and-israeli-lt-gen-gantz-hold-press-conference#.VLI40ZXec0>.



the adversary. Under the Law of Armed Conflict, members of organised armed groups may be attacked at any time by the sole virtue of their membership,⁴²² unless they become *hors de combat* or serve a function (such as medical personnel) which entitles them to special protection.

265. Within the Gaza Strip, Hamas and other terrorist organisations operate several organised armed groups. For example, Hamas's primary military wing (the Izz al-Din al-Qassam Brigades) is an organised armed group, and its members are therefore lawful targets of attack at all times and in all places (except for when such persons are *hors de combat* or entitled to special protection due to their particular function). Another such group is Hamas's so-called "Naval Police," which is responsible not only for maritime policing activities but also for continuous and pre-planned attacks against the Israeli Navy, in close cooperation with the Izz al-Din al-Qassam Brigades. As organised armed groups, their members are legitimate targets under customary international law, even when they are not in the act of preparing or conducting military activities.

266. In determining whether a particular entity constitutes an organised armed group for targeting purposes, the IDF relies on comprehensive, timely intelligence assessments (which are reviewed and updated as necessary) and consultations with military lawyers as well as with the highest military echelons. Such determinations have been subject to oversight by Israel's highest legal echelons, including the Ministry of Justice.

267. Throughout the 2014 Gaza Conflict, the IDF attacked members of organised armed groups belonging to Hamas and other terrorist organisations operating in the Gaza Strip. Given that such persons often conducted their military activities from within presumptively civilian sites, the IDF in many cases had little choice but to target them in these locations. For example, on July 8, the IDF targeted Hafet Hamed, a Palestinian Islamic Jihad senior military commander (equivalent in rank and authority to a battalion commander), as well as other militants who were with him outside his home and whom the IDF assessed to be taking part in an operational briefing for impending attacks against Israel.⁴²³ In another example, on August 4, the IDF conducted a strike against Omar Al-Rahim, a senior commander in Palestinian Islamic Jihad (at a rank equivalent to that of a deputy brigade commander). At the time of the strike, Al-Rahim was located in the house of Ramadan Al-Bakri, a

⁴²² State practice and *opinio juris* make clear that a member in an organised armed group need not have a "continuous combat function" in order to be targetable under customary international law. This is the case notwithstanding the approach taken in the interpretative guidance prepared by the ICRC. See ICRC, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* 27 (prepared by Nils Melzer, May 2009). For more on this issue, see *Military Advocate General Maj. Gen. Dan Efrony's Comments on Contemporary Armed Conflict*, IDF (Feb. 17, 2015), available at <http://www.idfblog.com/chief-military-advocate-general-mag-gen-dan-efronys-comments-contemporary-armed-conflict/>.

⁴²³ *Decisions of the IDF Military Advocate General regarding Exceptional Incidents that Occurred during Operation 'Protective Edge' – Update No. 2*, IDF MAG Corps (Dec. 7, 2014), available at <http://www.mag.idf.il/261-6958-en/Patzar.aspx>.



Palestinian Islamic Jihad militant, together with other members of organised armed groups.⁴²⁴ Targeting such individuals as members of organised armed groups is permissible under Law of Armed Conflict, subject to proportionality and other relevant legal rules.

268. **Civilians Taking a Direct Part in Hostilities.** In addition to members of organised armed groups, civilians who have forfeited their protected civilian status are legitimate targets. Under the Law of Armed Conflict, civilians who take a direct part in hostilities become legitimate targets for attack during and for such time as they so participate in hostilities. “Direct participation in hostilities” is a legal term for the circumstances in which a civilian forfeits protection from attack because the individual is sufficiently involved in military action, so as to render him a lawful target. The Law of Armed Conflict does not contain an exhaustive list of activities that amount to direct participation in hostilities but rather mandates a careful evaluation of the circumstances of each case. To this end, the IDF has provided its personnel with a list of activities amounting to direct participation in hostilities, which accords with the relevant guidelines given by Israel’s Supreme Court.⁴²⁵

269. In accordance with the Law of Armed Conflict, during the 2014 Gaza Conflict IDF forces attacked individuals who, among other things, were launching rockets, assembling mortars for immediate use, or giving orders regarding military activity. The IDF did not target Hamas lawmakers, politicians or law-enforcement officials because of their affiliation with Hamas. The IDF recognises that civilians affiliated with Hamas are not lawful targets as such. In cases where the IDF targeted persons holding positions in Hamas, it did so based on reliable intelligence that the individuals had become lawful targets under the Law of Armed Conflict by directly participating in hostilities (*e.g.*, planning and/or commanding attacks against Israeli civilians or soldiers) or by serving as members of organised armed groups.

⁴²⁴ As a result of the strike, Al-Rahim was severely injured, and Ibrahim Al-Masharawi, who was a senior commander (at a rank equivalent to a battalion commander) in the Palestinian Islamic Jihad, was killed, along with Al-Bakri. According to media reports, four civilians were also killed as a result of the strike. For more information on this incident, and how it complied with the Law of Armed Conflict, see *Decisions of the IDF Military Advocate General regarding Exceptional Incidents during Operation ‘Protective Edge’ – Update No. 3*, IDF MAG Corps (Mar. 22, 2015), available at <http://www.law.idf.il/163-7183-en/Patzar.aspx>.

⁴²⁵ Israel’s Supreme Court has interpreted “direct participation in hostilities” as including, *e.g.*, “a civilian bearing arms (openly or concealed) who is on his way to the place where he will use them against the army, at such place, or on his way back from it,” as well as “a person who collected intelligence on the army, whether on issues regarding the hostilities . . . or beyond those issues . . . ; a person who transports unlawful combatants to or from the place where the hostilities are taking place; a person who operates weapons which unlawful combatants use, or supervises their operation, or provides service to them, be the distance from the battlefield as it may.” See *Public Committee against Torture in Israel v. Government of Israel*, H CJ 769/02 at ¶¶ 34-35 (Dec. 14, 2006), available at http://elyon1.court.gov.il/files_eng/02/690/007/A34/02007690.a34.pdf.



270. Notwithstanding the fact that Israel only targeted members of organised armed groups and civilians directly participating in hostilities — and that, as discussed below, Israel went to great lengths to mitigate the risk of harm to civilians — uninvolved civilians were killed during the 2014 Gaza Conflict.⁴²⁶ Israel did not intend these casualties and regrets that they occurred. The civilian casualties from the 2014 Gaza Conflict, however, are far lower than some have reported, because Hamas deliberately inflated the total number of civilian casualties, for example by including militants and civilians directly participating in hostilities.⁴²⁷

b. Targeting of Structures and Other Objects

271. **Definition of Military Objectives.** Consistent with the principle of distinction, IDF regulations permit attacks only against objects constituting military objectives. Under the Law of Armed Conflict, “military objectives” are limited to those objects that make an effective contribution to military action by their nature, location, use, or purpose, and whose total or partial neutralisation, destruction, or capture offers a definite military advantage in the circumstances ruling at the time. Under this definition, any civilian object may become a military objective when used for military purposes, such as a school being used to store rockets, a residential home regularly being used as an operational planning site or a vehicle being used to transport weaponry. Determining whether a certain structure is a military objective thus depends on the specific circumstances of each case.

272. During the 2014 Gaza Conflict, the IDF conducted over 6,000 aerial strikes against military objectives, many of which had been intentionally situated within densely populated areas. Among the objectives attacked were buildings used by organised armed groups for command, control, communications, and intelligence activities; as armament production and storage, and launching sites; and to house openings and exits to combat and cross-border tunnels.

273. **Military Objectives by Nature, including Ostensibly Civilian Infrastructure that is Actually Military in Nature.** Under the Law of Armed Conflict, military objectives by nature are lawful objects for attack. During the Conflict, the IDF attacked many such objects belonging to various organised armed groups in the Gaza Strip — including military bases, surveillance posts, rocket and mortar launching sites and training camps of the Izz al-Din al-Qassam Brigades.

⁴²⁶ When applying the principle of distinction to assess the legality of an attack that resulted in death or injury to individuals, it is essential to distinguish between harm resulting from a deliberate attack on an individual and harm resulting as an incidental consequence of an attack on a lawful military objective in close proximity.

⁴²⁷ For a discussion of Hamas’s inflation of “civilian” casualties, see Annex: *Palestinian Fatality Figures in the 2014 Gaza Conflict*, also available at <http://mfa.gov.il/ProtectiveEdge/Documents/PalestinianFatalities.pdf>.



274. Some military objectives by nature may appear to be civilian, although they are in fact an integral part of the military apparatus of groups such as Hamas. For example, posts and bases of operation belonging to Hamas’s so-called “Naval Police” qualified as military objectives, because the Naval Police is an organised armed group, its posts and bases of operation make an effective contribution to military action, and their destruction offers a definite military advantage. The headquarters of Hamas’s so-called “Ministry of Interior” was also a military objective because the Ministry was responsible for commanding the military operations of several organised armed groups against Israeli civilians and soldiers. Other governmental buildings in the Gaza Strip were also used by Hamas for military purposes, such as storing rockets, planning and coordinating specific attacks, and servicing military equipment and vehicles. The IDF did not target governmental institutions solely because of their affiliation with Hamas. Rather, the IDF attacked only those facilities that qualified as military objectives under the Law of Armed Conflict.

275. Civilian Infrastructure Constituting Military Objectives Due to Military Use or Purpose. For many years Hamas and other terrorist organisations operating in the Gaza Strip have routinely used civilian objects for military purposes, thereby rendering them lawful targets. During the 2014 Gaza Conflict, this phenomenon was especially common. Hamas and other terrorist organisations used a significant number of residential buildings, schools, mosques, and even medical and U.N. facilities for military operational purposes, most often as command and control centres or as arms depots. Furthermore, throughout the ground campaign IDF forces confronted heavy attacks from within presumptively civilian structures.⁴²⁸

276. *Residential Buildings.* In some cases, the IDF — after employing all feasible precautions and making proportionality assessments — attacked military objectives that were situated within residential buildings. For example, on July 8, the IDF struck a weapons depot and operational planning site located in the residence of Ibrahim al-Shawaf, a senior military commander in the Palestinian Islamic Jihad. (The planning process undertaken for this target is detailed above on pages 142-145.) The IDF considered this site a legitimate military target not because al-Shawaf (a member of an organised armed group) lived there, but because the site was used as an operational planning site and because a large number of weapons had been stored there and designated for attacks against Israeli citizens. During the IDF’s strike, secondary explosions of the weaponry hidden inside the building further confirmed that it was a disguised weapons depot and thus constituted a military objective.

⁴²⁸ Because the Law of Armed Conflict includes prohibitions regarding the use of civilians and/or civilian property in an effort to immunize otherwise lawful objectives from enemy attack (for example by co-mingling military assets among the civilian population or by using the movement of civilians to cloak military assets or activities), in many cases these Hamas tactics were themselves unlawful. For more information, see Chapter IV (Hamas’s War Crimes).



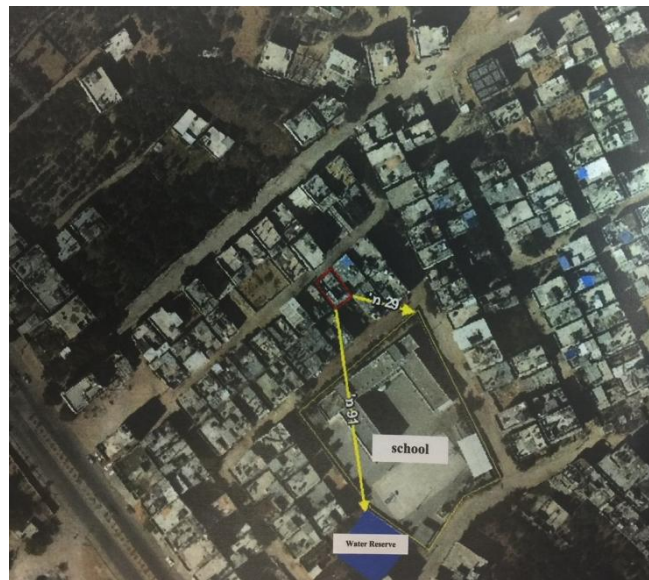
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Above: Aerial footage of the strike against the weapons depot in al-Shawaf's house on July 8, 2014, including the target and its surroundings, the primary explosion, the secondary explosions, and a photo of the target following the strike (as taken in connection with the IDF's Battle Damage Assessment). For the full video of the strike, see *IDF Pinpoint Strike on Weapons Storage Facility in Gaza*, YouTube (July 9, 2014), <https://youtu.be/i5KJ3WMxArk>.



277. Commanders in Hamas’s Izz al-Din al-Qassam Brigades also made widespread use of residences for military purposes, often situating command and control centres inside their homes. For instance, on July 9, the IDF struck the Jabalia house of Ahmed Randur, the commander of Hamas’s Northern Brigade, who was planning, directing and executing military operations from the building. The IDF attacked this command and control centre only after providing several warnings to civilians, making sure they had evacuated, and confirming that the school building located next to the site was not being used at the time as either a school or a civilian shelter. Three “roof knocks” were carried out as a further precaution prior to the attack,⁴²⁹ and a large secondary explosion was identified at the site following the attack. When conducting a Battle Damage Assessment, the IDF discovered an opening to a tunnel or bunker beneath the site.



Above: Randur’s house, used as a command and control centre, situated in the vicinity of a school and other sensitive sites. (Source: IDF)

278. Houses belonging to certain Hamas political leaders in the Gaza Strip were also used for military purposes. For example, on July 12, the IDF attacked the house of Yehya Sinwar in Khan Yunis. As one of the senior leaders of Hamas in the Gaza Strip, Yehya Sinwar controls and directs the activities of the Izz al-Din al-Qassam Brigades, Hamas’s military wing. Sinwar’s house in Khan Yunis was continuously being used for important military purposes, which reliable intelligence verified as making an effective contribution to Hamas’s military action and which thus rendered the home a military objective. Similarly, on July 21, the IDF attacked the house of Alaa al-Rafati in Gaza City. Al-Rafati is Hamas’s Minister of the Economy, and at the time of the attack his house was being used by the Izz al-Din al-Qassam Brigades as a command and control centre for the Al-

⁴²⁹ For more information regarding “roof knocking,” see *infra* Section D.2.c.



Shati battalion, and thus constituted a lawful military objective. Before striking Rafati's and Sinwar's houses, the IDF provided effective advance warnings and verified that civilians had evacuated.



Above: Al-Rafati's house, used as a command and control centre, situated in the immediate vicinity of an UNRWA facility (marked in yellow). (Source: IDF)

279. Hamas and other terrorist organisations also located many of their military objectives within multi-story residential buildings. For example, Hamas situated several command and control centres on multiple floors of the "Zafer 4" building in Sabra Tal al-Hawa. After providing several effective advance warnings to the building's occupants and neighbours,⁴³⁰ and verifying that it was fully vacated, the IDF struck the building on August 23. No civilians were harmed in the attack.

280. *Schools.* Hamas and other terrorist organisations operating in the Gaza Strip exploited schools by transforming them into military objectives. Throughout the 2014 Gaza Conflict, these terrorist organisations systematically used schools in Beit Lahiya, Jabalia, Sheikh Radwan, Shuja'iyeh, Al-Tuffah, and Al-Zaitoun, among other places, for military purposes including weapons storage, command and control of operations, and rocket launches. Terrorist organisations also deliberately stored weapons in schools belonging to the United Nations Relief and Works Agency ("UNRWA"), as acknowledged more than once by the Agency itself, as well as by the United Nations Secretary General and by an independent Board of Inquiry established by the U.N. Secretary General and headed by a retired Major General from the Netherlands (the "U.N. Board of Inquiry"),

⁴³⁰ These effective advance warnings included multiple phone calls to the building's occupants and neighbours which began over an hour before the strike was carried out. The IDF also conducted a "roof knocking," after which additional phone calls were made to ensure evacuation.



which found that weaponry was stored in a school in which hundreds of persons were present.⁴³¹ The IDF has also recorded instances of mortar fire from within UNRWA schools, which were acknowledged by the U.N. Board of Inquiry.⁴³²

281. The use of educational facilities for military purposes rendered these facilities military objectives under the Law of Armed Conflict. The IDF nevertheless made every effort to avoid attacking them. However, in a very few cases, military necessity compelled Israel to attack educational facilities that were used for military purposes. (In none of these cases, though, was the object of attack an UNRWA school.) For example, starting on August 2, militants repeatedly fired mortars at Israeli residential communities from within a compound in Shuja'iyeh comprised of four schools, including UNRWA's Shuhadda al-Manar Elementary "B" School, as well as a medical clinic and mosque. These mortar attacks continued unabated for days. In order to put an end to this continuing threat, on the evening of August 25, after 11 mortars had been fired at Israeli residential communities over the course of that day, the IDF struck the launchers within the compound.

⁴³¹ See Chapter IV (Hamas's War Crimes), Section B. See also *Summary by the Secretary General of the report of the United Nations Headquarters Board of Inquiry into certain incidents that occurred in the Gaza Strip between 8 July and 26 August 2014* (U.N. Doc. S/2015/286), at ¶¶ 55, 67, 76, 80 (27 Apr. 2015) ("U.N. Board of Inquiry Summary"), available at http://www.un.org/ga/search/view_doc.asp?symbol=s/2015/286. The U.N. Board of Inquiry was established by the U.N. Secretary General to identify any gaps in the U.N.'s procedures and assess any actions that may be taken to prevent the recurrence of similar events in the future. It did not constitute a judicial body nor make any findings of legal liability. The report of the U.N. Board of Inquiry was submitted to the U.N. Secretary General on Feb. 5, 2015, and remains an internal U.N. document, not for public release. While Israel cooperated fully with the Board of Inquiry, it maintains reservations concerning some aspects of the Board of Inquiry's methodology and findings.

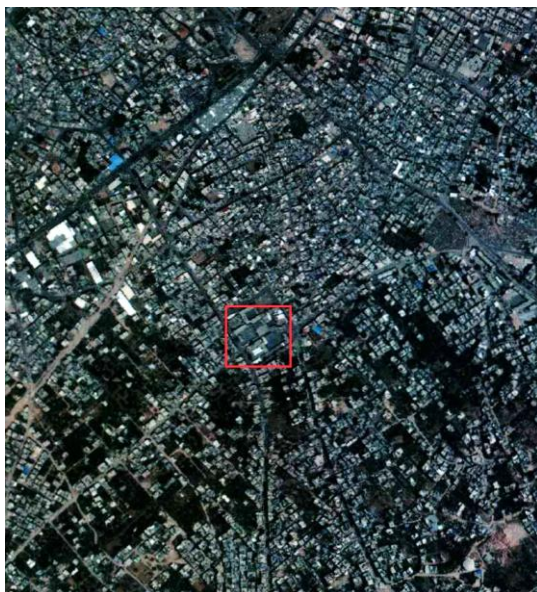
⁴³² See Chapter IV (Hamas's War Crimes), Section B; U.N. Board of Inquiry Summary, *supra* note 431, at ¶¶ 70, 82. The U.N. Board of Inquiry also found that Palestinian terrorist organisations conducted military operations, including the launching of projectiles, from the immediate vicinity of UNRWA schools. *Id.* at ¶ 65.



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Left and below: Aerial photographs of the compound in Shuja'iyyeh from which mortars were fired at Israeli residential communities. Launch areas are marked with red dots, some of which represent more than one launch. The aerial photograph bottom-right shows in greater detail mortar launches from the compound over the course of a single day on August 25, 2014. During the 2014 Gaza Conflict, the Al-Salaah Mosque (marked on the right side of the compound in the first image above) operated as a command-and-control centre for a senior Hamas commander (equivalent in authority and rank to a Battalion Commander) who was responsible for military operations in the area. This target was attacked by IDF forces on July 20, 2014. (Source: IDF)





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282. The IDF took extensive precautions to minimise the collateral damage expected from any attacks on educational facilities that had become legitimate military targets. Whenever feasible, the IDF issued extensive warnings and timed attacks so as to avoid, or in any event, mitigate the risk of civilian harm.⁴³³

283. *Mosques.* Hamas and other terrorist organisations also routinely used mosques all over the Gaza Strip for various military purposes. For instance, on July 29, following a firefight with militants located in al-Tawheed mosque in Khuza'a, IDF forces discovered a Hamas military compound inside the mosque, which included a weapons stockpile and two entrances to combat tunnels in the basement prayer room.⁴³⁴

⁴³³ For an example of the process that the IDF implemented in attacking such facilities, see *infra* Section D.2.b, which shows the operational order concerning the attack of launchers in the compound in Shuja'iyeh referred to above.

⁴³⁴ See also Chapter IV (Hamas's War Crimes), Section B.



Above: Photographs of weaponry and a tunnel shaft uncovered in the al-Tawheed mosque in Khuza'a, by IDF forces. See IDF, *IDF Soldiers Find Mosque with Weapons and Tunnel Openings*, YouTube (July 31, 2014), <https://www.youtube.com/watch?v=aWkjwfkx-qM>.



284. Whenever the IDF attacked mosques that were legitimate military targets, it took all feasible precautions, including with regard to the timing of attacks.⁴³⁵ For example, the IDF carried out its August 9 strike on a combat tunnel that Hamas had located in the Hasan al-Bana Mosque in Al-Zaitoun, before the time for morning prayers. The IDF provided an effective advance warning via phone calls to residences neighbouring the mosque and employed real-time visual surveillance in order to determine that that no civilians were present at the time of the attack.

285. *Medical facilities and vehicles.* Hamas and other terrorist organisations unlawfully commandeered medical facilities and vehicles — including hospitals, clinics, and ambulances — for military purposes. Under the Law of Armed Conflict, medical facilities and vehicles are afforded special (though not absolute) protection from attack. Accordingly, IDF regulations and orders, including those issued during the 2014 Gaza Conflict, strictly limited the circumstances in which such objects could be attacked. Unfortunately, on a number of occasions Hamas used medical facilities to endanger IDF forces and the Israeli civilian population, leaving the IDF with little choice but to respond. For example, between July 11 and July 23, Hamas militants repeatedly fired at IDF forces from, and set up military surveillance devices within, the Al-Wafa hospital compound. In response to the shooting, which posed a serious and immediate threat, the IDF returned fire in a precise and discriminating manner that did not cause any harm to civilians. That response was permissible under the Law of Armed Conflict. The IDF repeatedly warned official entities in the Gaza Strip, as well as the Palestinian Authority and international organisations, that military use of the hospital must stop. On July 23, after these warnings went unheeded and militants again fired at IDF forces from the hospital compound — and after confirming multiple times that staff members and other civilians were no longer present and that the hospital was not being used for civilian purposes — the IDF attacked the site.⁴³⁶

286. **Evidence of Military Use.** In the context of wide-scale military operations, it is often extremely difficult to provide evidence demonstrating exactly why certain structures were damaged.⁴³⁷ While the IDF targets only military objectives, forensic evidence that a particular site was used for military purposes is rarely available after an attack. Such evidence is usually destroyed in the attack or, if time allows, removed by the terrorist organisations who exploited the site in the

⁴³⁵ See *infra* Section D.2.c for information regarding the IDF's efforts to collate and disseminate information regarding the times for prayers and ritual feasts during the month of Ramadan.

⁴³⁶ IDF, *Warning Call to Wafa Hospital Before IDF Targets Site*, YouTube (July 23, 2014), <http://youtu.be/8O9AHzUKYk8>.

⁴³⁷ For more on this issue, see Chapter VII (Israel's Investigations of Alleged LOAC Violations), Section A.2. See also *Letter dated 27 April 2015 from the Secretary-General addressed to the President of the Security Council* presenting the U.N. Board of Inquiry Summary, *supra* note 431. In his letter, the Secretary General "recognize[d] the difficulties that [the U.N. Board of Inquiry] naturally faced in obtaining clear and reliable evidence about what precisely happened in each of the incidents ... occurring, as they did, in a situation of armed conflict, and, in some but not all cases, in close proximity to where intense fighting was taking place."



first place. It is therefore unsurprising that forensic evidence of military use cannot usually be traced following attacks. As is the case with most militaries, the IDF unfortunately cannot publicise detailed reasoning behind every attack without endangering intelligence sources and methods.⁴³⁸

287. **Damage to Objects as a Collateral Consequence of Lawful Attacks.** Not all objects damaged during the 2014 Gaza Conflict were necessarily military objectives or damaged as the result of deliberate attacks. In many cases, the damage to such objects was collateral to attacks against other objects or persons qualifying as lawful targets. As discussed in more detail in Section D.3 below, the Law of Armed Conflict does not prohibit collateral damage so long as it complies with the rule of proportionality, *i.e.*, so long as it is not expected to be excessive in relation to the anticipated military advantage from an attack on a military objective.

288. Collateral damage is an inevitable consequence of armed conflict, particularly when hostilities occur in urban areas. A case in point is the IDF's July 9 attack on underground rocket launching sites positioned just a few dozen metres away from a Red Crescent station in Jabalia. The IDF forces knew the location of the Red Crescent station and had marked it in the IDF's operational systems as a sensitive site. Furthermore, in planning and carrying out the attack, the IDF took multiple precautionary measures intended to minimise incidental damage to the station and to any civilians who might be inside or nearby. These precautions included conducting the attack at night and carefully selecting munitions that would cause the least incidental damage while still achieving the objective sought. Although the IDF successfully struck the military target, the force of the blast also propelled some objects, which regrettably caused incidental damage to the Red Crescent station and reportedly to several workers inside the station, as well as nearby ambulances. These unfortunate effects did not render the attack unlawful, but instead constituted lawful collateral damage and incidental (albeit unfortunate) injury resulting from the attack on the nearby military objective.⁴³⁹

⁴³⁸ The Law of Armed Conflict does not include any requirement or obligation to publicise such information.

⁴³⁹ For further details, see Chapter VII (Israel's Investigations of Alleged LOAC Violations), Section D.



Above: Rocket launch site situated adjacent to Red Crescent Station. (Source: IDF)

289. Even when munitions directed at military targets unintentionally hit civilian objects, the collateral damage caused does not by itself render the attack unlawful. Such was the case with the IDF tank shells that on July 29 unfortunately missed their intended target and hit fuel tanks serving Gaza’s power plant (but not the power plant itself). In this incident, IDF tank forces had legitimately directed an attack against several individuals who were believed to be carrying anti-tank rockets intended for immediate use.⁴⁴⁰

2. Precautions in Attack

290. Throughout the 2014 Gaza Conflict, the IDF took great care to mitigate the effects of hostilities on the civilian population⁴⁴¹ and, in accordance with the Law of Armed Conflict, used precautionary measures wherever feasible.⁴⁴² These precautions included the verification of targets

⁴⁴⁰ As discussed *infra* at Section E.2, during the 2014 Gaza Conflict Israel provided electricity to the Gaza Strip via power lines running from Israel and made extensive efforts to facilitate the repair of any power lines that were damaged as a result of the fighting. Nevertheless, the MAG referred the July 29, 2014 incident to the Fact-Finding Assessment Mechanism for examination, the findings of which have been provided to the MAG. The MAG’s decision whether to order the opening of a criminal investigation into this incident is still pending.

⁴⁴¹ As the (then) Chief of General Staff, Lt. Gen. Benjamin (Benny) Gantz noted during the 2014 Gaza Conflict, “We will continue to do everything possible in order not to harm civilians.” Elad Benari, *Gantz to Residents of Gaza: Stay Away from Hamas*, Arutz Sheva (July 29, 2014), available at http://www.israelnationalnews.com/News/News.aspx/183454#_VPW4HXysVp5.

⁴⁴² Under customary international law, doing “everything feasible” means doing everything practically possible, taking into account all circumstances ruling at the time, including humanitarian and military considerations.



based on timely intelligence gathering, extensive warning systems, and limitations on the timing of attacks and the munitions used. Although the IDF's precautionary efforts could not eliminate the possibility of civilian harm, they met — and often exceeded — Israel's obligations under international law.⁴⁴³ The IDF's use of precautionary measures during the 2014 Gaza Conflict was unprecedented in its scale and rigor when compared to the practices of other militaries engaged in urban combat.

a. Verification of the Nature of Targets

291. Consistent with their obligations under the Law of Armed Conflict, IDF personnel who plan or decide upon an attack do everything feasible to verify that targets are lawful military objectives and that they are not subject to special protection. To make sure that all reasonably available information is taken into account, the IDF assigns a high priority to the collection, collation, evaluation and distribution of timely intelligence relating to targets. Accordingly, during the 2014 Gaza Conflict, the IDF devoted substantial efforts and resources to verifying the nature of targets.

b. Provision of Effective Advance Warnings

292. To notify civilians of impending IDF operations and to instruct civilians how to avoid harm, the IDF employed a comprehensive advance warnings system, with multiple, overlapping notification procedures.

293. **Definition and Aim of Effective Advance Warnings.** Under customary international law, warnings must be given prior to attacks that are expected to cause civilian casualties or injuries, unless the circumstances do not permit.⁴⁴⁴ A warning qualifies as “effective” and “in advance” so long as civilians can understand it and have sufficient time to protect themselves by evacuating, seeking shelter, or taking other appropriate action. Once an effective warning is given, international law does not require additional warnings.

⁴⁴³ These efforts were acknowledged by foreign militaries, including by the Chairman of the U.S. Joint Chiefs of Staff Gen. Martin Dempsey, who said: “I actually do think that Israel went to extraordinary lengths to limit collateral damage and civilian casualties. . . . [I]n this kind of conflict, where you are held to a standard that your enemy is not held to, you’re going to be criticized for civilian casualties. . . . [T]hey did some extraordinary things to try to limit civilian casualties, to include making it known that they were going to destroy a particular structure.” Indeed, the Chairman noted that he “sent a team of senior officers and non-commissioned officers over to work with the IDF to get the lessons from that particular operation in Gaza, to include the measures they took to prevent civilian casualties” *A Conversation with General Martin Dempsey, Chairman of the Joint Chiefs of Staff*, Carnegie Council for Ethics in International Affairs (Nov. 6, 2014), available at <http://www.carnegiecouncil.org/studio/multimedia/20141106/index.html>.

⁴⁴⁴ Consequently, the obligation to warn does not apply where an attack may only be expected to cause mere inconvenience to civilians or damage to civilian property.



294. As mentioned above, the IDF has issued directives that, among other things, explain when warnings must be given, when warnings are considered effective under the Law of Armed Conflict, and how commanders must consider related legal obligations, such as the rule of proportionality.

295. **Content of Warnings.** Warnings disseminated during the 2014 Gaza Conflict clearly specified, in Arabic, the dangers arising from the hostilities, the areas in which such dangers were likely to arise, and the actions civilians should take to protect themselves. Where feasible, the warnings identified evacuation routes. Far from having no place to flee, the population could — and the vast majority of it did — leave the main areas where hostilities were taking place. In situations where evacuation would be dangerous, the IDF still sought to inform civilians about steps they should take to minimise their risk of injury, such as staying inside their homes. For example, in the morning on August 1, after the resumption of hostilities following a ceasefire violation by Hamas and the attempted kidnapping of an IDF officer, the IDF warned the residents of Rafah through telephone calls and text messages that “due to the IDF’s increased operational activity against militants, you are asked to remain in your homes, and not go out into the streets. Whoever leaves his home, risks injury and endangers his life.” Later that afternoon, as the intensive hostilities continued, the IDF disseminated additional telephone and text messages warning residents not to travel on the roads leading from Rafah to Khan Yunis because of concentrated IDF activity in that area.

296. **Warning Types and Dissemination Methods.** During the 2014 Gaza Conflict, the IDF issued a variety of different warnings, in Arabic, to minimise civilian harm.

- First, the IDF issued general warnings for civilians in the Gaza Strip to stay away from sites where Hamas and other terrorist organisations were conducting combat activities.
- Second, the IDF distributed regional warnings in areas where it expected to undertake attacks or significant operations.
- And third, the IDF issued highly specific warnings to particular buildings, households and persons that were expected to be affected by an attack on a military objective.

297. The IDF often communicated warnings through multiple channels simultaneously — leaflets dropped from the air, phone calls, text messages, and radio and TV broadcasts — even when using only some of these methods would have been sufficient under international law. As a result, many civilians received the same warning through several different media.

298. For example, at 07:00 on July 13, the IDF warned the residents of Beit Lahiya of attacks scheduled to take place in the area several hours later. In order to reach as many residents as possible, the IDF dropped 10,000 leaflets from the air. The warning stated:



State of Israel

Military Notice

To the residents of Beit Lahiya

The IDF intends to carry out airstrikes against the militants and terrorist infrastructure belonging to them in the areas from where rockets are launched towards Israel, as follows:

From east of al-Atatra to al-Salatin road, and west and north of Muascar Jabalia.

For your safety:

You are requested to leave your places of residence immediately and to move to south Jabalia al-Balad, by way of:

al-Faluja road, until 1200 on Sunday 13/7/2014.

The IDF does not wish to harm you or your family members. The fighting is temporary and short. Anyone who does not heed these warnings and evacuate immediately endangers their lives and those of their families!!!

You have been warned!

Israel Defense Forces Headquarters

بلاغ عسكري

الى سكان بيت لاهيا

سيقوم جيش الدفاع الاسرائيلي بالعمل بقوة وعزم للضرب من الجو العناصر الارهابية والبنى التحتية التابعة لها في المناطق التي تطلق منها الصواريخ باتجاه دولة اسرائيل وهي كالاتي:
من شرق العظاطرة وحتى شارع السلاطين ومن غرب وشمال معسكر جباليا.

من اجل سلامتكم:

عليكم اخلاء بيوتكم حالا وفورا والاتجاه الى جنوب جباليا البلد عبر الطريق التالي :

شارع عالفالوجا وهذا حتى الساعة ١٢ ظهر يوم الاحد ١٣ / ٧ / ٢٠١٤.

جيش الدفاع الاسرائيلي غير معني بالمس بكم وبابناء عائلاتكم, هذه العمليات مؤقتة وقصيرة.

كل من سيخالف هذه التعليمات ولا يخلي بيته على الفور يعرض حياته وحياة ابناءه للخطر!!!!

اعذر من انذرا!

قيادة جيش الدفاع الاسرائيلي

299. Between 6:15 and 9:15 that morning, the IDF provided the same message via pre-recorded mass phone calls to residents of Beit Lahiya. During this time, radio and TV stations in Beit Lahiya repeatedly broadcast similar messages.⁴⁴⁵ To further reinforce the message that civilians should evacuate, the IDF again went beyond the requirements of international law, and dropped another 10,000 leaflets over Beit Lahiya in the early afternoon of July 13.

⁴⁴⁵ These warnings were in addition to those provided by the IDF on July 10, 2014 through mass recorded phone-calls and radio broadcasts, of impending IDF activity in the Beit Lahiya area.



300. Similarly, in Shuja'iyeh on July 15 and 16, the IDF repeatedly broadcast over radio and television and made tens of thousands of pre-recorded phone-calls with the following message:

Military Notice
To the residents of Shuja'iyeh and al-Zaitoun
Despite the ceasefire initiative, Hamas and other terrorist organisations continued to launch rockets, and therefore

*The IDF will heavily strike from the air militants and terrorist infrastructure belonging to them
In the areas of Shuja'iyeh and al-Zaitoun from which rockets are being launched against the State of Israel.*

For your safety:
*You should leave your places of residence immediately and to move to the centre of Gaza City
until 0800 on Wednesday, 16/7/2014.*

*The IDF does not wish to harm you or your family members. Evacuation of these areas is intended to protect
your lives!*

*Anyone who does not heed these warnings and evacuate immediately endangers their lives and those of their
families.*

You have been warned!

Israel Defense Forces Headquarters

بلاغ عسكري
الى سكان الشجاعية والزيتون

بالرغم من مبادرة وقف اطلاق النار حماس والحركات الارهابية الاخرى استمروا فى اطلاقهم النار لهذا
سيقوم جيش الدفاع الاسرائيلي بالعمل بقوة وعزم للضرب من الجو العناصر الإرهابية والبنى التحتية
التابعة لها
في منطقة الشجاعية والزيتون التي تطلق منها الصواريخ باتجاه دولة اسرائيل.

من اجل سلامتكم:

عليكم اخلاء بيوتكم حالا وفورا والاتجاه الى مركز مدينة غزة.
وهذا حتى الساعة الثامنة صباح يوم الاربعاء ١٦ / ٧ / ٢٠١٤.

جيش الدفاع الاسرائيلي لا يريد المس بكم وبأبناء عائلاتكم. الهدف من اخلاء المناطق هو لضمان حياتكم!
كل من سيخالف هذه التعليمات ولا يخلي بيته على الفور حياته وحياة ابناء عائلته في خطر.
اعذر من انذر!

قيادة جيش الدفاع الاسرائيلي

301. In the early morning hours of July 16, the IDF dropped tens of thousands of leaflets containing the above message over Shuja'iyeh. Television and radio broadcasts, as well as pre-recorded phone calls, repeated a similar message throughout the day on July 17.⁴⁴⁶

⁴⁴⁶ The message read as follows:

To the residents of the Gaza Strip, the IDF is permitting a "humanitarian pause" today, between 1000 and 1500, for your personal well-being. During this time, the IDF will hold all fire towards the Gaza Strip. Use

Footnote continued on next page



302. Following the July 17 decision to conduct a ground operation, including within Shuja'iyeh, the IDF used a multi-tiered system to warn residents of the impending operations in affected areas. Through phone calls, radio broadcasts, television broadcasts and over 150,000 leaflets, the IDF provided the following warning:

Military Notice

*To the residents of Shuja'iyeh al-Turkman and Shuja'iyeh al-Jadida
The IDF does not target any of you and does not wish any harm to you or your families.
For your own safety you are asked to evacuate your homes immediately, and travel to the centre of Gaza City.
Gathering in Gaza City is limited to west of Salah al-Din street and north of Omar al-Mukhtar street and East of al-Nasr street and south of al-Quds street.
The fighting is temporary, and when it ends everyone will return to their homes.
Following the IDF's instructions will prevent any harm to you, the civilian population.*

Israel Defense Forces Headquarters

بلاغ عسكري

إلى سكان شجاعية التركمان وشجاعية الجديدة
ان جيش الدفاع الإسرائيلي لا يستهدف ايا منكم ولا يريد إلحاق الأذى بكم وبأفراد عائلاتكم
من أجل سلامتكم، انتم مطالبون بإخلاء منازلكم فوراً والتحرك باتجاه مركز مدينة غزة.
إن التمرکز في مدينة غزة فهو محصور على التواجد غرباً لطريق صلاح الدين وشمالاً لطريق
عمر المختار وشرقاً لطريق النصر وجنوباً لطريق القدس.
ان هذه المواجهة مؤقتة الاجل وفي نهايتها سوف يعود كل فرد الى داره.
إن الانصياع لتعليمات جيش الدفاع الإسرائيلي سيحول دون إلحاق الأذى بكم، السكان المدنيين.

قيادة جيش الدفاع الإسرائيلي

303. Even after disseminating these effective warnings, the IDF again went beyond the requirements of the Law of Armed Conflict and further delayed its manoeuvre in order to provide additional warnings on July 18 and July 19. For instance, phone calls made on July 19 stated:

Footnote continued from previous page

this time properly to obtain medicines, food and any other supplies you need. During these hours, if Israel is fired upon by Hamas and other terrorist organisations, the IDF will respond with full force to those locations from where rockets are launched. IDF.



*To the residents of Shuja'iyeh al-Turkman and Shuja'iyeh al-Jadida
For your own safety, you are asked to leave your homes immediately and to move towards the centre of Gaza
City.
Gathering in Gaza City is limited to west of Salah al-Din street and north of Omar al-Mukhtar street and East
of al-Nasr street and south of al-Quds street.
Israel Defense Forces Headquarters*

إلى سكان شجاعية التركمان وشجاعية الجديدة
من أجل سلامتكم، انتم مطالبون بإخلاء منازلكم فوراً والتحرك باتجاه مركز مدينة غزة.
إن التمرکز في مدينة غزة فهو محصور على التواجد غرباً لطريق صلاح الدين وشمالاً لطريق عمر
المختار وشرقاً لطريق النصر وجنوباً لطريق القدس.
قيادة جيش الدفاع الإسرائيلي

304. In addition to regional warnings of impending military activity, the IDF issued specific warnings prior to more than a thousand attacks against individual targets. Typically, the IDF disseminated these warnings through telephone calls to civilians inside or near buildings that were military objectives. Such warnings allowed adequate time for civilians to seek shelter.⁴⁴⁷ On some occasions where the IDF provided multiple warnings, the time between the second (or third) warning and the attack may have been shorter than had it constituted the sole warning. The fluid nature of the hostilities affect the manner in which warnings may be provided, and the time available for providing warnings (while ensuring that they remain effective) may differ depending on operational circumstances.

305. **Effectiveness Assessments.** Warnings form an integral part of the planning and execution process of any IDF operation, and substantial resources are devoted to issuing them and assessing their effectiveness in providing civilians with sufficient opportunity to protect themselves. Effectiveness assessments influence further planning and decision-making and, as illustrated above, may lead to delays in operational activity. Intelligence collected by the IDF suggests that warnings provided during the 2014 Gaza Conflict were highly effective.

⁴⁴⁷ For example, on July 12, 2014, a Gazan man received a call warning him that a building nearby was about to be attacked a few minutes later and that he and his family needed to evacuate. For the recording of this call, see IDF, *Recording of Phone call Warning to a Gazan Before an Airstrike*, YouTube (July 14, 2014), <https://www.youtube.com/watch?v=7yvQz3SQxGI>. As mentioned above, this is just one of more than a thousand similar warnings given during the 2014 Gaza Conflict.



From: General Staff Command Operations Room
[redacted]

Document Reference Number: [redacted]

[Hebrew Calendar Date]

25 August 2014

Distribution List

Subject: Planned Attack on Launchers in a School from which Rockets were Launched

1. General:

- a. The IDF is in the 49th day of Operation 'Protective Edge'.
- b. During the hostilities, the IDF has refrained from causing damage to schools. However, the adversary continues to fire rockets towards Israel from such sites, including from those that operate as civilian shelters.
- c. [redacted]

2. Aim: Frustrate rocket fire from the school towards Israel, while avoiding harm to civilians.

3. Mission: Attack the site determined to be a launch site [redacted] located within the school, in order to reduce rocket fire to southern Israel, following the provision of effective advance warning and the evacuation of persons located within the school, and while avoiding harm to civilians.

4. Method:

a. General

1. Effective advance warning, full evacuation and attack after the facility has been evacuated.
2. Responsible authority (for all actions – warning, evacuation and attack) – [redacted].

b. The Target and its Components

1. Target ID No. [redacted] in Shajeyia. **Components for Attack:** [redacted].

c. Warning, Evacuation and Attack Procedure

1. Effective advance warning to be provided by [redacted], using all available means including warning phone-call regarding the intention to attack the military objectives within the school ([redacted]).
2. Follow-up of the evacuation.
3. Ongoing warnings in order to avoid civilians returning to the site.
4. [redacted] as part of the warning (while avoiding harm to civilians) – 'knock on the roof' procedure, and verification of evacuation from the target.
5. Attack the launchers and military objectives within the school compound.

5. Authorities and Responsibilities

- a. [redacted]

6. Additional Information and Tasks

- a. Warnings to persons present at the site are to be effective.
- b. [redacted]
- c. [redacted]
- d. In the event that the school functions as a civilian shelter, sufficient time must be provided for the evacuation – responsible entity is [redacted].

Above: An operational order outlining the warning and assessment process that must be followed prior to an attack against multiple mortar launchers within a compound in Shuja'iyyeh comprised of four schools, including UNRWA's Shuhadda al-Manar Elementary "B" School, as well as a medical clinic and mosque. See pages 163-164 above for further information regarding this incident. (Source: IDF)

306. **Response to Non-Evacuation Despite Warnings.** After providing a warning, the IDF did not assume that a relevant site or area had been evacuated. As stressed by orders issued throughout the 2014 Gaza Conflict, any estimation of the collateral damage expected as a result of an attack always required a timely assessment regarding the presence of civilians, and the provision of a warning never, on its own, affected a proportionality assessment.

307. Although Hamas authorities actively encouraged civilians to ignore the IDF's warnings and refrain from evacuating,⁴⁴⁸ the IDF did not regard civilians who heeded such advice as voluntary human shields and thus legitimate targets for attack. Nor did the IDF discount such civilians for purposes of its proportionality analyses.



Above: One of Hamas's Ministry of Interior's many messages to the civilian population in the Gaza Strip, dated July 13, 2014, calling on the population to ignore warnings altogether in order to impede IDF operations. The above message, entitled "Urgent Notice to our People in Northern Gaza Strip" and published on the Ministry of Interior's website, states that "the warnings, recorded and [individual] phone calls that the Occupation is providing through home phones in an intensive manner ... is psychological warfare ... intended to cause fear in people's hearts.... There is no need for evacuation of homes at this time... We call on all our people that have evacuated their homes to return immediately and not to leave them...." (Source: <http://www.moi.gov.ps/news/68158>)

⁴⁴⁸ For more on this issue, see Chapter IV (Hamas's War Crimes), Section C.



308. **Reasons Warnings Were Not Always Provided.** The Law of Armed Conflict acknowledges that circumstances may not always permit advance warnings. For example, under customary international law, a warning is not required where the element of surprise is necessary for the success of a military operation (*e.g.*, where a target is a militant who would escape if warned) or where a warning would compromise the safety of attacking forces. This was the case with the IDF's strike on August 3 against Danian Mansour, a senior commander (with a rank equivalent to that of a brigade commander) in the Palestinian Islamic Jihad terror organisation, who at the time was located in a residential home in the Gaza Strip together with other senior militants. The IDF reasonably expected that providing a specific warning prior to the attack would frustrate the strike's objective.⁴⁴⁹

309. During the 2014 Gaza Conflict the IDF consistently tried to maintain an appropriate balance between, on the one hand, its desire to provide civilians with considerable time to seek protection, and, on the other hand, its need to avoid undermining the military attack or operation. The IDF typically weighted the balance heavily toward warning civilians, and frequently issued warnings even when it was not required to do so. For example, as discussed above, the IDF delayed its ground manoeuvre in the area of Shuja'iyyeh for more than 24 hours in order to facilitate further evacuations of civilians, despite the additional time that this gave Hamas and other terrorist organisations to prepare for close-quarter combat.

c. Means and Methods of Attack

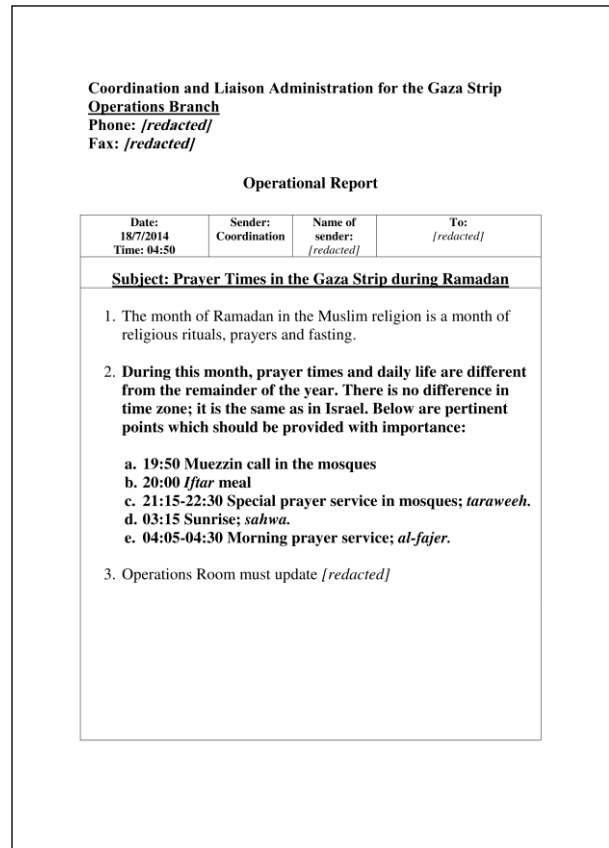
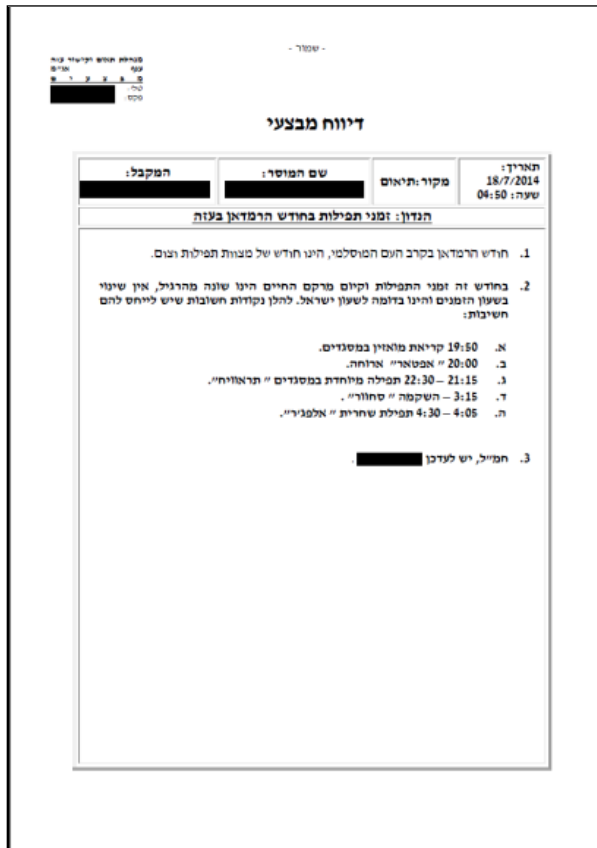
310. In addition to the provision of warnings and other precautions, the IDF chooses the means and methods of attack with a view to avoiding, and in any event minimising, incidental loss of civilian life, injury to civilians, and damage to civilian objects. To this end, the IDF took a number of different precautions during the 2014 Gaza Conflict.

311. **Timing of Attacks.** Whenever feasible, the IDF timed attacks on targets so as to minimise collateral damage. For example, when conducting operations against legitimate military targets used by civilians during daytime hours (such as targets in buildings containing commercial offices), the IDF generally attacked at night. The IDF similarly took steps to confine its attacks against military targets near such buildings to the night-time hours. Moreover, the IDF also took steps to limit its

⁴⁴⁹ As a result of the strike, Mansour (who was responsible for the Palestinian Islamic Jihad's (the "PIJ") operations in the northern Gaza Strip and for the PIJ's entire intelligence service), was killed, along with Abd Al-Nasser Al-Ajouri, a senior PIJ militant. Immad Al-Masri, Danian Mansour's deputy, was injured, along with two additional militants (Mohammad Al-Masri of PIJ and Vaal Kassam of Hamas). According to media reports, eight civilians were also killed as a result of the strike. For more information on this incident, see *Decisions of the IDF Military Advocate General regarding Exceptional Incidents during Operation 'Protective Edge' – Update No. 3*, IDF MAG Corps (Mar. 22, 2015), available at <http://www.law.idf.il/163-7183-en/Patzar.aspx>.



attacks on military objectives located inside mosques to times when no prayers or other organised civilian activities were taking place, including steps to remind IDF ground forces of the relevant times of such activities. To this end, on July 18, for example, the Civil and Liaison Administration updated IDF operational entities with detailed information concerning prayer times and the *iftar* fast (during which times large family gatherings are held) in the Gaza Strip. The IDF thus based its timing decisions on the most up-to-date intelligence available about the presence of civilians in or near the target.



Above: Notice distributed within the IDF, with information for operational commanders regarding the hours for prayers and the holiday *iftar* feast in the Gaza Strip. (Source: IDF)

312. **Choice of Munitions.** During the 2014 Gaza Conflict, whenever feasible, the IDF selected munitions that would minimise potential civilian casualties and injuries, while still achieving the objective sought. In this regard, whenever feasible, the IDF conducted pinpoint aerial strikes, using precision-guided munitions.⁴⁵⁰ In certain cases, the IDF employed delay fuses for bombs to detonate deep inside targets, to limit damage to adjacent structures. The majority of the IDF's more than 6,000 airstrikes during the Operation resulted in no civilian casualties. Further, as discussed in more detail

⁴⁵⁰ The use of other means of warfare, such as high-explosive artillery shells, is discussed in *infra* Section D.4.b.



below, the IDF deployed only legal means of warfare, and did so in a manner consistent with the Law of Armed Conflict.

313. **“Roof knocking.”** In certain instances where warnings were unheeded or unfeasible, the IDF, as a progressive precaution that went beyond the requirements of international law, fired a low-explosive projectile at the target’s roof. The purpose of this procedure — known as “roof knocking” — was to signal the impending danger and give civilians in or near the target a last opportunity to seek safety before an attack. This procedure was especially important in light of the efforts by Hamas and other terrorist organisations to encourage or coerce civilians to remain at the site of an impending attack. “Roof knockings” conducted by the IDF sought to provide civilians with sufficient time to take protective action. While “roof knockings,” like other kinetic means, may be imperfect, IDF assessments show that the employment of “roof knocking” was highly effective, preventing many civilian injuries and deaths during the 2014 Gaza Conflict.

314. **Other Operational Planning.** As part of operational planning during the 2014 Gaza Conflict, the IDF employed engineers and other specialists in damage assessment to select angles of attack and points of impact that would minimise collateral damage. These precautions at times sacrificed military efficacy — for example, when the IDF’s limited strike left parts of a legitimate military target intact.

d. Cancellation and Suspension of Attacks

315. In accordance with the Law of Armed Conflict, the IDF cancelled or suspended an attack whenever it became apparent — for example, due to fresh intelligence — that the target was no longer a military objective, that the target was subject to special protection, or that the expected damage to civilians and civilian property was excessive in relation to the anticipated military advantage.

316. During the 2014 Gaza Conflict, the IDF cancelled or postponed various planned attacks when new information changed prior assessments regarding the nature of a target or the potential for collateral damage. In certain cases, attacks were cancelled or suspended because the expected harm to civilians was likely to be excessive; in others, attacks were cancelled or suspended for reasons of policy, although they were expected to be within the parameters of the rule of proportionality. Throughout the 2014 Gaza Conflict, individual pilots exercised their discretion to cancel or delay planned strikes due to the presence of civilians, even when not so required by the law. For example, on July 10, IDF pilots were on their way to attack a weapons manufacturing site in the al-Maghazi region when new intelligence showed a large group of people walking close to the target; the pilots



consequently aborted the attack.⁴⁵¹ Similarly, on July 13, IDF pilots aborted an attack against a rocket launching site in Al-Shati after spotting three civilians walking near the site.⁴⁵²

3. Proportionality

317. As in all military operations, throughout the 2014 Gaza Conflict the IDF made the rule of proportionality an operational mandate for its forces, in accordance with the Law of Armed Conflict. The rule of proportionality does not forbid incidental harm to civilians and civilian property. Rather, under customary international law, this principle prohibits attacks that may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects, or a combination thereof, that would be excessive in relation to the military advantage anticipated. For purposes of a legal analysis, the relevant perspective is not hindsight, but rather that of a “reasonable commander” at the time of the attack.

a. Military Advantage Assessment

318. Under customary international law, military advantage includes a variety of operational considerations such as gaining ground, disrupting enemy activities, weakening the enemy’s military forces, and protecting the security of one’s own forces and civilians. Military advantage, moreover, refers also to the advantage anticipated from an attack considered as a whole and not only to the advantage anticipated from isolated or particular parts of the attack.

319. In planning attacks, the IDF regularly assesses the military advantage anticipated from attacks by, *inter alia*, collecting as much reliable intelligence as feasible regarding the nature of targets and their military importance. This intelligence may include, for example, detailed information about the number and rank of militants anticipated to be hit during an attack, as well as the quality and quantity of enemy weapons expected to be destroyed. In performing proportionality analyses, commanders must focus on the concrete and direct military advantage anticipated and may not take into account unlikely possibilities of military advantage.

320. During the 2014 Gaza Conflict, the IDF sought to gain military advantage in a variety of ways. For example, the IDF attacked a large number of command and control centres of organised armed groups. The military advantage anticipated from these attacks included destruction of military infrastructure and incapacitation of command activities. The IDF also attacked a number of

⁴⁵¹ IDF, *IDF Aircraft Calls Off Strikes to Protect Gazan Civilians*, YouTube (July 14, 2014), <http://youtu.be/PuL-OA84p54> (first incident in video).

⁴⁵² *Id.* (third incident in video).



individual militants (in which cases, the attack was conducted without giving advance warning), which provided a military advantage of incapacitation of individual militants. In addition, the IDF attacked a large number of arms depots and rocket and mortar launching sites to deprive Hamas and other terrorist organisations of weapons for use against IDF forces and Israeli civilians. The IDF also sought to neutralise Hamas's extensive network of tunnels that were being (or planned to be) used for a wide range of military purposes, including attacks against Israeli civilians and tactical advantages over IDF soldiers. These various attacks also served the larger goal of degrading the overall ability of Hamas and other terrorist organisations to conduct military operations against the IDF and Israeli civilians.

321. Israel's substantial investment in defensive systems to protect its population against rocket fire does not diminish the military value of IDF offensive operations aimed at curtailing that fire. Israel's defensive systems — including the Iron Dome — are not infallible. Terrorist organisations continuously study and seek to develop methods to overcome such measures. Constant rocket and mortar attacks from the Gaza Strip have affected IDF activities and caused deaths and injuries among the Israeli population.⁴⁵³ Preventing such harm is a legitimate and important military advantage for Israel.

322. Moreover, rockets, mortars, and other offensive capabilities possess an intrinsic military value for enemy forces, and destroying them therefore weakens the enemy substantially. The high cost of Israel's defensive systems, which requires a diversion of limited resources, also must be factored into the military advantage anticipated. To suggest that sophisticated defensive capabilities intended to defend civilians inherently reduce the military advantage in attacks would create a perverse incentive that completely undermines the rationales of the Law of Armed Conflict. A state that wishes to defeat its adversary should not be incentivised to reduce the level of defence it provides to its citizens — as doing so would contravene the most basic humanitarian rationale behind the Law of Armed Conflict.

b. Collateral Damage Assessment

323. A proportionality assessment also must take into account the expected incidental harm to civilians and civilian property. The Law of Armed Conflict acknowledges and allows such collateral damage, as long as it is not excessive in relation to the military advantage anticipated. Indeed, collateral damage is often unavoidable, especially when a party to an armed conflict — such as Hamas — deliberately carries out attacks from within the civilian environment.

⁴⁵³ For more information on this subject, see Chapter V (The Threat to Israel's Civilian Population).



324. Collateral damage does not include lawful targets such as civilians who are directly participating in hostilities or objects that are used for military purposes. Nor does it include mere inconvenience to civilians (such as temporary disruption of communications networks). On the other hand, expected harm to civilians or civilian property located in or near a military objective is relevant to the proportionality analysis.

325. The IDF devotes significant resources to assessing and minimising the collateral damage that is expected as a direct or indirect result of attacks.⁴⁵⁴ During the 2014 Gaza Conflict, the IDF took steps to ensure the collection of all reasonably available, timely information regarding a target's surroundings, focusing in particular on civilians and civilian objects that may be in its vicinity at the time of the attack, regardless of whether an advance warning has been given. For example, remotely piloted aircraft flew over countless targets to monitor the presence of civilians in real time. In addition, the IDF routinely used engineers and damage-assessment specialists to assist with the assessment of expected collateral damage by considering the specific circumstances of each case (including the target's surroundings, the means and methods used in the attack, and so on).

326. The estimation of potential collateral damage can be very challenging. No military has perfect information regarding the presence of civilians in all the areas where attacks take place. This is all the more so when operating in a complex urban environment, with dense physical infrastructure and a mobile civilian population.⁴⁵⁵ While militaries are required to exercise due diligence and to devote reasonable efforts to collect information with respect to the collateral damage expected, information deficits are inevitable.

327. Moreover, there are often situations where it is necessary to launch an attack without being able to acquire or receive all information regarding the likely collateral damage. For example, during ground operations, fire from a building near an infantry platoon may demand an immediate response, and the platoon may not have access to real-time data regarding the presence of civilians or the nature of surrounding structures. In such exigent circumstances, the platoon will have to rely on whatever partial information it does have, in addition to its prior training on the Law of Armed Conflict. The legality of the platoon's conduct must be assessed in light of what a reasonable commander would or would not have done under the same or similar circumstances.

⁴⁵⁴ Naturally, indirect effects are often unpredictable. When they may be reasonably expected, however, the IDF takes them into account as part of the proportionality assessment.

⁴⁵⁵ See *infra* Section C.

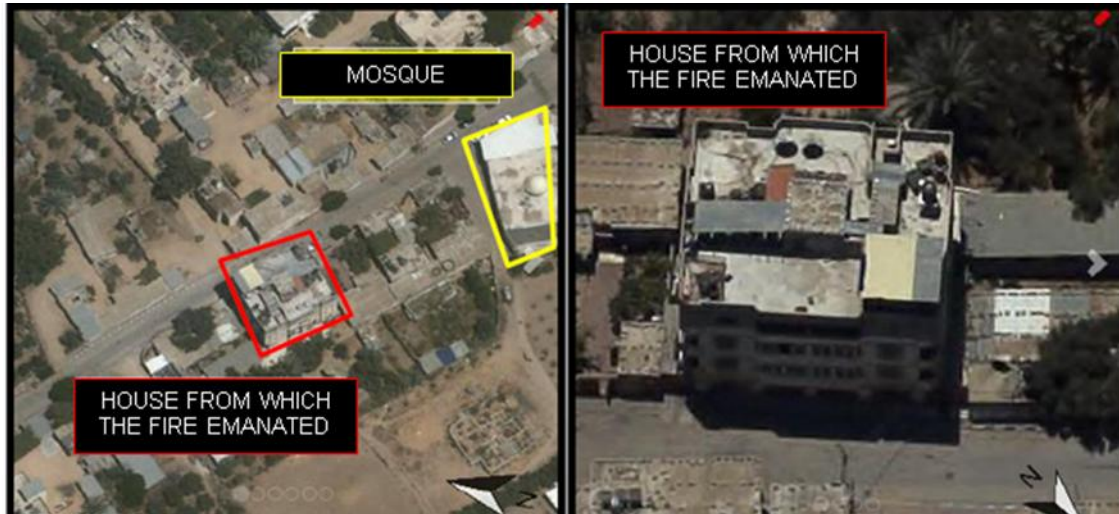


328. Furthermore, placing military objectives in urban areas — which Hamas and other terrorist organisations deliberately did throughout the 2014 Gaza Conflict — significantly complicates the IDF's ability to assess the collateral damage expected from an attack. For example, it is difficult to estimate the effect of an attack on military objectives such as arms depots and rocket launching sites, whose destruction may cause secondary explosions that could unexpectedly harm civilians or damage civilian property within a radius that cannot be reliably calculated before the attack.⁴⁵⁶ It is also difficult to predict — or monitor in real time — the movements of civilians, which are highly dynamic in a dense urban area during active hostilities. This difficulty is illustrated by a July 8, IDF attack against a military objective in a residential building belonging to the Kaware family in Khan Yunis. Although the IDF warned civilians in the building about an impending attack and they did in fact evacuate, a number of people were nevertheless identified as approaching or returning to the premises after the bomb had been dropped but before it hit its target. At that stage, given the type of bomb, there was no technical possibility of diverting the bomb or aborting the attack, and, regrettably, eight civilians lost their lives in this exceptional incident.⁴⁵⁷

329. In many instances during the 2014 Gaza Conflict, commanders refrained from carrying out attacks in light of the potential for civilian harm, even where such harm may have been considered proportionate. In some instances, commanders refrained from attacking even when their forces were exposed to a direct threat. For example, on July 27, IDF forces dismantling tunnel infrastructure in Dir el-Balah were fired upon with what appeared to be a long-range anti-tank missile. The forces refrained from returning fire, however, because they could not determine whether the four-story apartment building from which the enemy fire originated was populated and because they were aware that it was prayer time at a nearby mosque.

⁴⁵⁶ Where the IDF is aware that weaponry is present at a military objective, it will endeavour to take into account the potential consequences of a strike in the context of a proportionality assessment, where feasible to do so. However, the presence of weaponry at a site is not always known to those planning or executing an attack.

⁴⁵⁷ *Decisions of the IDF Military Advocate General regarding Exceptional Incidents that Occurred during Operation 'Protective Edge' – Update No. 2*, IDF MAG Corps (Dec. 7, 2014), available at <http://www.mag.idf.il/261-6958-en/Patzar.aspx>.



Above: The four-story apartment building from which the enemy fire originated on July 27, and the nearby mosque. (Source: IDF)

c. Analysing the Proportionality of Strikes

330. Under IDF regulations and directives, as well as orders issued during the 2014 Gaza Conflict, commanders must analyse the proportionality of each and every attack. Where the collateral damage expected is excessive in relation to the military advantage anticipated, attacks are expressly prohibited. Excessiveness, however, is not measured using absolute numbers. It is assessed on a case-by-case basis, in light of the specific military advantage anticipated by the commander based on the information reasonably available to him at the time of the attack. As long as there is no significant imbalance between the expected collateral damage and the anticipated military advantage, no excessiveness exists. And as long as the expected civilian harm is not excessive in relation to the military advantage anticipated, the principle of proportionality is not violated.

331. When analysing the proportionality of an attack, the IDF takes into account not only the expected harm to civilians, but also the expected damage to civilian objects. In a few situations during the 2014 Gaza Conflict, the IDF determined that the anticipated military advantage from certain attacks on large multi-story buildings was sufficient to justify the collateral damage to property. Because the IDF reasonably anticipated that each of the attacks would yield sufficiently significant military advantage from the destruction of multiple command and control centres and arms depots located in each building, the IDF carried out the attacks (after employing a multi-tiered system of warnings, including repeated phone calls to residents and neighbours). In other cases, commanders decided not to carry out strikes against military targets because of the disproportionate damage to civilian property expected to occur as a result of the attack.



332. The words “expected” and “anticipated” in the legal definition of proportionality demonstrate that the relevant analysis is forward-looking, based on what a reasonable military commander could anticipate under the same or similar circumstances. There may be cases where, following an attack, the collateral damage turns out to be higher than initially and reasonably expected. Even if such damage would have been considered excessive had it been known at the outset, the attack is nevertheless lawful as long as, when the attack was launched, the commander reasonably expected the collateral damage to be proportionate. The clarity of hindsight may inform future decisions, but does not affect the legality of actions already taken, even if the reasonable assessment at the time turned out to be inaccurate.

333. Determining the reasonableness of decisions made by military commanders in real time is unquestionably difficult for outside observers. Third parties lacking information about the aims, actions, intelligence, operational circumstances and means of an attack will frequently have difficulty discerning the military advantage anticipated by an individual commander, especially when that advantage derives from an overall combination of interrelated attacks. Moreover, because evidence of military objectives is often destroyed during or immediately after an attack, the military advantage anticipated before the attack may not be readily identifiable later. Third parties are also not privy to the information about potential collateral damage that the commander possessed when deciding to launch the attack, and such classified information may not be releasable. Nor are they aware of the circumstances surrounding the incident, making it difficult to determine what the commander should reasonably have known. Thus, assessments of what a reasonable commander would or would not have done under the same or similar circumstances are extremely complex and should be made with considerable caution.

d. The General Staff Directive for Contending with Kidnapping Attempts (“The Hannibal Directive”)

334. The requirement that attacks be carried out in accordance with the principle of proportionality is applicable to all instances of the application of force by IDF forces. The IDF does not maintain any rules, orders or directives that allow, explicitly or implicitly, for exceptions to this requirement. Thus, allegations that IDF directives, and particularly, the IDF General Staff Directive for Contending with Kidnapping Attempts (also known as the “Hannibal Directive”), permit IDF forces to exercise force in a manner that does not accord with the principle of proportionality, are incorrect.

335. The IDF General Staff Directive for Contending with Kidnapping Attempts provides methods and procedures for preventing and frustrating attempted kidnappings of Israeli nationals (both civilians and IDF soldiers). This Directive has been in force for decades and has been amended



several times. It sets forth, *inter alia*, general guidelines for the hot pursuit of kidnappers and the command-and-control structure for such situations. As an operational order, however, the Directive's specific content is classified. As with other classified directives, revealing all of this Directive's contents would provide adversaries with the ability to frustrate its very purpose.

336. The Directive does *not* grant permission to violate the Law of Armed Conflict, including the rules relating to distinction and proportionality. To the contrary, and as with all IDF directives concerning combat situations, IDF forces are required to adhere to the Law of Armed Conflict at all times when implementing the Directive's provisions. The use of unrestrained force is never permitted, even in the direst of circumstances. Moreover, the Directive explicitly prohibits actions intended to kill the kidnapped person (though any military action designed to thwart kidnapping entails some risk to life).⁴⁵⁸

4. Means of Warfare

337. In choosing and employing its means of warfare, the IDF adheres to the applicable rules of international law, namely, Israel's obligations as a party to international conventions governing certain means of warfare and Israel's obligations under customary international law.⁴⁵⁹ The IDF deploys only legal means of warfare, and does so in a manner consistent with the Law of Armed Conflict.

338. Israel researches, develops, and acquires means of warfare in accordance with strict procedures. Further, before a particular means is put into use, IDF authorities promulgate directives with detailed instructions. While these directives reflect the relevant rules of international law, they often include additional restrictions that are based on policy considerations (as exemplified below). The restrictions take into account the features and capabilities of the means in question, as well as the operational context and environment for its expected use. IDF directives on means of warfare are subject to ongoing review and are updated in light of lessons learned from prior military operations and new operational or legal considerations that may arise.

⁴⁵⁸ The MAG asked the IDF's Fact Finding Assessment Mechanism to examine the events surrounding the attempted kidnapping of the late Lieutenant Hadar Goldin in Rafah on August 1, 2014, including actions allegedly taken by IDF forces pursuant to the Hannibal Directive. The FFA Mechanism has provided its findings and collated materials to the MAG for a decision regarding whether a criminal investigation is required. In accordance with the MAG's continuing efforts at transparency, the MAG intends to release additional information in due course. For additional information concerning the Directive as well as the examination of the above incident, see the Office of the Attorney General's January 12, 2015 reply to letters from the Association for Civil Rights in Israel concerning the Hannibal Directive and its use in populated areas, which is available at <http://index.justice.gov.il/Units/InternationalAgreements/HumanRightsAndForeignRelations/Pages/AnswersInquiries.aspx>.

⁴⁵⁹ For relevant conventions to which Israel is a party, see *supra* note 396.



339. The IDF integrates legal input into the above-mentioned processes as needed. Legal review of a potential means of warfare will include, at a minimum, an examination of whether the means in question is unlawful *per se*, *i.e.*, whether it is specifically prohibited under any international convention to which Israel is party or under customary international law; whether it is calculated to cause superfluous injury or unnecessary suffering; and whether it is indiscriminate by its nature. With respect to means that are not unlawful *per se*, the legal review will consider whether the applicable rules under the Law of Armed Conflict impose specific restrictions on the manner in which the means under review may be used, either in general or in certain circumstances. Any such restrictions are integrated into the IDF directive governing use of the means.

340. During the 2014 Gaza Conflict, Israel used a wide variety of means of warfare, including air-delivered munitions, sea-delivered munitions, artillery shells, tank projectiles, and light arms. In this regard, applicable IDF directives required military commanders, where it was feasible, to consider the various means of warfare that are equally capable of achieving a defined military objective, and to choose the means that was most precise and expected to cause the least collateral damage under the circumstances. Thus, for example, most of the air-delivered bombs that the IDF used during the Operation were precision-guided munitions, not so-called “general purpose” bombs, which are not precision-guided. In many cases, this was done as a matter of policy, not legal obligation, as the Law of Armed Conflict does not mandate a State to acquire or necessarily use precision-guided munitions.

341. Of the various means of warfare Israel used during the 2014 Gaza Conflict, the use of flechette munitions and high-explosive artillery fire received particular attention.⁴⁶⁰

a. Munitions Containing Flechettes

342. Flechettes are pointed metal darts that can be dispersed from projectiles of different types, including rockets, artillery shells, tank shells and light-arms projectiles. Because of their distinct features, they are considered a particularly effective weapon when used against enemy personnel operating in the open or in areas covered by vegetation.

⁴⁶⁰ The main types of high-explosive artillery used during the Conflict, and which are discussed below, were 155-mm diameter artillery shells and 120-mm diameter mortars. The IDF’s use of other types of artillery that are not high-explosive — namely illumination shells and smoke shells — is not discussed here. These types of artillery shells are used for different purposes. Generally, the purpose of illumination shells is to illuminate the battlefield in a manner that exposes enemy forces or that otherwise assists one’s own forces to manoeuvre. Smoke shells are primarily used to create smokescreens that obscure ground forces undertaking a manoeuvre, thereby protecting them from enemy attacks. As with any other means of warfare, IDF commanders are required to follow the relevant rules of the Law of Armed Conflict while using these types of shells.



343. **Legality of Flechettes.** Neither customary international law nor any international convention categorically prohibits the use of flechettes. As with any other lawful means of warfare, flechette munitions must be used in a manner consistent with the rules of the Law of Armed Conflict, including those relating to distinction, precautions and proportionality. The lawfulness of their use is thus to be determined on a case-by-case basis, depending on the circumstances. The same analysis applies to the employment of flechette munitions in more challenging environments, such as populated areas.

344. In 2003, Israel's Supreme Court, sitting as the High Court of Justice, considered, and squarely rejected, the argument that the use of flechette munitions in the Gaza Strip was *per se* indiscriminate and hence unlawful under the Law of Armed Conflict.⁴⁶¹ In its decision, the Court noted the lack of international support for a ban on flechettes within the framework of the Convention on the Prohibitions or Restrictions on the Use of Certain Conventional Weapons. The Court concluded that the decision whether to use flechette munitions should depend on the specific circumstances at hand, in line with the relevant obligations under the Law of Armed Conflict.

345. **IDF Directives Regulating the Use of Flechette Munitions.** The IDF has flechette munitions in the form of 105-mm and 120-mm diameter tank shells. Their use is strictly regulated in accordance with IDF directives that integrate the relevant rules of the Law of Armed Conflict, including those relating to distinction, precautions, and proportionality. As Israel's Supreme Court observed in its 2003 decision regarding the IDF directives, they allow the use of flechette munitions only against those who pose a threat to IDF forces or Israeli civilians and only in geographic areas where there is no substantial risk of harming civilians. The directives have been revised several times since 2003, most recently in 2010 based on lessons learned from the 2008-2009 Gaza Conflict.

346. **Use of Flechettes by the IDF during the 2014 Gaza Conflict.** IDF standing directives restricting the use of flechette munitions were in force throughout the 2014 Gaza Conflict. Before entering the Gaza Strip, IDF tank forces were specifically briefed on these restrictions (in addition to restrictions concerning other types of munitions). During hostilities, IDF tanks used only 105-mm flechette shells, and did so in a limited fashion — in accordance with the Law of Armed Conflict and binding IDF directives — predominately against exposed enemy personnel in open areas.

⁴⁶¹ *Physicians for Human Rights v. OC Southern Command*, HCJ 8990/02 (Apr. 23, 2003), available at http://elyon1.court.gov.il/files_eng/02/900/089/f04/02089900.f04.htm.



b. High-Explosive Artillery

347. Like all lawful means of warfare, high-explosive (“HE”) artillery must be used in accordance with the rules of the Law of Armed Conflict, including those relating to distinction, precautions, and proportionality. As detailed further below, the IDF employs HE artillery in the same manner as other law-abiding militaries around the world, and puts great efforts and resources into minimising the possibility for civilian harm as a result of its use. In particular, IDF policy on the use of HE artillery in populated areas is more stringent than mandated by the Law of Armed Conflict. During the 2014 Gaza Conflict, HE artillery was, in the overwhelming majority of cases, used in open areas devoid of civilian presence. In a small minority of instances IDF forces, on an exceptional basis, used HE artillery in areas where civilians were or may have been present. In doing so, IDF forces retained their obligation to act in accordance with IDF directives and the Law of Armed Conflict. A few incidents of the use of HE artillery fire have been referred to the IDF General Staff Fact Finding Assessment Mechanism (the “FFA Mechanism”) for examination by the MAG (criminal investigations have been launched into two such incidents).⁴⁶²

348. **The Military Rationale for Using HE Artillery.** Many militaries around the world consider HE artillery to be an essential battlefield capability. Its most common use is to provide forces with continuous and responsive fire support during a ground manoeuvre. HE artillery is extremely effective for this purpose, owing to several advantages it possesses: it can be used to fire at ranges, at speeds, in quantities and with persistence⁴⁶³ that cannot be achieved by other means; can provide a large variety of fire effects, such as disruption, suppression or neutralisation of enemy forces, rather than being limited to the objective of destroying a nominated target;⁴⁶⁴ and can dominate an entire area simultaneously, rather than being limited to a singular location.

349. From a military perspective, these advantages combine to make artillery the preferred tool in certain scenarios, and at times an irreplaceable tool. By way of comparison, an aircraft providing continuous fire support to ground forces may have relative weaknesses: it requires frequent substitution due to limitations on flight time and the amount of munitions that can be loaded for each

⁴⁶² For discussion of the IDF’s mechanism for the examination of exceptional incidents, see Chapter VII (Israel’s Investigations of Alleged LOAC Violations).

⁴⁶³ More specifically, artillery has the ability to fire at long distances into the depths of the belligerent’s formation, at areas that other means cannot reach without undertaking significant risks; the ability to fire immediately when the necessity arises or when potential fire support platforms are not within range; the ability to direct fire at different locations in the area of operations, without the need to reposition the firing unit; and the capacity to continuously disrupt the enemy’s activity over an extended period of time through repeated shelling.

⁴⁶⁴ By way of illustration, a publicly available manual of the United States Army enumerates and explains a large variety of artillery fire effects. *See* Headquarters, Dep’t of the Army, Field Artillery Operations and Fire Support, FM 3-09, ¶¶ 1-9 to 1-19 (Apr. 2014), available at http://armypubs.army.mil/doctrine/dr_pubs/dr_a/pdf/fm3_09.pdf.



sortie; it lacks the flexibility to change the munitions it carries once in flight; its munitions usually have far larger explosive payloads that limit the variety of fire effects and expose armed forces and civilians in the vicinity of fire to greater risk; it lacks the ability to dominate an entire area with fire and thus will not be equally effective when the location of enemy forces is unknown or dynamic or when their activity needs to be disrupted in various locations at the same time; and it is more vulnerable to enemy fire (namely surface-to-air or air-to-air missiles). In addition, using an aircraft for fire support would be more costly in resources and funds, and would divert it from other missions, particularly independent targeting missions.⁴⁶⁵ All these factors are relevant when considering the military advantage of fire support from the air.

350. In the context of urban warfare, the relative advantages of artillery, including HE artillery, for fire support missions — when compared to other potential fire support platforms — are in many situations no less applicable than in other environments, and in some respects are especially weighty. For example, the steep angle of the trajectory of artillery shells can help overcome built-up obstacles more easily than other fire platforms (such as tank fire). However, at the same time, using HE artillery in such areas presents particular challenges, both tactical and humanitarian, due to the limited accuracy of regular HE shells, on the one hand, and the presence of civilian property and of civilians that may have remained in the area, on the other. Thus, the decision to use HE artillery in urban areas requires careful consideration, as described further below.

351. **Legality of Using HE Artillery.** HE artillery is a lawful means of warfare under the Law of Armed Conflict. Like any other lawful means, the way it is used in each case is subject to the relevant rules of the Law of Armed Conflict, especially those relating precautions and proportionality. The lawfulness of its use is determined on a case-by-case basis, depending on the circumstances.

352. Because there is no international treaty or customary rule in the Law of Armed Conflict that categorically prohibits the use of HE artillery in populated areas, the lawfulness of using HE artillery in such an environment is also dependent on a case-specific determination. As mentioned above, implementation of certain rules of the Law of Armed Conflict may be more challenging in an urban environment, due to the presence of civilian property and civilians who may remain there. Commanders are thus required to exercise particular care before artillery can be used; they must consider, *inter alia*, the density of the area and the possibility of civilian presence — particularly in

⁴⁶⁵ In contrast, HE artillery would not usually be the weapon of choice for independent targeting missions, particularly when striking the target requires relative precision.



applying the rule of proportionality. Militaries of law-abiding states that have publicly addressed the use of artillery in an urban environment seem to take a similar approach.⁴⁶⁶

353. **IDF Directives regarding the Use of HE Artillery.** Like other militaries, the IDF uses HE artillery primarily to provide supporting fire to ground forces, usually through disruption of enemy activity. IDF doctrine specifies the types of effects that HE artillery may be used to achieve, on a scale starting with the mere disruption of enemy activity, up to the destruction of military targets. IDF doctrine regulates the number of HE shells to achieve each effect, taking into account the relevant features of the enemy forces (for example, whether they are fortified or exposed).

354. As far as populated areas are concerned, IDF directives applicable to the 2014 Gaza Conflict set stringent restrictions on the use of HE artillery shells — restrictions that went above and beyond the IDF's obligations under the Law of Armed Conflict and which were imposed as a matter of policy. These directives generally prohibited the firing of HE shells into populated areas and required the observance of specified "safety margins," *i.e.* set distances from civilians.⁴⁶⁷ The directives only permitted firing in close proximity to, or into, populated areas on an exceptional basis, in certain exigent circumstances that created an imperative military necessity for artillery fire support (the precise parameters of these circumstances remain classified). Even where such an exception was triggered, IDF directives did not relieve IDF forces of their obligations under the Law of Armed Conflict, including those relating to distinction, proportionality and precautions. These obligations are anchored in IDF directives in a comprehensive manner, and do not permit any exceptions.

355. Thus, except under certain exigent circumstances of imperative military necessity, HE artillery could be used to provide fire support to a ground force until the force reached the outskirts of a populated area, but could not be used within the populated area. IDF directives prohibit the use of HE artillery in populated areas in certain situations where the Law of Armed Conflict would allow

⁴⁶⁶ For example, this approach is reflected in several manuals and documents that guide the U.S. Army. While these documents require commanders to make certain operational adjustments in consideration of the urban terrain and to exercise particular care as to the potential presence of civilians, they allow HE artillery to be used in urban areas for similar objectives as in other terrain. *See* Headquarters, Dep't of the Army, Combined Arms Operations in Urban Terrain, ATTP 3-06.11, ¶¶ B-30 to B-35 (June 2011), available at http://armypubs.army.mil/doctrine/DR_pubs/dr_a/pdf/attp3_06x11.pdf; Headquarters, Dep't of the Army, Urban Operations, FM 3-06, ¶¶ 4-35 to 4-42 (Oct. 2006), available at http://armypubs.army.mil/doctrine/DR_pubs/dr_a/pdf/fm3_06.pdf; Dep't of the Army, FM 3-09, *supra* note 464, ¶¶ 1-114 to 1-116.

⁴⁶⁷ The current distances set forth for HE artillery were updated as part of the "lessons-learned" process the IDF conducted following the 2008-2009 Gaza Conflict. The IDF determined these distances on the basis of research conducted by technical experts, focusing on the accuracy of each artillery calibre and its dispersal range.



such use, and, as general matter, are stricter than the practice of other law-abiding militaries facing comparable operational challenges.

356. **Use of HE Artillery by the IDF during the 2014 Gaza Conflict.** In the overwhelming majority of cases involving the use of HE artillery during the Conflict, it was fired into open areas where there were no civilians and in accordance with the “safety margins” set out in IDF directives. In these cases, HE artillery proved to be highly effective in achieving its intended tactical effect — particularly the obstruction of enemy forces in their ongoing effort to attack IDF forces neutralising Hamas’s cross-border assault tunnels.

357. Despite the public attention devoted to several incidents of HE artillery fire into urban areas (including incidents that took place during some of the most publicised battles of the Conflict), HE artillery was actually fired into such areas only on an exceptional basis, and these instances comprised only a small fraction of the total number of cases HE artillery was used during the Conflict. Generally, the use of HE artillery in these instances occurred in urban areas that were known to be largely evacuated (following advance warnings by the IDF and the subsequent initiation of ground activity by IDF forces), and when HE artillery was the only available and effective means to produce the required tactical effect. Furthermore, HE artillery was used in a restrained and calculated fashion, after taking various technical and doctrinal precautions intended to minimise potential civilian harm and optimise the fire’s accuracy.

358. An example of a technical precaution was the use of a particularly robust calibration technique designed to optimise the artillery cannons’ accuracy. The IDF’s calibration process includes the initial firing of a few inert shells (always into an area empty of civilians) before engaging in live fire, and the analysis of their trajectory, so that forces can calibrate the cannon based on information that is more reliable than just statistical data compiled from previous use. The IDF scrupulously followed this calibration process throughout the 2014 Gaza Conflict, even in the most difficult of circumstances, and despite its significant cost in resources and time. Moreover, the IDF’s primary delivery platforms for artillery fire included sophisticated navigation systems that enabled the firing forces to track their position more accurately and thus shoot more accurately. The IDF also deployed a sophisticated digital system that provided an accurate, real-time assessment of the meteorological parameters required to direct artillery fire, rather than depending on less-reliable statistical data.

359. An example of a doctrinal precaution was the deployment of an extensive forward-observation array. The array consisted of well-trained IDF officers who were positioned in the field to observe the fire from artillery units. These officers provided continuous feedback that helped optimise accuracy. Furthermore, in cases where artillery fire into built-up areas was needed, artillery



forces generally employed fewer portions of shells than the set quantity that IDF doctrine dictates for the lowest minimal tactical effect (*i.e.*, disruption fire), even where the reduced use of shells risked compromising the military mission.

360. Notwithstanding the above, the IDF is aware of allegations regarding the misuse of HE artillery in a few incidents. The MAG has referred several exceptional incidents involving the use of HE artillery for examination by the FFA Mechanism,⁴⁶⁸ including alleged incidents occurring in Shuja'yeh on July 19-20 and on July 30, in Beit Hanun on July 24, in Jabalia on July 30, and in Rafah on August 1. The FFA Mechanism has concluded its examination process with respect to each of these cases and forwarded its findings to the MAG for a decision regarding whether to order a criminal investigation or whether additional information is required before reaching such a decision. To date, the MAG has ordered criminal investigations into two of these incidents and has closed the case with regard to one of the incidents. The MAG's decision with respect to the remaining incidents is still pending.⁴⁶⁹

5. Detention

361. During the 2014 Gaza Conflict, the IDF captured certain individuals on the battlefield. The vast majority of these individuals were released shortly after capture, while 22 of them are currently being detained in Israel pursuant to Israeli law and in accordance with the Law of Armed Conflict. All are held in conditions that meet, and often exceed, the requirements of the Law of Armed Conflict.

362. **Capture on the battlefield.** In accordance with the Law of Armed Conflict, the IDF captured individuals in the Gaza Strip only when there was a military necessity for doing so. For example, the IDF captured individuals in order to collect tactical intelligence regarding the location of combat tunnels or booby-trapped buildings in the area of IDF activity, or to screen persons suspected of being involved in terror activity — a dire need when militants disguise themselves as civilians in an urban area. IDF directives require that every captured person be treated humanely and held in appropriate conditions. Thus, each time the MAG has received an allegation providing reasonable grounds for a suspicion of mistreatment of individuals allegedly detained by IDF forces

⁴⁶⁸ For more on the FFA Mechanism's examination of exceptional incidents and the criminal investigations ordered by the MAG, see Chapter VII (Israel's Investigations of Alleged LOAC Violations).

⁴⁶⁹ See *Decisions of the IDF Military Advocate General regarding Exceptional Incidents during Operation 'Protective Edge' – Update No. 3*, IDF MAG Corps (Mar. 22, 2015), available at <http://www.law.idf.il/163-7183-en/Patzar.aspx>; *Decisions of the IDF Military Advocate General regarding Exceptional Incidents that Occurred during Operation 'Protective Edge' – Update No. 2*, IDF, MAG Corps (Dec. 7, 2014), available at <http://www.law.idf.il/163-6958-en/Patzar.aspx>.



during the Conflict, the MAG has immediately ordered a criminal investigation (four such criminal investigations have been opened to date, and they are ongoing.)⁴⁷⁰

363. **Detention in Israel.** In approximately 150 cases, IDF commanders in the field determined that a captured individual needed to be brought to Israeli territory for further questioning. These individuals were transferred to detention facilities in Israel as soon as feasible, taking into account considerations for their safety, the safety of IDF forces, and certain other operational constraints.⁴⁷¹ Once in Israel, each person was questioned and assessed on an individual basis. Most of these individuals were safely returned back to the Gaza Strip shortly thereafter, typically within 48 hours from the time they were brought to a detention facility in Israel and typically through the Erez Crossing and in coordination with the Palestinian Authority. In the rest of the cases, where adequate information indicated the person's involvement in terror activity, he was detained pursuant to either Israeli criminal law or Israel's Incarceration of Unlawful Combatants Law.

364. **Israeli Criminal Law track.** Twenty-one persons captured in the Gaza Strip during the 2014 Gaza Conflict have been the subject of detention orders under Israeli criminal law and are currently incarcerated in Israel. Each detainee has been offered a civilian public defence attorney and the option to hire a private defence attorney, and has been brought before an Israeli civilian court for judicial hearings. Indictments filed against these detainees include accusations relating to their varied military activity, military training, and membership in terrorist organisations in the Gaza Strip. To date, several proceedings have resulted in convictions, while others are ongoing.

365. **Incarceration of Unlawful Combatants Law track.** Only one individual who was captured in the course of the 2014 Gaza Conflict, Samir Najar, remains detained in Israel under the Incarceration of Unlawful Combatants Law.⁴⁷² This law, enacted in 2002, provides legal tools for

⁴⁷⁰ *See id.*

⁴⁷¹ During the Operation, the IDF operated a provisional detention facility located in the IDF's Se'de Teman base in the Negev in southern Israel. On July 2, 1 2014, the Israeli Minister of Defense formally declared this facility as an "incarceration facility" pursuant to the Incarceration of Unlawful Combatants Law. This facility was intended only to hold individuals for short periods before their release to the Gaza Strip or their transfer to an Israel Prison Service facility. Accordingly, the facility ensured appropriate material conditions, adequate for a short period of incarceration. The Se'de Teman facility was closed when the 2014 Gaza Conflict ended. Moreover, during a short time in the Operation, the IDF also employed two tactical screening facilities on the Israeli side on the Israel-Gaza fence line, but these were closed shortly after they were opened. When in operation, they served as a short-stay transit station that allowed for screening of detainees, before they were moved to the Se'de Teman facility, Israel Prison Service's facilities or released back to the Gaza Strip. The decision to establish provisional detention facilities only inside Israel and not in enemy territory during the Conflict was context-specific and may change in future military operations.

⁴⁷² Incarceration of Unlawful Combatants Law, 2002, S.H. 192. A total of 13 persons captured in the Gaza Strip during the 2014 Gaza Conflict were detained in Israel under temporary detention instructions issued pursuant to the Incarceration of Unlawful Combatants Law. These orders were issued following a determination by the relevant authorities that there was a reasonable basis to believe that the captured persons fell within the definition of an

Footnote continued on next page



preventive detention in the specific context of hostilities, consistent with the requirements of the Law of Armed Conflict.⁴⁷³ As such, it allows for the detention of foreign individuals who take part in hostilities against Israel or who are members of a belligerent force carrying out such hostilities, in order to remove them from the cycle of hostilities (those entitled to prisoner of war status, however, are subject to a separate legal regime regulated by the Law of Armed Conflict). The Incarceration of Unlawful Combatants Law may be invoked only once the person in question is present in Israeli territory. During the 2014 Gaza Conflict, where a justification for continued detention existed under both this law and Israeli criminal law with respect to a specific detainee, Israel generally chose to use criminal proceedings as a matter of policy.

366. In accordance with the Incarceration of Unlawful Combatants Law, an IDF Major General specifically authorised Najar's detention order based on an assessment that he poses an ongoing security threat to Israel, given his vast knowledge of, and practical experience with, explosives; his senior role in Hamas's police, and his close connections with members of Hamas's military wing. A civilian District Court judge, as well as Israel's Supreme Court, have upheld Najar's detention, following court hearings in which Najar was present and represented by his legal counsel.⁴⁷⁴ Under the Incarceration of Unlawful Combatants Law, Najar is entitled to a periodic judicial review every six months, until his release.⁴⁷⁵

367. **Notifications of Detention.** Under the Fourth Geneva Convention,⁴⁷⁶ where a party to an international armed conflict places a protected person in custody for more than two weeks or in "internment" (*i.e.*, preventive, non-criminal detention), that party must notify the person's State and provide certain information about his status, potentially through an intermediary such as the

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"unlawful combatant." Temporary detention instructions allow a person to be held for a maximum period of 96 hours, during which time an assessment is conducted to determine whether to issue a detention order under the law. Twelve of the thirteen individuals who were detained under a temporary detention instruction were released back to the Gaza Strip within 96 hours. Najar was the only individual for whom a detention order as an unlawful combatant was issued.

⁴⁷³ The Supreme Court of Israel has generally affirmed that the Unlawful Combatant's Law complies with the requirements of the Law of Armed Conflict. See *Anonymous v. State of Israel*, CA 6659/06, (June 11, 2008), available at http://elyon1.court.gov.il/Files_ENG/06/590/066/n04/06066590.n04.pdf. For an in-depth discussion of the legal regime created by the Incarceration of Unlawful Combatants Law, including a comparison to two other legal regimes of preventive detention that Israel employs in different contexts, see Dvir Saar & Ben Wahlhaus, *Preventive Detention for National Security Purposes - The Israeli Experience* (2015), available at <http://ssrn.com/abstract=2601838>.

⁴⁷⁴ For the Supreme Court's decision, see *Najar v. The State of Israel*, ADA 6594/14, (Oct. 30, 2014) (unpublished decision) (Hebrew), available at <http://elyon1.court.gov.il/files/14/940/065/i03/14065940.i03.htm>.

⁴⁷⁵ The last periodic review hearing was on March 8, 2015, at the District Court of Be'er Sheva. On March 11, 2015, the District Court approved the continued detention of Najar.

⁴⁷⁶ Geneva Convention IV, Arts. 136-138. Articles 140-141 of the convention describe another mechanism of notification that practically leads to similar results. See also Article 106.



International Committee of the Red Cross (“ICRC”). The party also must reply to enquiries regarding protected persons in these circumstances.

368. Although these provisions do not necessarily apply to the 2014 Gaza Conflict, during the Conflict Israeli authorities notified the ICRC of each detainee who was brought to the incarceration facilities of the Israel Prison Service (regardless of whether the individual was detained under Israeli criminal law or under the Incarceration of Unlawful Combatants Law). In addition, as a matter of policy, Israel, where practicable, contacted the detainee’s relatives by telephone to inform them about the detainee’s status.

369. Furthermore, as a matter of policy, Israel offered humanitarian organisations acting on behalf of families from the Gaza Strip who had lost contact with their relatives during the Conflict the opportunity to ask the Control Centre for Imprisonment of the Military Police of the IDF whether and where their relatives were being detained in Israel.⁴⁷⁷ After receiving various such inquiries, the Control Centre provided replies.⁴⁷⁸

370. **Visits and Conditions of Detention in Israeli Incarceration facilities.** Under the Fourth Geneva Convention,⁴⁷⁹ which is applicable to international armed conflicts, the ICRC generally may visit places where persons protected under the Convention are detained and interview them. The Convention also stipulates that “internees” generally may receive visits from close relatives and certain others.

371. Although these provisions do not necessarily apply to the 2014 Gaza Conflict, Israel has facilitated visits from the ICRC, as well as detainees’ meetings with legal counsel (regardless of

⁴⁷⁷ Typically, the Control Centre deals with inquiries regarding residents of the West Bank.

⁴⁷⁸ In the midst of the 2014 Gaza Conflict, on July 28, 2014, an Israeli NGO filed a petition to the Israeli Supreme Court, seeking information about whether and where five residents of the Gaza Strip were being held in Israel at that time. The petition was filed after the NGO had failed to provide the IDF Military Police’s Centre for Imprisonment with sufficient documentation in order to allow the IDF to fulfil the NGO’s request for information. On the same day it filed the petition, the NGO then provided the requisite documentation to the IDF Military Police’s Centre for Imprisonment to receive the information it sought; when the NGO received the information it originally requested, it withdrew the petition. *See Abu Rida v. IDF*, H CJ 5226/14 (July 29, 2014). On July 29, 2014, the same NGO filed another petition to the Israeli Supreme Court, requesting that the IDF provide the identities and whereabouts of all persons detained during the 2014 Gaza Conflict and currently held in IDF detention facilities in Israel. The IDF filed a written response arguing that the petitioner did not show any legal right, under international or domestic law, to receive the information sought. The IDF further explained that the petition attempted to afford the NGO with a special status not afforded to it under international law, and noted that the relevant authorities already provide such notifications to relevant addressees (as detailed above), in a manner that goes over and above Israel’s legal obligations under international law. On August 4, 2014, during a Supreme Court hearing, the petitioner requested to withdraw its petition after hearing the State’s arguments and comments made by the Court. *See Hamoked Le’haganat Haprat v. IDF*, H CJ 5243/14 (Aug. 4, 2014).

⁴⁷⁹ Geneva Convention IV, Arts. 116, 143.



whether an individual is detained under the criminal law or the Incarceration of Unlawful Combatants Law). Moreover, in October 2014, Israel reinstated a policy that granted Gaza-based family members of Palestinian detainees permission to enter Israeli territory for visits (which had been temporarily suspended prior to the Conflict), even though Israel is not obligated by law to do so.⁴⁸⁰ All 22 detainees captured during the 2014 Gaza Conflict have been allowed to receive visits from their family members who reside in the Gaza Strip, and almost all of them have in fact received such visits in the last few months at the facilities of the Israel Prison Service where they are being held.

372. As with other Palestinian detainees, persons detained during the 2014 Gaza Conflict enjoy appropriate detention conditions that meet, and often exceed, the requirements of international law. Unfortunately, Israel's commitment to such humanitarian protections is not reciprocated by Hamas.⁴⁸¹

E. Humanitarian Efforts

373. During the 2014 Gaza Conflict, Israel made extensive efforts to advance the humanitarian objective of mitigating the suffering of civilians affected by the Conflict. Israel's humanitarian efforts were not ancillary to its military activities but rather a central component of IDF operations.

374. Since 2005, Israel has not had effective control over the Gaza Strip, and thus its obligation under the Law of Armed Conflict is limited generally to allowing (or at most facilitating) humanitarian aid to persons in need where hostilities were taking place.⁴⁸² In light of the temporary and transient nature of the IDF presence in the outskirts of the Gaza Strip, and the intensive and ongoing nature of the combat, Israel did not have the additional legal obligations that would arise in the context of a belligerent occupation. Nevertheless, Israel made significant humanitarian efforts that in many respects went beyond its obligations under international law.

⁴⁸⁰ To clarify, it is Israel's position that detainees should receive ICRC visits also in the context of non-international armed conflicts.

⁴⁸¹ The last Israeli soldier held captive by Hamas was Corporal Gilad Shalit, who was abducted from within Israeli territory in 2006. He was held for five years completely *incommunicado* and denied basic rights, including ICRC visits. He was only returned when Israel released 1,027 Palestinians who had been duly convicted of crimes or otherwise lawfully detained by Israel.

⁴⁸² For a background on Israel's 2005 disengagement from the Gaza Strip and Hamas's subsequent position as the *de facto* authority there, see Chapter II (Background to the Conflict).



1. The Coordination and Liaison Administration

375. Israel's Coordinator of Government Activities in the Territories ("COGAT") — a joint arm of the IDF and the Ministry of Defense — coordinates, *inter alia*, the implementation of Israeli government policy with respect to the Gaza Strip. Within COGAT, a specialised unit called the Coordination and Liaison Administration for the Gaza Strip ("CLA") is dedicated to monitoring, identifying, and facilitating the humanitarian needs of the civilian population in the Gaza Strip. The CLA includes hundreds of active duty and reserve officers and soldiers, as well as civilian governmental employees, with expertise in areas such as health services, agriculture, industry, and transport.

376. In addition to their day-to-day activities, CLA personnel participate in the planning of IDF operations and the coordination of humanitarian relief during such operations. The CLA's understanding of the geography, demographics, infrastructure, government, public services, politics, economics, religion, culture, and current affairs in the Gaza Strip is used by the IDF when planning and conducting operations. For example, the CLA works with interlocutors to identify the location of sensitive sites, including schools, medical clinics, diplomatic facilities, essential infrastructure, and international organisations' facilities, as well as the location of sites being used as shelters during hostilities, so that this information can be integrated into IDF command and control systems used by operational forces. The CLA also maintains channels of communication with representatives of the Palestinian Authority and various international organisations in order to make the provision of aid, facilitation of medical services, and work on infrastructure more effective and efficient.

377. In 2010 the CLA created the position of a Civilian Affairs Officer ("CAO"). These specially trained officers are assigned to IDF operational units at the command, division, brigade, and battalion levels. They train and operate with their assigned combat units, and are responsible for providing advice to commanders with regard to humanitarian aspects of the unit's operations. They are also responsible for coordinating the movements of international organisations and local rescue and emergency teams within their area of operations in the Gaza Strip. In order to facilitate such movements, all CAOs speak fluent Arabic. During the 2014 Gaza Conflict, 89 CAOs were assigned to IDF units, ranging from battalions present inside the Gaza Strip to the Southern Command responsible for the overview of the entire ground operation.



Above: Images of CAOs assisting the local civilian population during the 2014 Gaza Conflict. (Source: IDF)

2. Specific Humanitarian Activities during the 2014 Gaza Conflict

378. **Movement of supplies into the Gaza Strip.** During the 2014 Gaza Conflict, the CLA facilitated the movement of a total of 5,637 trucks carrying 122,757 tons of supplies into the Gaza Strip from Israel through the Kerem Shalom Crossing:⁴⁸³

Item	No. of truckloads	Tons
Food	3,270	74,602
Animal Feed	653	24,980
Medicines and Medical Equipment	144	1,742 (additional 30 tons through the Erez Crossing)
Humanitarian supplies (incl., blankets, hygiene/cosmetics, mattresses, clothing, footwear, milk powder, baby food, shelter kits, agricultural goods and others)	1,570	21,433
Total	5,637	122,757

⁴⁸³ The number of shipments authorized by the IDF (8,395 truckloads) was substantially larger than the number of trucks that actually passed through the crossing (5,637 truckloads). The ongoing rocket and mortar fire that Hamas and other terrorist organisations directed at the Kerem Shalom Crossing forced various organisations to cancel shipments.



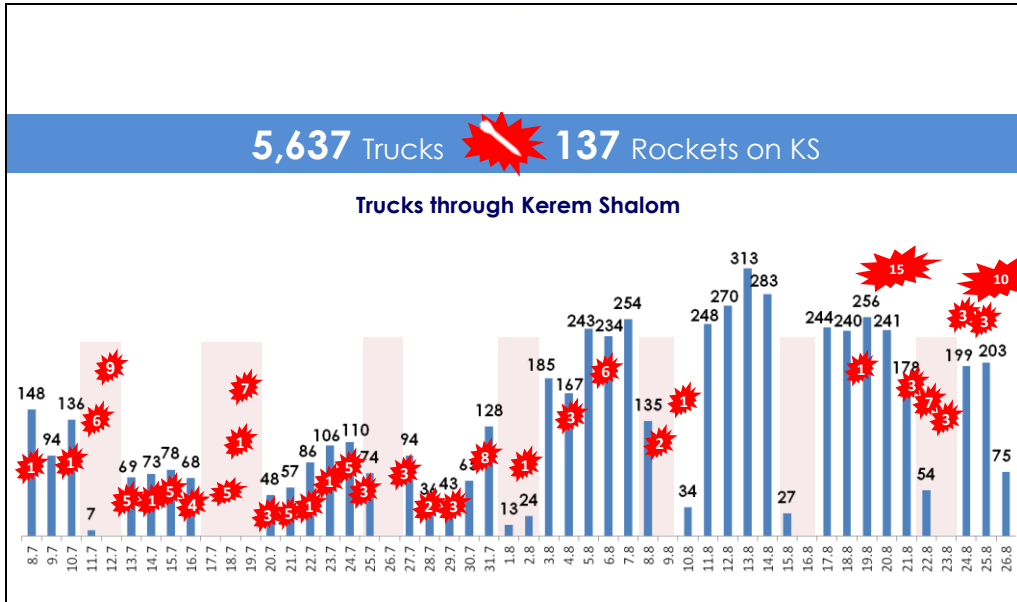
Above: Images of supplies for transfer into the Gaza Strip at the Kerem Shalom Crossing. (Source: IDF)

379. In addition, to ensure that there was no disruption of supplies entering into the Gaza Strip, the Erez Crossing — which is typically used for pedestrian movement — was also used to transfer goods and supplies on certain occasions when the Kerem Shalom Crossing was temporarily closed due to rocket and mortar fire or other security threats.

380. Beyond facilitating the passage of humanitarian supplies from international organisations and various donor countries, Israel donated eight truckloads of supplies containing 20 tons of rice, 20 tons of flour, 20 tons of sugar, 20 tons of cooking oil, and 20,000 water bottles. The source of these donations was concealed so that Hamas authorities would not reject them. The Palestinian Authority and international organisations refused an additional, substantial donation of medical supplies by Israel out of fear of recriminations by Hamas.

381. In addition to shipments passing through Israel, a total of 1,432 tons of medical supplies and 541 tons of food entered the Gaza Strip via the Rafah Crossing at the Egyptian border (even though Egyptian authorities had for the most part closed the Rafah Crossing during the 2014 Gaza Conflict).⁴⁸⁴

⁴⁸⁴ Moreover, shortly after the 2014 Gaza Conflict, Israel, the Palestinian Authority, and the U.N. established a mechanism to ensure the necessary transfer of materials required to repair damaged buildings and services in the Gaza Strip, while respecting Israel's legitimate security considerations. On October 14, 2014, 600 tons of cement, 50 truckloads of construction aggregate, and 10 truckloads of metal were transferred into the Gaza Strip. As of December 15, 2014, over 22,000 tons of construction materials by private sector vendors have entered into the Gaza Strip. See Robert Serry, Special Coordinator for the Middle East Peace Process, Briefing to the Security Council on the Situation in the Middle East (Dec. 15, 2014), available at <http://www.unsco.org/Documents/Statements/MSCB/2008/Security%20Council%20Briefing%20-%202015%20December%202014.pdf>.



Above: Graph displaying the approximate amounts of goods transferred through the Kerem Shalom Crossing, as well as the approximate number of attacks on the Kerem Shalom Crossing during the 2014 Gaza Conflict.

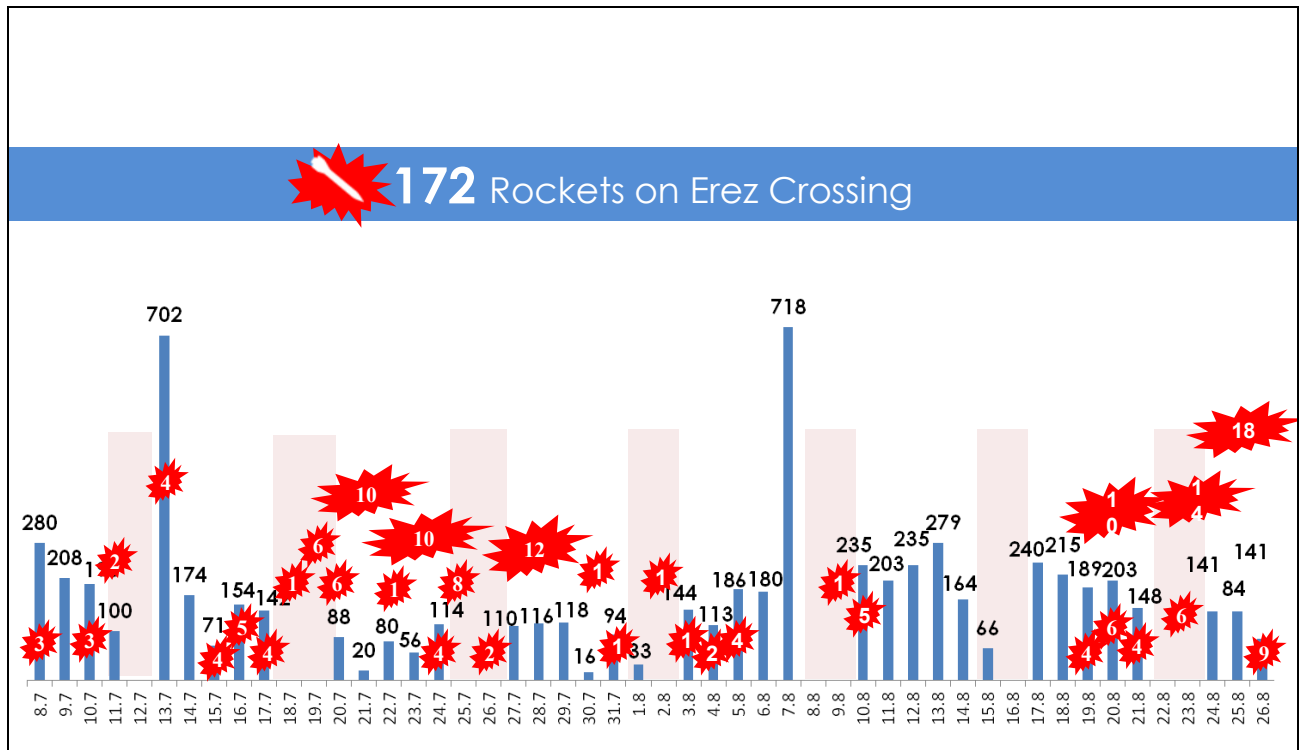
382. **Movement of people in and out of the Gaza Strip.** Over the 51 days of the 2014 Gaza Conflict, between 6,000 to 7,000 persons passed through the Erez Crossing with Israel. Among these persons were:

- 84 medical personnel (71 doctors and 13 nurses) from Israel, the West Bank and abroad, who entered the Gaza Strip to work in medical facilities there;
- 171 wounded persons who were transferred out of the Gaza Strip for medical treatment in Israel, the West Bank, and Jordan, and an additional 87 persons who were transferred for treatment in Turkey;
- 402 persons who left the Gaza Strip for specialised medical treatment that was not related to the hostilities and could not be obtained in the Gaza Strip but was available in Israel, the West Bank or Jordan;
- 927 journalists entering and 697 journalists leaving the Gaza Strip; and
- 1,198 Palestinian residents holding foreign citizenship exiting the Gaza Strip.

383. Operating the Erez Crossing, like the Kerem Shalom Crossing, is a highly complex endeavour fraught with extreme danger and risk.



384. The activities at the Erez Crossing continued throughout the 2014 Gaza Conflict, except when the Crossing came under rocket or mortar fire. In such events, those working and passing through the Crossing had to seek shelter immediately and remain there for approximately 10-15 minutes, after which the Crossing would return to operating as normal. The stability of the Crossing’s activities is clear from the following graph, which shows that the number of persons passing through the Crossing did not significantly decrease following the initiation of Israel’s ground operation or when Hamas and other terrorist organisations violated humanitarian suspension of hostilities.



Above: Graph displaying the approximate number of persons passing through Erez Crossing, as well as the approximate number of attacks on Erez Crossing during the 2014 Gaza Conflict.

385. **Increased availability of medical treatment within the Gaza Strip, and provision of medical treatment at the Erez Crossing.** The CLA facilitated the entry of 177 ambulances into the Gaza Strip during the 2014 Gaza Conflict. In addition, on July 20 the IDF set up a field hospital at the Erez Crossing in order to provide medical assistance to wounded civilians from the Gaza Strip.⁴⁸⁵ This field hospital treated 51 patients during the Conflict; more could have been admitted had Hamas

⁴⁸⁵ *Israel Humanitarian Aid to Gaza Continues*, The Embassy of Israel to the United States (Aug. 27, 2014), <http://www.israelemb.org/washington/NewsAndEvents/Pages/Under-rocket-fire-from-Gaza-Israeli-humanitarian-aid-continues.aspx>.



not prevented their arrival. Moreover, the IDF facilitated efforts to increase the availability of medical services within the Gaza Strip, for example, by ensuring that a field hospital donated by the UAE and operated by the Red Crescent could be established and operated in Dir El Balah. This hospital began operation on August 5. The CLA also worked to ensure that IDF forces operating on the ground were aware of the movements of medical teams entering Gaza from the Rafah Crossing with Egypt.



Above: Gazan resident receiving medical treatment at the field hospital. (Source: IDF)

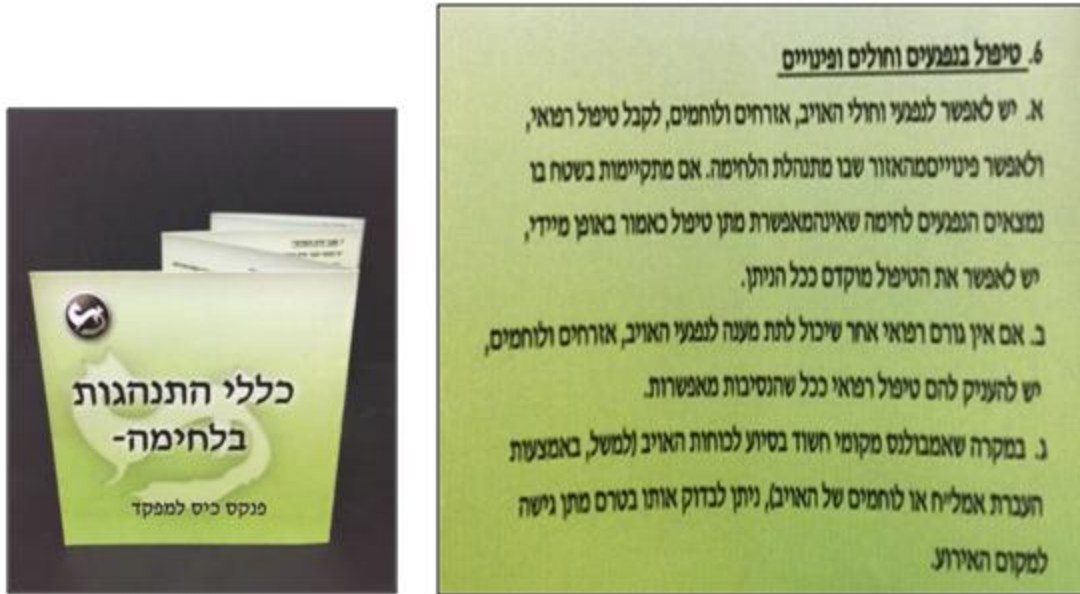
386. **Provision of medical treatment and evacuation by IDF forces.** IDF medics and doctors provided primary medical treatment for Palestinians in the Gaza Strip, including militants who were wounded, despite the difficulties presented by an active combat situation.⁴⁸⁶ The IDF Medical Corps Oath, to which all IDF medics and doctors must swear, imposes a duty to “extend a helping hand to any who is injured or ill, be he lowly or venerable, friend or foe,” and applies to *all* IDF activities. Moreover, the IDF’s primary operational order for the 2014 Gaza Conflict⁴⁸⁷ explicitly mandated that IDF medical forces provide urgent medical care to wounded Palestinians and ensure access to further medical treatment where feasible. Further, the above-mentioned “Rules of Conduct in Warfare – A Pocketbook for Commanders” provided that all forces (medical or otherwise) must allow for medical

⁴⁸⁶ For examples of such treatment and facilitation of evacuation, see *16-year Old Gaza Terrorist Treated in Israeli Hospital*, The Times of Israel (July 22, 2014), available at <http://www.timesofisrael.com/16-year-old-gaza-terrorist-treated-in-israeli-hospital/>; *IDF Medics Save Life of Gaza Terrorist*, Israel Today (July 20, 2014), available at http://www.israeltoday.co.il/NewsItem/tabid/178/nid/24763/Default.aspx?topic=article_title.

⁴⁸⁷ For more on this operational order, see *supra* Section B.



evacuation and treatment of wounded persons, and if such treatment is unavailable and urgent, to provide first aid services themselves, where feasible.⁴⁸⁸



Above: The “Rules of Conduct in Warfare – A Pocketbook for Commanders” includes a section titled “Treatment and Evacuation of the Wounded and Sick,” which states that “Civilians and militants of the adversary who are wounded or sick must be given access to medical care, and their evacuation must be permitted from the area of active hostilities. If the provision of medical care cannot be provided immediately due to the hostilities ongoing in the area where the wounded are present, such care shall be facilitated at the earliest possible opportunity.... In the absence of a medical authority who can treat wounded civilians or militants, [IDF forces] shall provide medical treatment as far as circumstances permit.... In the event that a local ambulance is suspected of assisting the adversary (for example, by transporting weaponry or militants), a search may be conducted prior to allowing access to the area.” (Source: IDF)

387. Throughout the IDF’s ground operation during the 2014 Gaza Conflict, IDF forces facilitated the evacuation of wounded persons not only to medical facilities in the Gaza Strip, but also to the field hospital at the Erez Crossing and, in some cases, to Israeli hospitals. For example, on the night of July 19, in the midst of the intensive hostilities in Shuja’iyeh, a brigade CAO received a report from the CLA headquarters regarding wounded persons located in a house near the brigade’s operations. In response, the brigade commander facilitated the movement of an ambulance through the combat area in order to evacuate the wounded persons. While such actions were not always feasible due to the exigencies of (and risks inherent in) intensive hostilities, the facilitation of medical treatment for wounded persons was considered part of each commander’s responsibilities and frequently undertaken.

⁴⁸⁸ See page 142, *supra*, for further information regarding the “Rules of Conduct in Warfare – A Pocketbook for Commanders.”



Above: Following the IDF's warnings to the residents of Khuza'a to evacuate in advance of IDF ground forces activity in the area, IDF forces found a weak elderly woman on her way towards Rafah. For four days IDF forces provided her with food and water from their own supplies and monitored her medical situation, while attempting to coordinate her evacuation through the CAO; however, international organisations were disinclined to evacuate the woman because of the intensive fighting in the area. Eventually, the IDF forces evacuated the woman in an IDF vehicle to Israel, where she was hospitalised at Ashkelon's Barzilai Hospital. (Source: IDF)



Above: On the morning of July 18, Hamas militants attacked IDF ground forces near the Israel-Gaza fence line, and in the ensuing combat a militant was wounded and captured by the IDF. The wounded militant was provided first aid in the field and transferred for further treatment to Be'er Sheva's Soroka Hospital. (Source: IDF)

388. **Movement of international organisations within the Gaza Strip.** In addition to providing medical treatment and facilitating evacuations, the IDF facilitated the movement of international organisations within the Gaza Strip. On July 9, the IDF established a Joint Coordination Room at the CLA Headquarters adjacent to the Erez Crossing. This facility was specially tasked with coordinating between the IDF, the U.N., and the ICRC, and dealing with real-time requests for the coordination and facilitation of movements into and within the Gaza Strip. Requests and updates



from the representatives of international organisations in the Joint Coordination Room were conveyed to the CLA Central Operations Room, which was in constant communication with IDF forces in the Gaza Strip, both via operations rooms at the brigade and division level as well as via the Civilian Affairs Officers embedded with IDF forces in the Gaza Strip.

389. The CLA worked together with IDF forces located inside the Gaza Strip and with international aid organisations to coordinate the evacuation of wounded persons and civilians from areas of active hostilities. Requests for movement coordination typically came either from IDF forces that identified a Palestinian resident requiring medical attention, or by organisations such as the ICRC, that received information about wounded persons from the Palestinian Red Crescent Society or Gaza Strip residents. The CLA worked with the organisations requesting coordination to determine the best route and to ensure that IDF forces were aware of the planned movements.

390. *Challenges in coordinating movement.* Coordinating the movement of medical vehicles and aid convoys in areas of active combat posed significant challenges. Such coordination required contact with a number of entities, including the CLA; the Israel Air Force; the ground forces in the area (through the relevant CAOs' communicating both with the relevant commanding officers — who conveyed information about the intensity of the combat at the time and the optimal routes for the vehicles — as well as with the forces operating in the immediate vicinity, to ensure that they did not view approaching vehicles as potentially hostile); the medical units in the field; and the persons requiring medical attention. Furthermore, requests for medical vehicles often were submitted without sufficient details, such as the exact positions and the medical state of the persons, necessary to ensure a smooth coordination. Due to the intense and uncertain nature of the combat in the Gaza Strip, it could become necessary at any time to alter, delay, or cancel coordinated movements. Hamas's systematic, deliberate and unlawful exploitation of medical vehicles⁴⁸⁹ and of coordinated suspensions of hostilities posed additional challenges for IDF forces present in the area, because it required vigilance and verification procedures to ensure that the approaching vehicles were intended solely for providing medical services. Finally, the nature of the combat in urban areas impeded access by medical vehicles to certain areas. For example, on one occasion the CLA coordinated the approval for a convoy of ambulances to transport civilians from an area of Khuza'a. However, the convoy encountered difficulties in reaching the area as a result of rubble blocking the coordinated route. Subsequent attempts by the CLA to coordinate alternative routes failed. Ultimately, the IDF provided a D9 tractor to clear the routes and move ahead of the convoy in order to ensure that it could reach its destination.

⁴⁸⁹ For more on this, see Chapter IV (Hamas's War Crimes), Section B.



391. Despite these difficulties, during the 2014 Gaza Conflict, the CLA and IDF operational forces successfully facilitated 425 requests for coordination of movement in the area of hostilities. The U.N. Board of Inquiry found that the establishment of the Joint Coordination Room “significantly contributed” to the coordination of U.N. activities in the Gaza Strip,⁴⁹⁰ and the IDF’s efforts undertaken in this regard were recognised publically by the Head of the ICRC Delegation to Israel, the West Bank and the Gaza Strip in a speech made in November 2014:

[H]umanitarian access in Israel and the [West Bank and Gaza Strip] is, in a comparative sense, outstandingly good. In fact, I can think of no other context where the ICRC operates worldwide – where there exists active conflict, but even including other situations of armed violence or ongoing political/ethnic/religious tensions – where the access for humanitarian organizations is as good as it is here.⁴⁹¹

392. **Essential infrastructure.** Damage to essential infrastructure serving the Gaza Strip caused by the hostilities (including by rockets and mortars launched by Hamas and other terrorist organisations), as well as ordinary breakdowns, necessitated maintenance and repair work. To this end, the IDF set up a dedicated Infrastructure Coordination Centre, manned around-the-clock, to identify needs and coordinate repairs to infrastructure in areas of hostilities, sometimes under great danger.

- *Fuel:* Israel facilitated the entry of fuel to the Gaza Strip throughout the 2014 Gaza Conflict, in spite of the continued shelling of the crossing and the risk that the fuel would be diverted to Hamas’s war effort. 782 truckloads of fuels and gas entered the Gaza Strip from Israel, including the following amounts:

Fuel Type	Amount
Diesel for Gaza Power Station	4,444,000 litres
Diesel for Transport (Private)	9,778,000 litres
Petrol for Transport (Private)	4,238,000 litres
Diesel for UNRWA	2,034,000 litres
Petrol for UNRWA	167,000 litres
Cooking Gas	4,767 tons

⁴⁹⁰ See U.N. Board of Inquiry Summary, *supra* note 431, at ¶ 94.

⁴⁹¹ Jacques de Maio, Opening Address, The 9th Annual Minerva/ICRC Conference on International Humanitarian Law (Nov. 3, 2014), available at <http://blogs.icrc.org/ilot/2014/11/03/the-9th-annual-minerva-icrc-international-conference-on-humanitarian-law-jerusalem-3-4-november-2014/>



Above: Fuel being provided for transfer into the Gaza Strip. (Source: IDF)

- *Electricity:* In accordance with previous agreements between Israel and the Palestinian Authority, Israel supplies electricity to the Gaza Strip on an annual basis. (At the time of the 2014 Gaza Conflict, Israel was providing a total of 125 megawatts annually. In addition, 27 megawatts are provided annually by Egypt, and 40-60 megawatts are supplied through Gaza's power station). Although Israel knows that this electricity is used to facilitate the military operations of Hamas and other terrorist organisations, Israel, as a matter of policy, continued the regular supply to the Gaza Strip during the 2014 Gaza Conflict. Unfortunately, some of the fighting (including Hamas's fire, as well as the IDF's) caused a number of disruptions to the flow of electricity. In order to ensure the maintenance and repair of the ten power lines through which Israel provides the electricity, the Infrastructure Coordination Centre maintained constant communication with IDF forces in the field, the Palestinian Energy Authority, and the Israel Electric Corporation to identify problems and fix them as soon as possible. Despite the challenges of repairing electricity infrastructure in an urban environment amidst intense combat operations, the Infrastructure Coordination Centre coordinated 78 repairs within the Gaza Strip during the 2014 Gaza Conflict. Following an incident in which the fuel tanks servicing the power plant were put out of service as a result of IDF fire,⁴⁹² Israel also donated ten industrial-sized electricity generators — four to the Palestinian Authority's Ministry of Health for use at hospitals, and six for the maintenance of essential infrastructure, such as water mains, in the Gaza Strip.

⁴⁹² See *supra* Section D.1.b.



Above: Generator being prepared for transfer into the Gaza Strip. (Source: IDF)

- *Water and sewage systems:* Based on previous agreements between Israel and the Palestinian Authority, Israel supplies approximately 5 million cubic metres annually out of a total of about 170 million cubic metres annual water consumption in the Gaza Strip. The supply remained stable throughout the 2014 Gaza Conflict. However, one of the two water lines leading from Israel to the Gaza Strip was damaged, causing a reduction in supply for several days. Altogether, Israel made 22 repairs to water infrastructure and three repairs to the sewage system during the 2014 Gaza Conflict. Mortar fire, tunnel attacks and safety concerns arising from the hostilities sometimes delayed efforts to repair water and sewage infrastructure.
- *Communications infrastructure:* Communications networks in the Gaza Strip before and during the 2014 Gaza Conflict were powered by generators for which Israel facilitated the entry of fuel. Although there was no significant damage to major communications infrastructure, a number of fibre optic cables and antennae required a total of 13 repairs during the 2014 Gaza Conflict. In addition, Israel allowed 15 truckloads of communications equipment into the Gaza Strip for Jawwal and Paltel, two Palestinian communications companies.

393. *Challenges in coordinating infrastructure repairs.* As a result of the complexity of coordinating the movement of technicians to repair damaged infrastructure, as well as the uncertain and volatile nature of the hostilities, many planned repairs during the 2014 Gaza Conflict were either delayed or cancelled. For example, a coordinated repair to an electricity line scheduled for July 28 was delayed because the technicians could not secure accompaniment from international aid organisations that were occupied at the time with medical evacuations. A repeated attempt to carry out the repair shortly thereafter was cancelled due to an attack by Hamas on the IDF forces operating in the relevant area. The repair was eventually carried out later that same day. In other instances,



coordinating the movement of technicians often involved exposing them to the constant danger of rocket and mortar fire. For example, on July 17, one of the main lines supplying electricity to the Gaza Strip from Israel was damaged as a result of mortar fire from the Gaza Strip. In order to repair the damage, the Israel Electricity Company had to build and insert a new electricity pole and supporting infrastructure. This involved hours of work, mostly on cherry pickers, which exposed the civilian technicians to risk of harm from mortar, anti-tank artillery, and sniper fire.

3. Suspensions of Hostilities

394. During the 2014 Gaza Conflict, Israel agreed to numerous ceasefires brokered by other countries and international organisations. On various occasions, Israel also declared unilateral ceasefires — with regard not only to specific areas of activity but also the entire IDF operation in the Gaza Strip. Israel undertook substantial efforts during these suspensions in hostilities to assist with the provision of supplies, medical aid and repairs to infrastructure. For example, during the suspension of hostilities that occurred on July 26 and 27, repairs to electricity lines resulted in an increase from 52mw to 102mw supplied by Israel to the Gaza Strip. A non-exhaustive list of the ceasefires appears in the table on the next page.



Date and Time	Unilateral / Coordinated	Violations	IDF Activity During the Suspension
15/7 0900-1500	Brokered by Egypt	Rejected by Hamas; 56 rockets fired (including long range to Haifa)	
20/7 1330-1630, Shuja'iyeh	Unilaterally declared by Israel and accepted by Hamas	Rockets fired and attacks conducted against IDF forces, including from within a school, at approximately 1400	Suspension extended unilaterally to 1730
26/7 0800 –2000	Coordinated		Israel agreed to extend by four hours; rejected by Hamas
28/7 (Eid Al-Fitr holiday in the Gaza Strip)	Proposed by U.N. Security Council and accepted by Israel and Hamas	Continued firing of rockets into Israel, infiltration through a tunnel into Israel, and attacks against IDF forces in the Gaza Strip	
1/8 0800 for three days	Coordinated on the basis of a U.N/U.S. proposal	Attack against IDF forces, attempted abduction of IDF soldier	Cancellation of suspension following violation by Hamas
5/8 0800 for three days	Coordinated	Firing at Kerem Shalom Crossing	
11/8 0000 for three days	Coordinated	Rocket fire towards Southern Israel	
14/8 0800 for five days (extended on 18/8 for another 24 hours)	Coordinated	50 Rockets and mortars were fired towards Southern Israel after the suspension was extended by 24 hours	

395. In addition, on numerous occasions during the 2014 Gaza Conflict, the IDF unilaterally suspended military activity in specific areas in which IDF forces were operating, in order to enable re-supply of the population and other humanitarian relief activities in those areas. Some examples follow.



Date	Area of suspension	IDF activity during the suspension
July 14	Passages for movement from inside the Gaza Strip towards the Erez Crossing	Facilitation of the entrance of Palestinian residents holding foreign citizenship into Israel from the Erez Crossing
July 17	Various areas of IDF activity	Facilitation of repairs to infrastructure, coordination of passage of medical supplies and the provision of medical aid
July 20	Vicinity of Erez Crossing	Facilitation of the entrance of Palestinians holding foreign citizenship into Israel
July 21	Area of operation of IDF Brigade	Coordination of movement of humanitarian organisations
July 23	Passages for movement from inside the Gaza Strip towards the Erez Crossing	Facilitation of the entrance of journalists into Israel, facilitation of the evacuation of wounded persons for medical treatment
July 24	Area of operation of IDF Brigade	Coordination of movement of journalists in the vicinity, coordination of movement of representatives of international organisations in the vicinity, facilitation of the evacuation of wounded persons for medical treatment
July 25	Khuza'a	Coordination of movement of humanitarian organisations, including direct coordination of four ambulances within area of ongoing combat
July 29	Area of operation of IDF Brigade	Coordination of movement of humanitarian organisations

4. Hamas's Actions to Obstruct Israel's Humanitarian Efforts

396. Regrettably, the actions of Hamas and other terrorist organisations during and after the 2014 Gaza Conflict stymied many of Israel's efforts to mitigate civilian suffering. These organisations systematically and deliberately endangered the civilian population by placing military objectives and military activity within the civilian environment.⁴⁹³ Hamas also consistently rejected proposed ceasefire agreements, violated coordinated ceasefires, and exploited unilateral IDF ceasefires by conducting military activities against the IDF and carrying out rocket and mortar attacks against Israel — thus undermining opportunities to provide assistance to the wounded and the civilian population.

Furthermore, Hamas also purposefully hindered Israel's humanitarian efforts. In doing so, Hamas violated international law, which contemplates that parties to a conflict will cooperate to

⁴⁹³ For more on Hamas's failures to take precautions to protect the civilian population, see Chapter IV (Hamas's War Crimes), Section B.



mutually advance humanitarian relief measures. Throughout the 2014 Gaza Conflict, Hamas and other terrorist organisations constantly fired upon both the Erez and Kerem Shalom Crossings. Over 200 mortars landed near the Erez Crossing during the 2014 Gaza Conflict. These attacks delayed the transfer of persons and goods, damaged physical infrastructure, and caused deaths and injuries. On July 15, for instance, a mortar shell that landed inside the crossing compound killed an Israeli citizen.⁴⁹⁴ On August 10, deliberate, repeated firings on the Kerem Shalom Crossing resulted in delayed transfer of supplies.⁴⁹⁵ On August 23, three Israeli civilians were injured while they waited in their vehicles on the Israeli side of the Erez Crossing to evacuate wounded persons from the Gaza Strip for medical treatment.



Above: Screenshot of video from security cameras recording mortar fire on Kerem Shalom Crossing. (Source: IDF). For more, see IDF, *Rocket Attack Forces Closure of Israel-Gaza Border Crossing*, YouTube (Aug. 10, 2014) <https://www.youtube.com/watch?v=GJBQ4h41bEQ>.

397. Hamas also refused to permit the transfer of wounded civilians into Israel for medical treatment.⁴⁹⁶ In addition, Hamas and other terrorist organisations exploited the special protection afforded to medical facilities and vehicles in order to transfer weaponry and militants.⁴⁹⁷ The deliberate disruptions by Hamas and other terrorist organisations to the provision of humanitarian aid denied the Gaza Strip's civilians access to medical attention and essential supplies, and have caused

⁴⁹⁴ For more information, see Chapter V (The Threat to Israel's Civilian Population).

⁴⁹⁵ Israel Ministry of Foreign Affairs, *Rocket attack forces closure of Israel-Gaza border crossing* (Aug. 10, 2014), available at <http://mfa.gov.il/MFA/PressRoom/2014/Pages/Rocket-attack-forces-closure-of-Israel-Gaza-border-crossing-10-Aug-2014.aspx>.

⁴⁹⁶ See, e.g., William Booth, *While Israel Held Its Fire, the Militant Group Hamas Did Not*, Wash. Post (July 15, 2014), available at http://www.washingtonpost.com/world/middle_east/while-israel-held-its-fire-the-militant-group-hamas-did-not/2014/07/15/116fd3d7-3c0f-4413-94a9-2ab16af1445d_story.html

⁴⁹⁷ For an in-depth account of how Hamas used the civilian population of Gaza as a shield and exploited hospitals and ambulances for its own military benefits, see Chapter IV (Hamas's War Crimes), Section B.



them persistent hardship. Such actions also contravene Hamas's obligations to the Palestinian civilian population under customary international law.

398. In the wake of the 2014 Gaza Conflict, Israel has negotiated with the U.N. and the Palestinian Authority a Gaza Reconstruction Mechanism to enable construction and repair to the Gaza Strip's infrastructure.⁴⁹⁸ To date, Israel has allowed over 87,314 tons of construction materials to enter the Gaza Strip.⁴⁹⁹ However, Hamas continues to frustrate these reconstruction efforts by diverting goods and supplies for military purposes,⁵⁰⁰ by imposing additional taxes on donated materials, and providing relief only to Hamas members and affiliates.⁵⁰¹

F. Conclusion

399. The above discussion demonstrates the IDF's ongoing commitment to observing the Law of Armed Conflict at all times.⁵⁰² The IDF requires all its operations to be undertaken in accordance with the Law of Armed Conflict, and in many regards, the IDF's efforts to mitigate the risk of harm to civilians go above and beyond any legal requirements. The IDF's interpretation of the relevant principles of the Law of Armed Conflict accords with the generally accepted interpretations by militaries of democratic states, and is integrated into IDF directives, operational procedures, training and education. This commitment to international law is reflected in the IDF's selection and assessment of military targets, the means and methods of warfare it employs, the precautions it undertakes, and the warnings it provides, as well as in its treatment of detainees and its facilitation of humanitarian support to the civilian population in the Gaza Strip. Israel has robust systems in place — both inside and outside the military — to ensure actual compliance with the rule of law.

400. As discussed above, an assessment of the legality of the IDF's actions during the 2014 Gaza Conflict must take the following into account:

⁴⁹⁸ U.N. Office of the Special Coordinator for the Middle East Peace Process, Gaza Reconstruction Mechanism: Fact Sheet (October 2014), available at

<http://www.unsco.org/Gaza%20Reconstruction%20Mechanism%20Fact%20Sheet%209%20October%202014.pdf>

⁴⁹⁹ See Briefing to the Security Council on the Situation in the Middle East, *supra* note 484.

⁵⁰⁰ Tova Dvorin, *Hamas Rebuilding Terror Tunnels into Israel with Aid Materials*, Arutz Sheva (Dec. 19, 2014), available at http://www.israelnationalnews.com/News/News.aspx/188849#.VKw-8dLF_A4.

⁵⁰¹ For more information on this topic, see Chapter II (Background to the Conflict) and Chapter III (Objectives and Phases of the Conflict).

⁵⁰² Nevertheless, as noted at the beginning of this Chapter, this document should not be seen as an exhaustive discussion of all of the IDF's efforts. Such a discussion is beyond the scope of this document and is necessarily subject to certain limitations, including limitations on the publication of classified information.



401. First, while harm to civilians and their property is regrettable and often tragic, it cannot in and of itself form the basis of a legal violation. The Law of Armed Conflict accepts that civilian harm may occur during military operations, as an inevitable result of the use of kinetic force. Thus, the principle of proportionality, for example, allows for the occurrence of civilian harm as an incidental result of attacks against military targets, and only prohibits those attacks that are expected to cause incidental civilian harm that is excessive in relation to the military advantage anticipated.

402. Importantly, the outcome of an action cannot by itself determine the action's legality. A case-specific assessment is required, taking into account, among other things, the information reasonably available to the commander, his intentions, and the reasonableness of his expectations as to the outcome of the action. Just as a military action that resulted in no civilian harm or damage might be considered unlawful (if, for example, it was intentionally directed against civilian objects), a military action that unfortunately results in considerable civilian harm may still be entirely lawful (if, for example, the intended outcome was not expected to result in such a level of civilian harm, and that expectation was reasonable).

403. Second, the IDF made extensive efforts to mitigate the risk of civilian harm and damage to civilian property. Indeed, despite the challenge of conducting military operations in an urban environment, the majority of Israel's more than 6,000 airstrikes during the Operation resulted in no civilian fatalities. Nevertheless, the success of efforts to mitigate the risk of civilian harm may be limited by the challenges of operating in an urban environment, where distinguishing between military and civilian activity is made more difficult, the presence of civilians may be concealed by physical infrastructure, and small mistakes may have substantial repercussions for the civilian population.

404. Third, Hamas and other terrorist organisations deliberately and systematically sought to exploit the Gaza Strip's urban terrain and the presence of the civilian population for tactical and strategic advantages. As a result, the IDF was compelled on a number of occasions to strike sites such as mosques and apartment buildings, and on the rare occasion, schools and medical facilities, that Hamas and other terrorist organisations were using for military purposes and thus had rendered legitimate military targets. Hamas not only embedded its operations within the civilian environment; Hamas also actively encouraged, and even coerced, civilians to remain in areas of hostilities in order to impede IDF attack and shield military activities.

405. Fourth, the potential for civilian harm was dramatically increased as a result of the nature and scale of the 2014 Gaza Conflict. To achieve the Operation's limited objectives — neutralisation of cross-border tunnel infrastructure and reduction of the rocket and mortar fire aimed at the Israeli civilian population — the IDF was compelled to undertake extensive military activity over 51 days,



including over 6,000 airstrikes and a ground operation with infantry, engineering, mechanised and special forces. The overwhelming majority of this activity took place in an urban environment, in built-up areas with dynamic civilian presence. In such an environment, harm to civilians is far more likely to be the incidental (yet nevertheless lawful) result of attacks against military targets.

406. Fifth, the extent of civilian casualties and property damage has been overstated.⁵⁰³ A substantial number of the alleged “civilian” casualties were in fact members of organised armed groups and direct participants in the hostilities. Some reported statistics have been skewed by militants’ efforts to disguise themselves as civilians and by Hamas’s deliberate attempts to reduce the perceived number of militant casualties in order to promote a narrative of victory and Hamas’s deliberate attempts to inflate the number of civilian casualties in order to encourage condemnation of the IDF’s actions in the public arena.

407. In the same vein, attempts have been made to present the damage to property in the Gaza Strip as widespread and as the result of deliberate targeting by the IDF of civilian property. But in actuality, much of the property damage was centred on the limited areas where IDF ground forces operated, and on military targets that Hamas and other terrorist organisations systematically disguised within objects that appeared civilian in nature. The IDF did not permit, at any stage, the deliberate targeting of civilians or civilian property. There are numerous instances from the 2014 Gaza Conflict where the harm to civilians and property was the result not of IDF activity but of the actions of Hamas and other terrorist organisations. Rockets and mortars fired by these organisations at Israel’s civilian population fell short inside the Gaza Strip. Others were intentionally fired at areas within the Gaza Strip where IDF ground forces were working to dismantle the cross-border tunnel infrastructure. Moreover, secondary explosions triggered by IDF attacks on weapons depots located inside civilian homes caused damage to the surrounding areas, while booby-trapped homes caused considerable damage to civilian structures and their surroundings. When assessing an individual incident of damage or harm, care should be exercised before attributing the incident exclusively to IDF actions.

408. Notwithstanding the above, Israel is committed to investigating fully any credible accusation or reasonable suspicion of a serious violation of the Law of Armed Conflict. Where instances of harm to civilians or civilian property have led to allegations of misconduct by IDF forces, the IDF examines such allegations in an independent, effective and thorough manner, as will be discussed in the following chapter.

⁵⁰³ For more information on this topic, see Annex: *Palestinian Fatality Figures in the 2014 Gaza Conflict*, also available at <http://mfa.gov.il/ProtectiveEdge/Documents/PalestinianFatalities.pdf>.



VII. Israel's Investigation of Alleged Violations of the Law of Armed Conflict

409. Israel is aware of allegations of violations of international law during the 2014 Gaza Conflict and is committed to investigating fully any credible accusation or reasonable suspicion of a serious violation of the Law of Armed Conflict.⁵⁰⁴ Thus, Israel reviews complaints and other information suggesting IDF misconduct, regardless of the source, and maintains a mechanism that is capable of examining and investigating such allegations in an independent, prompt, thorough, and effective manner.

410. In 2010, the Government of Israel created an independent public commission of inquiry headed by retired Israeli Supreme Court Justice Jacob Turkel and observed by international legal experts (hereinafter: the "Turkel Commission"), whose mandate included an assessment of Israel's mechanisms for examining and investigating complaints and claims regarding alleged violations of the Law of Armed Conflict. The Turkel Commission reviewed Israel's investigations systems in light of the "general principles" for conducting an effective investigation under international law: independence, impartiality, effectiveness and thoroughness, and promptness.⁵⁰⁵ The Commission's work included a review of the military justice system — which involves a multi-stage process directed by Israel's Military Advocate General (the "MAG"), Military Courts, civilian oversight by the Attorney General of Israel, and judicial review by the Supreme Court of Israel. Following a careful and comprehensive review, the Turkel Commission concluded in 2013 that Israel's mechanisms for examining and investigating complaints and claims of violations of the Law of Armed Conflict generally comply with its obligations under international law. Although the Turkel Commission recommended additional best practices that Israel might implement, it found that Israel's system ranks favourably with those of other democratic countries, including Australia, Canada, Germany, the Netherlands, the United Kingdom and the United States.⁵⁰⁶

⁵⁰⁴ This Paper uses the term Law of Armed Conflict in its ordinary sense — describing the legal obligations of parties to an armed conflict in the course of their military operations. International Humanitarian Law is used by many commentators and countries as an interchangeable term, as is the laws of war.

⁵⁰⁵ For more information regarding Israel's investigations system, see Chapter C (pages 266-358) of The Public Commission to Examine the Maritime Incident of 31 May 2010, Second Report – The Turkel Commission: Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law (Feb. 2013) (hereinafter: "Turkel Report"), available at <http://www.turkel-committee.gov.il/files/newDoc3/The%20Turkel%20Report%20for%20website.pdf>, which includes a detailed description of the mechanisms in place for examining and investigating complaints and claims regarding alleged violations of the Law of Armed Conflict.

⁵⁰⁶ See Turkel Report, *supra* note 505, at Chapter C; see also *id.* at Chapter B (pages 152-264) ("Comparative Survey of Investigative Systems Relevant to Laws of Armed Conflict").



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411. Notwithstanding the endorsement of the Turkel Commission and numerous foreign jurists,⁵⁰⁷ Israel continually seeks to improve the effectiveness and efficiency of its investigations system. For example, in recent years Israel has developed a specialised prosecution unit to deal with allegations of misconduct arising from IDF operations. In July 2014, while IDF forces were engaged in the 2014 Gaza Conflict — and with the process of implementing the Turkel Commission’s recommendations still ongoing — the IDF Chief of General Staff implemented one of the Commission’s key recommendations: the creation of a permanent Fact Finding Assessment Mechanism (hereinafter: the “FFA Mechanism”). The FFA Mechanism is tasked with examining exceptional incidents (such as an attack resulting in significant, unanticipated civilian casualties) in order to assist the MAG’s decision whether to open a criminal investigation and also to inform the IDF’s “lessons-learned” process so that steps may be considered to minimise the risk of such incidents in the future.

412. The numerous practical challenges involved in examining and investigating alleged violations of the Law of Armed Conflict in the context of the 2014 Gaza Conflict have not deterred examination and investigatory efforts. The IDF’s new FFA Mechanism is actively examining approximately 126 incidents. Some examinations have been completed, and some are pending review by the MAG. The MAG periodically publishes his decisions. To date, the following details have been released: The MAG thus far has opened 19 criminal investigations based on a reasonable suspicion of criminal misconduct. Some of these criminal investigations were opened following an examination by the FFA Mechanism where the MAG required additional information to make a decision. Others were opened without an FFA examination on the basis of credible allegations that *prima facie* gave rise to a reasonable suspicion of criminal wrongdoing. The MAG also has closed a number of cases after reviewing findings and material collected by the FFA Mechanism and concluding that there is no reasonable suspicion of criminal misconduct. The examination and investigations process is ongoing, and the MAG is committed to providing further updates on decisions concerning specific incidents.⁵⁰⁸

⁵⁰⁷ See, for example, the decision of the Criminal Chamber of the National Court of Spain following a request to investigate military action carried out by the IDF against Salah Shehadeh, a leader of Hamas, in July 2002. Decision no. 1/2009, July 9, 2009 (plenary), Criminal Chamber of the Spanish National Criminal Court of Appeals (“Sala de lo Penal de la Audiencia Nacional”), at 24, regarding Preliminary Criminal Proceedings no. 157/2008 of the Central Investigation Court no. 4; Plenary of the Criminal Chamber of the Supreme Court, Appeal no. 1979/2009, April 5, 2010, at 6 (confirming the decision). See also Appeal of the Coordinating Prosecutor (Pedro Martínez Torrijos), May 6, 2009, from the Order of Criminal Investigating Court no. 4 of the National Court, May 4, 2009, in Preliminary Proceedings Case No. 157/2008 (emphasizing that Israel’s investigatory system, with review by the Military Advocate General, Attorney General, and Supreme Court, “fully satisfy” the requirements of “an independent and impartial system of justice”).

⁵⁰⁸ See *Decisions of the IDF Military Advocate General regarding Exceptional Incidents that Occurred during Operation ‘Protective Edge’ – Update No.3*, IDF, MAG Corps (Mar. 22, 2015), available at

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413. As in the civilian justice system, criminal investigations in the military justice system often take considerable time, and military prosecutors must thoroughly review all available evidence before deciding whether to bring criminal charges. As explained below, this is especially true in the complex circumstances of intensive military activity that takes place against terrorist organisations outside Israeli territory.

414. In addition to conducting thorough preliminary fact-finding examinations and criminal investigations, the IDF focuses on the lessons learned from these processes and continues to improve its military doctrine and operational practices in an effort to limit harm to civilians and civilian property during military operations.⁵⁰⁹

A. The IDF's Military Justice System

415. The IDF maintains a multi-layered investigations system, with numerous checks and balances to ensure impartiality before investigative, administrative, and judicial authorities.

1. Components

416. The three main components of the military justice system are the Military Advocate General's Corps ("MAG Corps"), the Military Police Criminal Investigation Division ("MPCID"), and the Military Courts. The MAG Corps consists of highly-trained lawyers who are divided into two units, one responsible for enforcing the law (both military and criminal) throughout the IDF⁵¹⁰ and another responsible for providing legal advice to all military authorities.⁵¹¹ The head of the MAG Corps (the

Footnote continued from previous page

<http://www.law.idf.il/163-7183-en/Patzar.aspx>; *Decisions of the IDF Military Advocate General regarding Exceptional Incidents that Occurred during Operation 'Protective Edge' – Update No. 2*, IDF, MAG Corps (Dec. 7, 2014), available at <http://www.law.idf.il/163-6958-en/Patzar.aspx>. For an earlier report, see *Operation Protective Edge: Examinations and Investigation*, IDF, MAG Corps (Sept. 10, 2014), available at <http://www.mag.idf.il/261-6858-en/Patzar.aspx?pos=13>.

⁵⁰⁹ See Chapter VI (IDF's Conduct during the Conflict), Section B.

⁵¹⁰ Military Justice Law 5715–1955, LA 189, art. 178(2), (4) (hereinafter: "Military Justice Law"); IDF Supreme Command Order 2.0613, The Military Advocate General Corps, ¶ (2)(a) (March 5, 1976), (hereinafter: "IDF Supreme Command Order 2.0613"). See also *Avivit Atiyah v. Attorney General*, H CJ 4723/96, ¶ 11 (July 29, 1997).

⁵¹¹ Military Justice Law, § 178(1); IDF Supreme Command Order 2.0613(2)(b) and 3(d). See also Attorney General's Directive No. 9.1002, *The Military Advocate General* (last updated April 2015), § 2(b), unofficial English translation available at

<http://index.justice.gov.il/En/Units/AttorneyGeneral/Documents/AGDirectiveMilitaryAdvocateGeneral.pdf> (hereinafter: the "Attorney General's Directive No. 9.1002"). This directive states that "[t]he opinion of the Military Advocate General with respect to a legal matter determines the state of the law for all IDF authorities, and the Military Advocate General's interpretation of the law is the authoritative interpretation for all IDF authorities."



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MAG), who serves on the IDF General Staff, is appointed by the Minister of Defence, a civilian authority,⁵¹² and is “subject to no authority but the law.”⁵¹³ On professional matters, the MAG is guided only by Israel’s Attorney General.⁵¹⁴ The MAG’s professional independence extends to every subordinate military attorney serving as an officer within the MAG Corps. These officers are subordinate to and report directly to their MAG Corps commanders, who, in turn, report to the MAG himself. This legal chain of command is an important and fundamental aspect of the MAG Corps, implemented to insulate military legal officers from the risk of improper influence by non-MAG commanders. No commanders outside of the MAG Corps are part of the legal chain of command.

417. In 2007, the MAG Corps underwent two significant organisational changes designed to improve its ability to more effectively enforce the rule of law. First, the MAG Corps separated its law enforcement units from its legal advice units. As a result, the MAG Corps officers responsible for military prosecutions (*i.e.*, the Chief Military Prosecutor and subordinate military prosecutors) do not provide legal advice to the military bodies whose activities they may prosecute.⁵¹⁵ The dual (but separate) enforcement and advisory responsibilities that the MAG himself retains parallel those of the Attorney General of the State of Israel.

418. Second, the MAG established a specialised department within the law enforcement unit — the Office of the Military Advocate for Operational Affairs — to oversee all investigations and conduct all prosecutions of alleged misconduct by IDF soldiers occurring in the context of operational activity, including alleged mistreatment of detainees, looting, abuse of authority, or the use of force in a manner not conforming with IDF rules and regulations (which incorporate the Law of Armed Conflict). This Office’s mandate specifically includes prosecution of alleged violations of the Law of Armed Conflict. Prosecutors assigned to the Office receive special training to ensure they

⁵¹² Military Justice Law, §§ 177(a), 178(1).

⁵¹³ IDF Supreme Command Order 2.0613(9)(a). The independent status of the MAG is also reflected in the Attorney General’s Directives No. 9.1002, which states that “[w]hen exercising his or her authority under Article 178 of the Military Justice Law as legal advisor [for the IDF Chief of General Staff and other IDF authorities]... the Military Advocate General operates independently, and is not subordinate to the Chief of the General Staff or any other command authority; and is guided by considerations pertaining to the rule of law – and these considerations only – when fulfilling his or her role.” Attorney General’s Directive No. 9.1002, *supra* note 511 at § 3.

⁵¹⁴ Attorney General’s Directive No. 9.1002 details the relationship between the military legal system headed by the MAG and the general legal system headed by the Attorney General, and also details the principal circumstances in which the Attorney General will intervene, or provide guidance, with respect to legal matters pertaining to the military legal system. *Id.* § 2(b) (“[T]he Military Advocate General must ... adopt the interpretation of the law given by the Attorney General”) and § 9 (“The Attorney General will review decisions made by the Military Advocate General ... after hearing the Military Advocate General’s position on the matter,” where, *inter alia*, the Attorney General believes that the MAG’s decision is of “special importance to the public” or where “the implications go beyond the IDF,” such as “decisions regarding policy aspects of the application of military force, where it is alleged that such policy is unlawful and constitutes a serious violation of international law.”).

⁵¹⁵ Turkel Report, *supra* note 505, at 283.



competently manage these sensitive cases and effectively advise military police investigators on how to conduct investigations regarding IDF operations.

419. The IDF's primary entity for investigating allegations of criminal offences — the Military Police Criminal Investigation Division ("MPCID") — enjoys complete professional independence similar to that of the MAG Corps. The MPCID is not subordinate to any commanders outside the military justice system. All MPCID investigators must complete extensive training.⁵¹⁶ Investigators handling alleged violations of the Law of Armed Conflict receive additional training that includes international law, reconstruction of battlefield situations, and gathering of evidence from witnesses and alleged victims outside Israeli territory. All investigators handling complaints involving Palestinians are assisted by Arabic-speaking interpreters. Following the 2014 Gaza Conflict, the MPCID established a specialised team dedicated to investigations arising from that Conflict. This MPCID team consists of experienced investigators who undergo in-depth training with respect to the Law of Armed Conflict as well as operational affairs.

420. The Military Courts — which are independent of both the MAG and the IDF chain of command — adjudicate charges against IDF soldiers for military and other criminal offenses. The Military Court system includes regional courts of first instance, as well as a Military Court of Appeals. The head of the Military Courts system, the President of the Military Court of Appeals, is a Major General. Professional military judges (appointed by an independent commission)⁵¹⁷ and regular IDF officers (who have no connection to the cases they hear) serve on these Military Courts.⁵¹⁸ Each bench of the Military Courts must include at least one professional military judge, and professional judges must constitute a majority of any appellate panel.⁵¹⁹ Under the Military Justice Law, "[i]n judicial matters, a military judge is not subject to any authority save that of the law, and is not subject in any way to the authority of his commanders."⁵²⁰

421. The proceedings of Military Courts are generally open to the public, except in rare cases when an open proceeding would jeopardise national security.⁵²¹ The media covers Military Court

⁵¹⁶ Military Justice Law, § 252(a)(3).

⁵¹⁷ Military commanders do not appoint professional military judges. Rather, an independent commission comprised of the Minister of Defense, the Minister of Justice, the General Chief of Staff, the Head of Manpower Directorate in the IDF, members of Israel's Supreme Court and the Military Court of Appeals, and a representative of the Israeli Bar Association, make the appointments. See Military Justice Law, § 187(a).

⁵¹⁸ *Id.* Israel's Supreme Court has noted that the participation of regular officers in the panel serves "to emphasize the common responsibility of all of those who serve in the military regarding what happens in the military." *Katz v. President of the Court Martial, Central Jurisdictional District*, HCJ 142/79, ¶ 6 (June 10, 1979).

⁵¹⁹ Military Justice Law, §§ 202, 216

⁵²⁰ *Id.* § 184.

⁵²¹ *Id.* § 324.



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proceedings, and many judgments of the Military Courts are published online.⁵²² Furthermore, Military Courts typically apply the same rules of evidence used in civilian criminal proceedings.⁵²³

2. Mechanisms for Investigating Complaints

422. Israel has multiple avenues for obtaining information regarding alleged misconduct by IDF soldiers, and the MAG Corps constantly reviews any complaints and other information that may suggest IDF misconduct, regardless of the source. As an open and democratic society, Israel has a free press and an active community of domestic and international non-governmental organisations, which are a source of many of the allegations of misconduct. Such allegations also may come from putative victims, their family members, attorneys, or witnesses of the conduct at issue. In fact, any person can file a complaint alleging misconduct by IDF soldiers at any civilian police or MPCID station, either by appearing in person or through written communication. Residents of the Gaza Strip also can — and indeed do — file complaints directly to the MAG through Israel’s liaison mechanism with the Palestinian Authority, through a non-governmental organisation acting on their behalf, or through an attorney (who need not be Israeli).

423. In addition, Israeli commanders, soldiers, police, or other law enforcement officers who witness an offence being committed may file a report to a competent officer. Indeed, under the Military Justice Law, any IDF “commander ... or soldier who knows or has reasonable grounds to believe that another soldier committed an offense” *must* prepare a complaint and present it to a competent officer.⁵²⁴ To bolster compliance, following a recommendation made in the Turkel Report, the IDF has revised existing procedures and introduced a specific directive asserting a duty to file a report, for example, when there is reasonable suspicion that an IDF soldier committed a serious violation of Israeli or international law, as well as in certain other cases even if no such cause for suspicion arises, such as when medical facilities are damaged. The IDF is currently integrating this new, more detailed directive into all levels of IDF command and in the field.

424. Each report, complaint or other piece of information suggesting IDF misconduct undergoes an initial screening process by the MAG Corps to determine whether it is sufficiently concrete and credible *prima facie* to merit further review by the MAG. In certain cases, where the known facts are

⁵²² See, e.g., Nevo Press Ltd., <http://www.nevo.co.il/>, and Takdin Online Israeli Law Database, <http://www.takdin.co.il/>.

⁵²³ See Military Justice Law, § 476 (establishing that evidence law applicable to criminal proceedings in civilian courts shall apply in Military Courts unless a specific provision states differently). Rules of evidence that are unique to the Military Courts must be interpreted in light of similar provisions and the principles of general evidence law. See *Isascharov v. Military Prosecutor General*, Cr.A. 5121/98 (May 4, 2006).

⁵²⁴ Military Justice Law, § 225.



sufficient to indicate that the alleged wrongdoing could be criminal in nature (such as looting or the abuse of detainees), the MAG immediately refers the complaint to the MPCID. In other cases — for example, when an allegation is sufficiently credible yet partial or circumstantial — the MAG may require additional information in order to decide whether to open a criminal investigation. Because the death or injury of civilians during an armed conflict — an unfortunate but inevitable reality of war — does not in and of itself establish a reasonable suspicion of criminal misconduct, the collection of additional information is often critical when addressing allegations of wrongdoing during combat activity. In such cases, the IDF will conduct a preliminary fact-finding assessment in order to develop the factual record so that the MAG can make a fully informed decision whether there is a reasonable suspicion of criminal misconduct that justifies opening a criminal investigation.⁵²⁵

425. **The IDF’s New Fact-Finding Assessment Mechanism.** Soon after the commencement of the 2014 Gaza Conflict, the (then) IDF Chief of General Staff ordered the establishment of a permanent General Staff Mechanism for Fact-Finding Assessments, in accordance with one of the Turkel Commission’s key recommendations.⁵²⁶ The FFA Mechanism is designed to conduct, based on proper expertise, a prompt, professional examination of exceptional incidents that took place during military operations, so that the MAG has sufficient factual information to determine whether allegations give rise to a reasonable suspicion of criminal misconduct. The FFA Mechanism examines all exceptional incidents referred to it by the MAG.⁵²⁷

426. The FFA Mechanism is currently headed by a Major General in the reserves and relies on high-ranking IDF reservist and active duty officers who are outside the chain of command for the operational activity being examined. The FFA Mechanism’s teams include officers with operational expertise, legal qualifications, and professional investigative experience. Each team is also provided with ongoing legal advice from legal officers in the MAG Corps who have particular expertise and experience in international law. In addition, the FFA Mechanism receives legal advice from its own high-ranking legal advisor, who has special expertise in international law as well.

⁵²⁵ *Id.* § 539A(a).

⁵²⁶ See *Operation Protective Edge: Examinations and Investigation*, IDF, MAG Corps (Sept. 10, 2014), available at <http://www.mag.idf.il/261-6858-en/Patzar.aspx>.

⁵²⁷ Previously, the MAG generally relied on “command investigations” (also known as “operational debriefings”) in order to determine whether allegations gave rise to a reasonable suspicion of criminal misconduct. While the FFA Mechanism is now dedicated to providing the MAG with the information required in order to make such a determination, command investigations are still used by the relevant units in order to conduct a “lessons learned” process, including to assess what steps, if any, may be taken to minimise the risk of harm or casualties in the future. The FFA Mechanism is authorised to obtain the results of any command investigation, and the materials used therein, which it deems relevant in order to fulfill its mandate to provide the MAG with a fuller factual examination.



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427. The FFA Mechanism has broad-ranging powers to obtain information from within and outside the IDF, and to seek information from civilians and from persons outside of Israeli sovereign territory. IDF soldiers are obliged to cooperate with the FFA Mechanism. To encourage full disclosure of relevant information, Israeli law treats the materials and findings of the FFA Mechanism as privileged.

428. Once an FFA Mechanism examination is complete, the MAG decides whether the findings and collected materials meet the requirements for a criminal investigation. In order to make this decision, the MAG may request supplementary examinations and materials from the FFA Mechanism. The MAG's decision must be prompt, reasoned, and documented. Complainants (including residents from the Gaza Strip and Palestinian NGO's) receive notification of the MAG's decision, which is also made public subject to legal and national security restrictions regarding the scope of information that can be disclosed.

429. If so directed by the MAG, the MPCID must conduct a criminal investigation. MPCID staff may investigate any IDF soldier or officer, collect evidence from a wide range of sources (including witness testimony of Palestinians), and seek counsel from military prosecutors. When the MPCID concludes its investigation, it transfers the case file to the Office of the Military Advocate for Operational Affairs. After a thorough review of the investigation materials, the military prosecutors can — and in many cases do — request supplemental investigations.

430. The MAG may also refer the findings and materials collected by the FFA Mechanism to an Investigative Officer, who is an operational commander outside the chain of command for the operational activity being investigated and who is specifically vested with the same investigatory authorities exercised by the MPCID.⁵²⁸

431. Following a criminal investigation (or investigation by an Investigative Officer), the file is transferred back to the Office of the Military Advocate for Operational Affairs for review. After this review, the MAG decides whether to initiate criminal or disciplinary proceedings. The MAG's decision must be based on the evidence available and the nature of the alleged misconduct. In accordance with well-established principles of criminal law, military prosecutors may file an indictment in the Military Courts if the evidence is sufficient to establish a reasonable chance of

⁵²⁸ Military Justice Law, § 252 et seq.



conviction.⁵²⁹ In the event of an indictment, Palestinian witnesses may testify in Israel with the aid of an interpreter provided by Israel and generally may review the investigation file. The Military Prosecution may appeal an acquittal or a sentencing decision to the Military Court of Appeals, and then may request to appeal the decision of the Military Court of Appeals to Israel's Supreme Court.⁵³⁰

432. Practical and Legal Challenges to Investigations and Prosecutions. Generally accepted understandings of international law recognise the inherent difficulties of conducting investigations in the context of armed conflict.⁵³¹ International legal standards need to be applied in a manner that is considerate of these difficulties, while at the same time remaining true to the ultimate aim of conducting effective investigations.⁵³² On a practical level, investigation of alleged violations of the Law of Armed Conflict inevitably is complicated by numerous challenges, especially in the context of an intensive conflict with a non-state actor like Hamas that embeds its military operations in urban terrain.⁵³³

433. These (often overlapping) challenges include, for example:

- the complex, dynamic nature of certain large-scale military operations involving many different forces and numerous attacks over several hours or days (*e.g.*, in the wide context of

⁵²⁹ Under Israel Supreme Court precedent, a criminal indictment may only be filed where a “reasonable chance to convict” exists in light of all evidence collected, including exculpatory evidence. *See, e.g., Yahav v. State Attorney*, HCJ 2534/97 (June 30, 1997).

⁵³⁰ *See* for example, *Military Prosecutor v. Sgt. Ilin*, C/62/03 ¶ E (May 27, 2003), where the Military Court of Appeals increased the sentence of a soldier convicted of looting, and *Military Prosecutor v. Cpl. Lior and Cpl. Roi*, C/128/03 and C/146/03 ¶ 17 (August 21, 2003), where the Military Court of Appeals increased the sentences of two soldiers serving in the Military Police who were convicted of assaulting Palestinian detainees.

⁵³¹ These challenges were acknowledged by the U.N. Secretary General in a letter to the President of the U.N. Security Council presenting a summary of the report of the U.N. Headquarters Board of Inquiry Into Certain Incidents That Occurred in the Gaza Strip between 8 July and 26 August 2014. The Secretary General “recognize[d] the difficulties that [the U.N. Board of Inquiry] naturally faced in obtaining clear and reliable evidence about what precisely happened in each of the incidents ... occurring, as they did, in a situation of armed conflict, and, in some but not all cases, in close proximity to where intense fighting was taking place.” *Letter dated 27 April 2015 from the Secretary-General addressed to the President of the Security Council*, annexing *Summary by the Secretary General of the report of the United Nations Headquarters Board of Inquiry into certain incidents that occurred in the Gaza Strip between 8 July and 26 August 2014* (U.N. Doc. S/2015/286), at ¶¶ 55, 67, 76, 80 (27 Apr. 2015), available at http://www.un.org/ga/search/view_doc.asp?symbol=s/2015/286. The U.N. Board of Inquiry was established by the U.N. Secretary General to identify any gaps in the U.N.’s procedures and assess any actions that may be taken to prevent the recurrence of similar events in the future. It did not constitute a judicial body nor make any findings of legal liability. The report of the U.N. Board of Inquiry was submitted to the U.N. Secretary General on February 5, 2015, and remains an internal U.N. document, not for public release. While Israel cooperated fully with the Board of Inquiry, it maintains reservations concerning some aspects of the Board of Inquiry’s methodology and findings.

⁵³² *See, e.g.,* Turkel Report, *supra* note 505, at 143, 154, 237.

⁵³³ *See* Chapter IV (Hamas’s War Crimes) and Chapter VI (IDF’s Conduct during the Conflict), Section C.



a battle it can be very difficult to identify the singular cause for damage to a structure — which party is directly responsible, which weaponry caused the damage, and which particular force was responsible for conducting the individual attack or even whether the damage was a result of a direct attack, shrapnel or other secondary causes);

- the inadvertent destruction of evidence during intense fighting, which often makes it difficult, if not impossible, to determine which party was directly responsible for the damage caused (*e.g.*, whether damage was caused by an IDF attack, or Hamas booby-trapping or misfire) or to identify the circumstances surrounding an attack (*e.g.*, whether IDF fire was responding to Hamas fire from a civilian structure);
- the scene of the alleged violation being outside the state's territory;
- the scene of the alleged violation being in an area under hostile control, which makes the collection of evidence difficult and, at best, incomplete, and makes the investigation of the scene difficult (*e.g.*, the collection of forensic evidence is often crucial in order to determine the type of weaponry that caused damage to a civilian structure; aerial photographs are not always sufficient to make this determination, particularly when destruction was the result of a type of weaponry that both parties to the conflict possess);
- the lack of eyewitnesses to certain military activity (such as an aerial bombing or covert ground operations) and the limited reliability of eyewitnesses whose observations occur in the midst of highly intensive combat operations;
- the failure of potential witnesses to come forward, because, *inter alia*, they fear retribution for cooperating with the IDF's investigation or for reporting on terrorist activity;
- the concealing of evidence or planting of false evidence by adversaries (*e.g.*, Hamas has a record of removing evidence of its military activities conducted within civilian terrain and trying to present its militant fatalities as innocent civilians).⁵³⁴

434. As a result of these various challenges and constraints, criminal investigations can take significant time and still fail to obtain evidence considered sufficient to warrant prosecution, either

⁵³⁴ For more information on Hamas's record of trying to present militant fatalities as innocent civilians, see Annex: *Palestinian Fatality Figures in the 2014 Gaza Conflict*, also available at <http://mfa.gov.il/ProtectiveEdge/Documents/PalestinianFatalities.pdf>.



because of a lack of information or because of evidentiary obstacles to the admissibility of information gathered.⁵³⁵ Nonetheless, Israel’s mechanism is designed to ensure that investigations are conducted as promptly and effectively as possible.

435. If an investigation progresses to prosecutorial review, additional challenges arise. As in civilian prosecutions, military prosecutors must carefully review all the evidence (both inculpatory and exculpatory) before deciding to take the significant step of bringing criminal charges. In addition, not all operational mistakes are indicative of criminal behaviour. Military prosecutors must assess conduct based on the circumstances known at the time of the decision at issue and strive to avoid the bias of hindsight or the convenience of effects-based condemnations. In evaluating alleged violations of the Law of Armed Conflict, the conduct must be considered from the perspective of the “reasonable commander” based on the information available at the time, not after the fact. Moreover, even if the investigators and prosecutors suspect that a violation of the law may have been committed, the prosecutors may nevertheless conclude — like civilian prosecutors — that the admissible evidence is insufficient to bring criminal charges that can withstand scrutiny in a criminal trial. In such cases, the IDF may still take internal disciplinary action against the personnel involved.⁵³⁶

436. Notwithstanding these challenges, Israel is committed to investigating alleged misconduct and holding wrongdoers accountable, through criminal prosecutions or disciplinary action, as may be appropriate in each case.

B. Civilian Review of the Military Justice System By Israel’s Attorney General and Supreme Court

437. As a democratic country committed to the rule of law, Israel subjects the IDF’s military justice system to civilian oversight.

⁵³⁵ Turkel Report, *supra* note 505, at 141-142 (including footnotes 273-274).

⁵³⁶ *Gaza Operation Investigations: An Update*, State of Israel (January 2010), available at http://mfa.gov.il/MFA_Graphics/MFA%20Gallery/Documents/GazaOperationInvestigationsUpdate.pdf; *Gaza Operation Investigations: Second Update*, State of Israel (July 2010), available at http://www.mfa.gov.il/MFA_Graphics/MFA%20Gallery/Documents/GazaUpdateJuly2010.pdf.



1. Review by the Attorney General

438. The Attorney General of Israel, who heads the public prosecution system and is the chief legal advisor to the Government of Israel, provides civilian supervision of the military justice system. The professional directives of the Attorney General bind all state authorities, including the IDF.

439. The Attorney General may review any decision of the MAG that the Attorney General considers to be of special public interest.⁵³⁷ Moreover, a complainant or non-governmental organisation can challenge the MAG's decision before the Attorney General as to whether to open a criminal investigation or to file an indictment in cases concerning alleged violations of the Law of Armed Conflict.⁵³⁸

2. Review by the Supreme Court

440. Israel's Supreme Court provides judicial review for the military justice system. Under the Military Justice Law, the Supreme Court may hear direct appeals from a judgment of the Military Court of Appeals "concerning an important, difficult, or innovative legal question."⁵³⁹ Complainants or non-governmental organisations also may petition the Supreme Court, sitting as the High Court of Justice ("HCJ"), against a decision of the MAG or the Attorney General.⁵⁴⁰ The Supreme Court may review and reverse decisions of the MAG and the Attorney General, including decisions whether to open a criminal investigation, whether to file a criminal indictment, whether to bring certain charges, or whether to appeal a decision of the Military Courts.⁵⁴¹

⁵³⁷ See, for example, *Avivit Atiyah v. Attorney General*, HCJ 4723/96 (July 29, 1997), where the Supreme Court ruled that the Attorney General could order the MAG Corps to change its position concerning whether to file a criminal indictment.

⁵³⁸ In light of the recommendations of the Turkel Commission, this procedure was set forth in a new directive issued by Israel's Attorney General in April 2015. According to this directive, an interested individual can seek review of a decision made by the Military Advocate General with respect to certain incidents by referring the issue for review by the Attorney General. See Attorney General's Directive 4.5003, *Review of decisions of the Military Advocate General regarding incidents involving the death of an individual in the course of Israel Defense Forces operational activity, when serious violations of customary international law are alleged* (last updated April 2015), § B(4), unofficial English translation available at <http://index.justice.gov.il/En/Units/AttorneyGeneral/Documents/AGDirectiveRightofReview.pdf> (unofficial English translation) (hereinafter: "Attorney General's Directive 4.5003").

⁵³⁹ Military Justice Law, §440I(a),(b).

⁵⁴⁰ Paragraph 15(D)(2) to the Basic Law: The Judiciary.

⁵⁴¹ For example, the Supreme Court has overturned the MAG's decision not to file criminal charges against a high-ranking field commander, resulting in the filing of such charges and ultimately in the conviction of the commander. See *Jamal Abed al Kader Mahmoud Zofan et al. v. Military Advocate General*, HCJ 425/89 (1989). In another case, Supreme Court hearings prompted the MAG to open a military investigation into an incident that had not previously

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441. The scope of the Court’s review is very broad. According to the jurisprudence and practice of the High Court of Justice, any interested party (including non-governmental organisations) — or any person (including those who are neither citizens nor residents of Israel) who is affected or potentially affected by the actions of a government authority (including the IDF or the Attorney General) — is entitled to petition the High Court of Justice, as a court of first instance, on any claim that a government action or an action of the IDF is *ultra vires*, unlawful, or substantially unreasonable. For example, in the midst of the 2014 Gaza Conflict, the High Court of Justice reviewed a petition concerning the disclosure of information regarding detainees held by the IDF outside the Gaza Strip,⁵⁴² and in recent years the High Court of Justice reviewed the IDF’s early warning procedures, targeted killing policy, supply of fuel and electricity in the Gaza Strip, and investigation policy (which was upheld).⁵⁴³

442. Israel’s Supreme Court has earned international respect and recognition for its jurisprudence, as well as for its independence in enforcing international law. Its landmark rulings in several cases related to the balancing of security and the protection of individuals are highly regarded by jurists and academic scholars of international law, and have been cited favourably by foreign courts, including the Supreme Court of Canada, the House of Lords in the United Kingdom, and the European Court of Justice.⁵⁴⁴

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been investigated. *See Brian Avery v. Military Advocate General*, HCJ 11343/04 (2005). In yet another case, the Supreme Court’s response to a petition arguing that the MAG should have charged a soldier and commander with more serious offenses than “unbecoming conduct” led to the MAG’s issuance of an amended indictment. *See Ashraf Abu Rahma et al. v. Military Advocate General*, HCJ 7195/08 (July 1, 2009).

⁵⁴² On July 29, 2014, an Israeli NGO filed a petition to the Israel’s Supreme Court, requesting that the IDF provide the identities and whereabouts of all persons detained during the 2014 Gaza Conflict and currently held in IDF detention facilities in Israel. On August 4, 2014, during a Supreme Court hearing, the petitioner requested to withdraw its petition after hearing the State’s arguments and comments made by the Court. *See Hamoked Le’haganat Haprat v. IDF*, HCJ 5243/14 (Aug. 4, 2014) (unpublished). For additional details, see Chapter VI (IDF’s Conduct during the Conflict), Section D.5.

⁵⁴³ *See* Turkel Report, *supra* note 505, at 317 (citing *AlBassiouni v. Prime Minister*, HCJ 9132/07 (Jan. 30, 2008) (unpublished) (supply of fuel and electricity); *The Public Committee Against Torture in Israel v. The Government of Israel*, HCJ 769/02, 62(1) 507 (2006) (targeted killing policy); *Adalah – The Legal Center for Arab Minority Rights in Israel v. GOC Central Command, IDF*, HCJ 3799/02, 60(3) 67 (2005) (early warning system). *See also B’Tselem – The Israeli Information Center for Human Rights in the Occupied Territories v. Military Advocate-General*, HCJ 9594/03 (Aug. 21, 2011) (upholding IDF investigations policy).

⁵⁴⁴ *See, e.g., Application Under S. 83.28 of the Criminal Code*, 2004 SCC 42, ¶ 7 (Supreme Court of Canada 2004) (citing the “eloquent” statements of Israel’s Supreme Court on the importance of responding to terrorism within the rule of law); *A and others v. Secretary of State for the Home Department*, 2 A.C. 221, ¶ 150 (U.K. House of Lords 2005) (emphasizing importance of the U.K.’s “retain[ing] the moral high ground which an open democratic society enjoys,” and thereby “uphold[ing] the values encapsulated in the judgment of the Supreme Court of Israel in *Public Committee Against Torture in Israel v. Israel* . . . [that] “[a]lthough a democracy must often fight with one hand tied behind its back, it nonetheless has the upper hand”) (citation omitted); *Kadi v. Council of the European Union*, 3

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C. Review by an Independent Public Commission of Inquiry

443. The Government of Israel from time to time may establish independent public commissions of inquiry to review Israel's practices and policies.⁵⁴⁵ Following the IDF's interdiction of vessels attempting to violate a naval blockade on May 31, 2010 (hereinafter: the "Flotilla Incident"), the Government created an independent public commission of inquiry headed by retired Supreme Court Justice Jacob Turkel.⁵⁴⁶ The Turkel Commission included the late Professor Shabtai Rosenne, General (ret.) Amos Horev, Israeli law professor Miguel Deutch, and former Ambassador Reuven Merhav, as well as international observers Lord David Trimble of Northern Ireland, a Nobel Peace Prize winner and formerly First Minister of Northern Ireland; Brigadier-General (ret.) Kenneth Watkin of Canada, a former Judge Advocate General of the Canadian armed forces; and Professor Timothy McCormack of Australia, who serves as a special advisor to the Prosecutor of the International Criminal Court in the Hague.⁵⁴⁷ The Commission was charged with assessing the legality of Israel's actions during the Flotilla Incident and evaluating Israel's procedures for examining and investigating alleged violations of the Law of Armed Conflict.⁵⁴⁸

444. In February 2013 the Turkel Commission published a 476-page report, which Canadian Brigadier-General Watkin described as "an important reflection of the commitment to the Rule of Law" and the product of "considerable efforts to hear from a wide range of interested groups and individuals in addition to the Government witnesses," including testimony from Palestinians who "provided a reminder of the human impact of [Israel's] investigations."⁵⁴⁹ According to Professor

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C.M.L.R. 41, ¶ AG 45 (European Court of Justice 2008) (quoting Israel's Supreme Court regarding importance of judicial oversight of political decisions, specifically that "[i]t is when the cannons roar that we especially need the laws... It is an expression of the difference between a democratic state fighting for its life and the fighting of terrorists rising up against it. The state fights in the name of the law and in the name of upholding the law. The terrorists fight against the law, while violating it. The war against terrorism is also law's war against those who rise up against it.").

⁵⁴⁵ The Government Law, 5761–2001, LA 1780; The Commissions of Inquiry Law, 5729–1968, LA 548, at Art. 1.

⁵⁴⁶ Resolution No. 1796 of the 32nd Government, Appointment of an Independent Public Commission, Chaired by Supreme Court Justice (ret.) Jacob Turkel, to Examine the Maritime Incident of 31 May 2010 (Jun. 6, 2010).

⁵⁴⁷ The Turkel Commission also benefitted from the contributions of several other reputable experts in the field of international law, including Professor Claus Krefß, Director of the Institute for International Peace and Security Law at the University of Cologne in Germany, and Professor Gabriella Blum, Rita E. Hauser Professor of Human Rights and Humanitarian Law at Harvard University. Professor Michael Schmitt, who was at the time the Chair of Public International Law at Durham University in the United Kingdom, also provided counsel to the Commission until his appointment in September 2011 as Chair of the International Law Department at the United States Naval War College. Turkel Report, *supra* note 505, at 37-38.

⁵⁴⁸ See Art. 5 of the Turkel Commission's Mandate, available (in English) at www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings/Independent+Public+Commission+Maritime+Incident+31-May-2010.htm.

⁵⁴⁹ Turkel Report, *supra* note 505, at 24-26 (Observer Letter of Brigadier-General (ret.) Kenneth Watkin, Q.C.).



McCormack, this report “represents the first comprehensive and systematic analysis of the international law of national investigations.”⁵⁵⁰

445. The Turkel Commission concluded that “the examination and investigation mechanisms in Israel for complaints and claims of violations of international humanitarian law and the methods they practice, generally comply with the obligations of the State of Israel under the rules of international law.”⁵⁵¹ With respect to principles of independence, impartiality, effectiveness, thoroughness, promptness, and transparency, the Turkel Commission also compared Israel’s investigations system favourably to the systems of six Western nations (Australia, Canada, Germany, the Netherlands, the United Kingdom and the United States).⁵⁵² In the words of Lord David Trimble, one of the Commission’s international observers, “taken as a whole, Israeli law and practice will stand comparison with the best in the world.”⁵⁵³

446. Consistent with its mandate, the Turkel Commission made various recommendations for how Israel might further improve its system for examining and investigating alleged violations of the Law of Armed Conflict. The Commission emphasised that these recommendations “[do] not necessarily indicate flaws in the past, but rather [signify] the Commission’s aspiration to pave a way towards best practice in this field in the future.”⁵⁵⁴

447. Israel has already implemented some of the recommendations of the Turkel Report, including the establishment of a permanent FFA Mechanism, as discussed in Sections A.2 above,⁵⁵⁵ and new Directives by the Attorney General, as discussed in Section B.1 above.⁵⁵⁶ An inter-agency commission is addressing how to implement the balance of the recommendations and expects to conclude its work in the near future.

⁵⁵⁰ Timothy McCormack, Shabtai Rosenne Memorial Lecture, YouTube (26 Nov. 2014), at 18:45, <https://www.youtube.com/watch?v=UMAmSltyEOE>.

⁵⁵¹ Turkel Report, *supra* note 505, at 49.

⁵⁵² *Id.* at 152-264 (“Comparative Survey of Investigative Systems Relevant to Laws of Armed Conflict”).

⁵⁵³ *Id.* at 22.

⁵⁵⁴ *Id.* at 361.

⁵⁵⁵ The establishment of the FFA Mechanism was fully coordinated with the Attorney General and was endorsed by Dr. Joseph Ciechanover, who heads the inter-agency commission responsible for implementing the recommendations of the Turkel Report.

⁵⁵⁶ Attorney General’s Directive 9.1002, *supra* note 511 and Attorney General’s Directive 4.5003, *supra* note 538.



D. Examination and Investigation of Allegations Arising from the 2014 Gaza Conflict

448. The IDF is currently reviewing hundreds of complaints regarding its conduct of operations during the 2014 Gaza Conflict. These complaints have been made by private complainants, the U.N., NGOs, international and local media, and IDF personnel. Indeed, the Military Advocate for Operational Affairs has requested the cooperation of certain NGOs.⁵⁵⁷

449. The MAG periodically publishes his decisions.⁵⁵⁸ As of March 22, 2015, the date of the MAG's last public report, the FFA Mechanism had been charged with examining approximately 126 incidents so as to provide the MAG with sufficient information to decide whether there is a reasonable suspicion of criminal behaviour such that a criminal investigation should be opened. The FFA Mechanism had completed the examination of 65 incidents. The MAG had ordered criminal investigations into six of these incidents, closed 17 after finding that the IDF's actions did not raise reasonable grounds for suspicion of criminal behaviour, and asked the FFA Mechanism to gather further information for an additional number of cases. As of March 22, 2015, the MAG was reviewing the remaining incidents. In addition, the MAG opened 13 criminal investigations without a prior examination by the FFA Mechanism, based on allegations that *prima facie* raised reasonable suspicion of criminal misconduct.⁵⁵⁹

450. This Section provides information regarding the examination and investigations of several specific incidents that took place during the 2014 Gaza Conflict. In deference to the integrity and independence of the processes underway in Israel, it would be premature to reach any final conclusions now, before those processes are complete.⁵⁶⁰ Nonetheless, given extensive public

⁵⁵⁷ See, e.g., Letter from Lt. Col. Ronen Hirsch, Military Advocate for Operational Matters, to Mr. Hagai El-Ad, B'Tselem Executive Director, regarding Examination of irregular incidents in Operation Protective Edge (Aug. 11, 2014), English translation available at http://www.btselem.org/download/20140811_letter_from_mag_corps_regarding_protective_edge_investigations_eng.pdf. To the extent that external organisations have gathered information related to the 2014 Gaza Conflict, they should provide the information and any evidence on which it is based to Israel to facilitate those investigations.

⁵⁵⁸ See *Decisions of the IDF Military Advocate General regarding Exceptional Incidents that Occurred during Operation 'Protective Edge' – Update No.3*, IDF, MAG Corps (Mar. 22, 2015), available at <http://www.law.idf.il/163-7183-en/Patzar.aspx>; *Decisions of the IDF Military Advocate General regarding Exceptional Incidents that Occurred during Operation 'Protective Edge' – Update No. 2*, IDF, MAG Corps (7 Dec. 2014), available at <http://www.law.idf.il/163-6958-en/Patzar.aspx>. For an earlier report, see *Operation Protective Edge: Examinations and Investigation*, IDF, MAG Corps (10 Sept. 2014), available at <http://www.mag.idf.il/261-6858-en/Patzar.aspx?pos=13>.

⁵⁵⁹ See *id.*

⁵⁶⁰ The U.N. Fact-Finding Mission on the Gaza Conflict that investigated allegations of IDF misconduct during the Gaza Operation 2008-2009 reached erroneous conclusions regarding intentionality based only on the fact of civilian

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discussion about these issues and the frequency with which public statements have preceded rather than followed the evidence, the IDF has decided to provide preliminary information regarding some of the specific incidents examined. This information reflects only what the IDF knows thus far, and what can be released legally and without compromising the integrity and independence of the ongoing, thorough processes.

451. The MAG Corps is making a substantial effort to ensure transparency in the process of examining and investigating exceptional incidents that allegedly occurred during the 2014 Gaza Conflict. To this end, the MAG periodically publishes his decisions with respect to individual incidents, holds press conferences to discuss such decisions as well as general processes, and meets with military attaché and other foreign dignitaries to discuss the examination and investigation processes, as well as individual incidents. Given the nature of the issues involved, however, the extent of information the MAG Corps can disclose may unavoidably be limited by laws protecting the confidentiality of the FFA Mechanism report and of ongoing criminal investigations or by considerations concerning the publication of classified information.

452. An objective analysis of specific incidents where civilians were killed or protected property damaged during the 2014 Gaza Conflict must also take into account the realities of armed conflict and the applicable Law of Armed Conflict. Civilian casualties in wartime are tragic. Damage to civilian property and infrastructure is regrettable. But the Law of Armed Conflict does not condemn military actions simply because they resulted in such casualties or damage. Rather, the law focuses on whether the actions of commanders and soldiers complied with the law at the time of the attack, including whether operations were aimed at achieving legitimate military objectives and were conducted in accordance with the principles of distinction, proportionality, and precautions. Rooted in the idea of the “reasonable commander,” the legal analysis is focused on the circumstances at the time of the incident, in light of information that was known to the commander (or should have been known). Thus, for example, targeting decisions that result in civilian casualties do not, *ipso facto*, indicate a violation of the Law of Armed Conflict, whereas the deliberate targeting of civilians would indicate such a violation. Because civilian casualties are unfortunately unavoidable when engaged in

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casualties. The Chairman of the Committee, Justice Richard Goldstone, has since written: “If I had known then what I know now, the Goldstone Report would have been a different document.” Richard Goldstone, *Reconsidering the Goldstone Report on Israel and war crimes*, Washington Post (Apr. 1, 2010), available at http://www.washingtonpost.com/opinions/reconsidering-the-goldstone-report-on-israel-and-war-crimes/2011/04/01/AFg111JC_story.html. Goldstone also acknowledged that according to a subsequent report issued by the U.N. Human Rights Council on the Gaza Operation 2008-2009, the Council’s final report on this Operation, “Israel has dedicated significant resources to investigate over 400 allegations of operational misconduct in Gaza” while “the de facto authorities (i.e., Hamas) have not conducted any investigations into the launching of rocket and mortar attacks against Israel.” *Id.*



hostilities within the urban terrain — and against an enemy like Hamas, which embeds its operations within the civilian environment⁵⁶¹ — the distinction between these two conclusions will often be highly fact contingent.

453. **Criminal Investigations.** As of the date of this report, the MAG has opened 19 criminal investigations. Thirteen of these criminal investigations were opened without a prior examination by the FFA Mechanism, based on allegations that *prima facie* raised reasonable suspicion of criminal misconduct by IDF forces, including allegations regarding the shooting of a woman in the Dahaniya area on July 18, 2014; allegations regarding a number of instances of looting (the stealing of money) in the Gaza Strip during the Operation; allegations regarding the mistreatment of a 17-year old held by IDF forces in Khuza'a between July 23 and 27, 2014; and allegations regarding the death of a man carrying a white flag and the use of his family as human shields in Khuza'a on July 25, 2014. On April 20, 2015, the MAG decided to file criminal charges against three soldiers with regard to allegations of looting. Two of these soldiers were also charged with obstruction of a criminal investigation.⁵⁶² Meanwhile, two other investigations concerning allegations of looting have been closed following the failure of the complainants to appear and provide testimony, despite the IDF's repeated efforts to coordinate the provision of such testimony, including by the assurance of immunity for witnesses who would come to the Erez Crossing Point to provide testimony to the MPCID.

454. Six of the criminal investigations opened thus far are based on initial examinations by the FFA Mechanism: allegations regarding the death of four children on the Gaza Strip coast on July 16, 2014; allegations regarding 15 civilian casualties resulting from a strike in the vicinity of an UNRWA school in Beit Hanun on July 24, 2014; allegations regarding the death of an ambulance driver in the Khan Yunis area on July 25, 2014; allegations regarding the death of an ambulance driver in the vicinity of a hospital in Beit Hanun on July 25, 2014; allegations regarding the deaths of 27 civilians as a result of strikes on the Abu-Jama House in Khan Yunis on July 21, 2014; and allegations regarding an IDF strike which resulted in casualties and injuries at an UNRWA school

⁵⁶¹ See Chapter III (Objectives and Phases of the Conflict); Chapter IV (Hamas's War Crimes); Chapter VI (IDF's Conduct during the Conflict).

⁵⁶² The indictments charge two soldiers with the looting of 2,420 NIS from a house where IDF forces were situated in Shuja'iyyeh. The third soldier is charged with assisting in committing the crime. The MAG opened these criminal investigations during the hostilities, following a report made by the battalion commander to the MPCID in close proximity to the incident. For the MAG Corps' announcement (in Hebrew), see <http://www.law.idf.il/163-7247-he/Patzar.aspx?pos=16>.



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and shelter on July 30, 2014. Information about the MAG's decision to open these investigations is available on the MAG's website.⁵⁶³

455. Specific Cases Examined and Closed For Lack of Reasonable Suspicion of a Legal Violation. After review by the FFA Mechanism, the MAG has closed 17 cases where the evidence did not raise a reasonable suspicion of a violation of Israeli law or the Law of Armed Conflict or where no involvement of IDF forces was identified. Israel deeply regrets the civilian deaths, injuries, and property damage that occurred in some of these incidents. Nevertheless, the harm to civilians and civilian property in these cases did not raise a suspicion of unlawful IDF conduct that justifies a criminal investigation. Accordingly, in these cases there was no basis for bringing criminal or disciplinary proceedings. However, in relation to some of these cases, the MAG recommended changes to operational methods in order to reduce the risk of exceptional incidents in the future.

456. By way of example, these cases include:

- Allegations Concerning an Aerial Strike on a Vehicle Marked "TV" in Gaza City on July 9, 2014: The MAG Corps received reports, as well as correspondence from NGO's, alleging that an aerial strike was carried out in the Rimal neighbourhood of Gaza City on July 9, 2014, against a vehicle marked "TV," and which resulted in the death of one person alleged to be a journalist (Ahmed Abdullah Mahmoud Shahab) and in the injury of eight additional persons also alleged to be journalists. Subsequently, and in accordance with the MAG's investigation policy, the incident was referred to the FFA Mechanism.

According to the factual findings and materials collated by the FFA Mechanism and presented to the MAG, the strike was carried out against a vehicle, which intelligence information and direct evidence (specifically, real-time aerial surveillance) indicated was being used to transport weaponry intended to be used against IDF forces or the Israeli civilian population that same day, and whose passengers were involved in the hostilities. It appears that the vehicle was marked "TV" in order to mask the military use made of the vehicle to transport weaponry.

⁵⁶³ *Decisions of the IDF Military Advocate General regarding Exceptional Incidents that Occurred during Operation 'Protective Edge' – Update No.3*, IDF, MAG Corps (Mar. 22, 2015), available at <http://www.law.idf.il/163-7183-en/Patzar.aspx>; *Decisions of the IDF Military Advocate General regarding Exceptional Incidents that Occurred during Operation 'Protective Edge' – Update No. 2*, IDF, MAG Corps (7 Dec. 2014), available at <http://www.law.idf.il/163-6958-en/Patzar.aspx>; see also *Operation Protective Edge: Examinations and Investigation*, IDF, MAG Corps (Sept. 10, 2014), available at <http://www.mag.idf.il/261-6858-en/Patzar.aspx?pos=13>.



The MAG found that the targeting process accorded with Israeli domestic law and international law requirements. The attack was carried out against a military objective, in accordance with the requirements of the principle of proportionality, and the decision to carry out the attack was made by the authorities authorised to do so. It should be noted that, according to the factual findings, at the time of the strike the IDF forces could not discern that the vehicle was marked “TV.” In any event, in light of the military use made of the vehicle for the purposes of transporting weaponry, the marking of the vehicle did not affect the lawfulness of the strike under international law. The MAG further found that the targeting process was carried out after undertaking various precautions with significant efforts to minimise the possibility of civilian harm. Indeed, the strike on the vehicle was at one point delayed, due to the concern that civilians in its vicinity could be harmed. Furthermore, no supporting evidence was found indicating harm caused to persons other than Shahab.

In light of the above, the MAG did not find that the actions of the IDF forces raised grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation or ordering further action against those involved in the incident.

- Allegation Concerning a Strike on a Red Crescent Station in Jabalya and Harm Caused to Red Crescent Personnel on July 9, 2014: The MAG Corps received allegations from a number of NGO’s that in the night-time hours of July 9, 2014, a number of persons working at a Red Crescent station were wounded (the various reports differ with regard to the number of wounded persons, with allegations ranging from three up to 15 persons wounded, and also differ with regard to the severity of their wounds, with some allegations of minor wounds caused and others claiming moderate wounds caused) and three ambulances were damaged, allegedly as a result of an IDF strike on agricultural property near the station. Subsequently, in accordance with the MAG’s investigation policy, the incident was referred to the FFA Mechanism.

According to the factual findings collected by the FFA Mechanism and presented to the MAG, Palestinian terrorist organisations had positioned rockets aimed at Israel in underground rocket launching sites a few tens of metres away from the Red Crescent station. The location of the station was known to the IDF forces and was marked in the IDF’s operational systems as a “sensitive site,” which receives special consideration. The rockets and the launchers that were hidden in the underground launch site next to the station were attacked by the IDF, together with an effort taken to avoid any harm to civilians and to the



nearby Red Crescent station. This included selecting the time for attack (at night-time, when it was less likely that civilians would be in the vicinity of the target) and employing appropriate munitions, in an effort to ensure that any damage caused to adjacent buildings, and persons potentially located inside them, would be minor, at most. In actuality, it appears that besides the destruction of the military target, incidental damage was caused to the Red Crescent station, workers inside the station were possibly injured, and ambulances at the location suffered indirect damage resulting from the attack — seemingly as a result of objects that were thrown by the force of the blast.

After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that the targeting process accorded with Israeli domestic law and international law requirements, and included significant efforts to minimise harm to civilians. The MAG further found that the damage caused to the Red Crescent station was unavoidable considering the proximity of the rockets placed by the Palestinian terror organisations only a few tens of metres from the station.

In light of the above, the MAG did not find that the actions of the IDF forces raised grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation or ordering further action against those involved in the incident.

At the same time, the MAG recommended to the relevant IDF operational entities that they consider specific amendments to the target planning process, which may assist in further minimising the potential collateral damage resulting from IDF strikes on military objectives located in close proximity to sensitive sites.

- Allegations Concerning Two Female Casualties at the “Alambra Association” in Beit Lahiya on July 12, 2014: According to correspondence and reports from various NGO’s, on July 12, 2014, two women were killed and four others injured as a result of an IDF aerial strike on a care centre for the mentally and physically disabled, belonging to the “Alambra Association,” in Beit Lahiya. As a result, and in accordance with the MAG’s investigation policy, it was decided to refer the incident for examination by the FFA Mechanism.

According to the factual findings and materials collated by the FFA Mechanism and presented to the MAG, the strike was directed at a weapons depot located inside the residential home of a senior Hamas commander, in a building comprising four apartments. While the operating forces were aware of the existence of a kindergarten in the same



building, close to the weapons depot, there was no information indicating the existence of a care centre.

Prior to the attack, a number of precautionary measures were undertaken in order to minimise potential civilian harm — including several attempts to telephone the residents of the building and the firing of two warning projectiles towards the structure (as part of the “knock on the roof” procedure). No reaction by the residents was identified, and no presence of persons at the site was discerned prior to the attack. As an additional precaution, the attack was carried out late at night, in order to avoid any possible harm to children attending the kindergarten during the day.

The findings further indicated that at the time the attack was decided upon, the operational assessment concluded that, as none of the precautionary measures resulted in any response, no civilians were present and no civilians were expected to be harmed as a result of the attack.

In light of these factual findings, the MAG found that the targeting process followed in this case accorded with Israeli domestic law and international law requirements. The attack was directed against a military objective, while adhering to the requirements of the principle of proportionality, and the decision to attack was made by the authorities authorised to do so. Further, the MAG found that the attack was carried out after a number of precautions were undertaken intended to minimise the potential for civilian harm, and that the professional assessment at the time of the attack — that civilians would not be harmed as a result of the attack — was not unreasonable under the circumstances. Although seemingly civilians were harmed as a result of the attack — indeed a regrettable result — it does not affect its legality post facto.

In light of the above, the MAG did not find that the actions of the IDF forces raised grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation or ordering further action against those involved in the incident.

- Allegation Concerning a Strike on the Al-Shifa Hospital and a Park in the Al-Shati Refugee Camp in the Gaza Strip on July 28, 2014: Various media reports alleged that on July 28, 2014, an incident occurred involving a strike on medical clinics belonging to the Al-Shifa Hospital, as well as a strike on a park where children were present in the Al-Shati refugee camp, and as a result of which ten persons (including nine children) were killed and tens



injured. Some of these reports alleged that the strikes were carried out by the IDF. As a result, and in accordance with the MAG's investigation policy, it was decided to refer the incident for examination by the FFA Mechanism.

Following a thorough review conducted by the FFA Mechanism, such a strike by IDF forces could not be identified. However, Israel's technical systems recorded in real-time the path of a salvo of missiles fired from within the Gaza Strip, seemingly by Hamas or Palestinian Islamic Jihad, which landed in the medical clinics and in the Al-Shati refugee camp at the time of the alleged incident. Under these circumstances, and in light of the fact that the strike on the hospital was the result of rocket fire from Palestinian terrorist organisations, the MAG ordered the case to be closed.

- Allegation Concerning the Deaths of Six Individuals During a Strike on the House of the Al-Bakri Family in Gaza City on August 4, 2014: In media reports, as well as complaints received by the MAG Corps from NGO's, it was alleged that on August 4, 2014, five members of the Al-Bakri family were killed, along with one additional person who was staying at their home, as the result of an IDF strike on the house. According to some of the reports, two of the deceased — Ramadan Al-Bakri and Ibrahim Al-Masharawi — were militants in the Palestinian Islamic Jihad, while the remaining four deceased were civilians. Subsequently, and in accordance with the MAG's investigation policy, the incident was referred to the FFA Mechanism for examination.

According to the factual findings collated by the FFA Mechanism and presented to the MAG, the strike in question was aimed at Omar Al-Rahim, a senior commander, at a rank equivalent to that of a deputy brigade commander, in the Palestinian Islamic Jihad terror organisation. Al-Rahim was staying in the house of Ramadan Al-Bakri, a Palestinian Islamic Jihad militant. During the target-planning process, it was assessed that there might be a number of civilians present in the building but that the extent of the harm expected to these civilians would not be excessive in relation to the significant military advantage anticipated to result from the strike. It was planned that the strike on the building would be carried out using a precise munitions and in a way that would allow achieving the aim of the strike while minimising harm to the surrounding buildings.

After the event, as a result of the strike, the target, Omar Al-Rahim, was severely injured, and Ibrahim Al-Masharawi, who was a senior commander at a rank equivalent to a battalion commander in the Palestinian Islamic Jihad, was killed, along with Ramadan Al-Bakri, a Palestinian Islamic Jihad militant, and four civilians.



After reviewing the factual findings and the material collated by the FFA Mechanism, the MAG found that the targeting process in question accorded with Israeli domestic law and international law requirements. The decision to strike was taken by the competent authorities and aimed at a lawful target — a senior commander in Palestinian Islamic Jihad. The strike complied with the principle of proportionality, as at the time the decision was taken, it was considered that the collateral damage expected from the strike would not be excessive in relation to the military advantage anticipated from it. Moreover, the strike was carried out while undertaking precautionary measures that aimed to mitigate the risk of civilian harm, with an emphasis on those who were present in the surrounding buildings. Such measures included, *inter alia*, the choice of munitions to be used, as well as the deployment of real-time visual coverage. Additionally, it was found that the provision of a specific warning prior to the attack to the people present in the structure in which the target was located, or to those in adjacent buildings, was not required by law and was expected to result in the frustration of the strike's objective.

In light of these findings, the MAG concluded that the actions of IDF forces did not raise grounds for a reasonable suspicion of criminal misconduct. As a result, the MAG ordered the case to be closed, without opening a criminal investigation or ordering further action against those involved in the incident.

457. The process of examining and investigating incidents that took place during the 2014 Gaza Conflict is ongoing. While the IDF dedicates considerable resources to ensuring that examinations and investigations are conducted professionally and promptly, this process takes time. The MAG continues to receive complaints and identify information in public sources that require consideration as to whether to refer them to examination or investigation. Ongoing examinations and investigations take time, due to, amongst other things, the complexity of the issues, the challenges in investigating these types of incidents (as detailed above), and the need to coordinate testimony from third parties. Where additional relevant information may become available after a case has been closed, the case may be re-opened.⁵⁶⁴ Furthermore, decisions made by the MAG are subject to

⁵⁶⁴ There is precedent for the MAG re-opening cases. For example, following the Gaza Operation 2008-2009 the MAG ordered the Israel Air Force to re-open an examination into an incident concerning the El-Bader flour mill after various news media reported in February 2010 that the U.N. was in possession of evidence that contradicted the findings of Israel's initial examination. The MAG also held a meeting with the U.N. representatives who had visited the site of the mill. After reviewing the materials collated in the context of this additional examination, the MAG confirmed that the flour mill had not been intentionally targeted by the Israel Air Force. Accordingly, the MAG determined that there was no basis for additional proceedings in this matter. The MAG periodically published details regarding the progress of the examination and the decisions reached, demonstrating the IDF's commitment to transparency and to properly assessing information in its possession. *See Gaza Operation Investigations: An*

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civilian oversight by the Attorney General of Israel and judicial review by the Supreme Court of Israel. In addition, Israel's system for examining and investigating alleged violations of the Law of Armed Conflict constantly undergoes improvements designed to enhance effectiveness and efficiency. For additional information and periodic updates regarding allegations of violations of international law during the 2014 Gaza Conflict, please visit the MAG Corps' website.⁵⁶⁵

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Update, State of Israel (January 2010), at pages 41-45, available at http://mfa.gov.il/MFA_Graphics/MFA%20Gallery/Documents/GazaOperationInvestigationsUpdate.pdf; *Gaza Operation Investigations: Second Update*, State of Israel (July 2010), at pages 30-31, available at http://www.mfa.gov.il/MFA_Graphics/MFA%20Gallery/Documents/GazaUpdateJuly2010.pdf.

⁵⁶⁵ IDF MAG Corps, <http://www.law.idf.il/14-en/Patzar.aspx>.



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Annex - Palestinian Fatality Figures in the 2014 Gaza Conflict

A. Introduction

1. In the wake of the 2014 Gaza Conflict (also known as “Operation Protective Edge”), various claims have been made regarding Israel’s adherence to the principle of proportionality under international law. Some critics have claimed that the Israel Defense Forces (“IDF”) employed disproportionate force in the Gaza Strip, citing either an alleged disparity between the number of Palestinian and Israeli fatalities or an alleged disparity between the number of Palestinian-civilian and militant fatalities.

2. Such comparisons, however, have no bearing on the legality of IDF operations. Under the Law of Armed Conflict, proportionality must be assessed by weighing the *anticipated military advantage* of a given attack against the *expected collateral damage* from that attack. This inquiry is forward-looking and considers the information reasonably available to the military commander at the time of the relevant decision; it is not applied in hindsight based on the actual results of the attack. Nor does it involve a comparison between the impact of the hostilities on the different sides of a conflict, or a comparison between the total number of civilian versus militant fatalities.

3. Civilian fatalities are a tragic, though often unavoidable, part of warfare. In the 2014 Gaza Conflict, Israel was forced to take action against militants who embedded themselves and other military objectives within urban areas, and who deliberately exploited this urban terrain and the presence of civilians in order to shield their military objectives and impede IDF operations — thus significantly increasing the risk of harm to the civilian population in the Gaza Strip. Throughout the 2014 Gaza Conflict, the IDF made extensive efforts to mitigate the risk of harm towards the civilian population in the Gaza Strip. Indeed, of the over 6,000 aerial strikes conducted by the IDF during the Operation, the vast majority did not result in any fatalities.¹

4. The fatality figures that certain Palestinian sources have published regarding the 2014 Gaza Conflict are highly unreliable. Hamas has deliberately sought to inflate the number of Palestinian civilian fatalities for its own strategic advantage by hiding the identity of militants. Serious

¹ For more information on the IDF's efforts to minimise civilian harm during the 2014 Gaza Conflict, see The 2014 Gaza Conflict (7 July - 26 August): Factual and Legal Aspects Report, Chapter VI (IDF's Conduct of Operations during the 2014 Gaza Conflict), Section D.2.



deficiencies also exist in the lists of fatalities provided by the Hamas-controlled Gaza Ministry of Health and the Palestinian Authority.

5. The IDF's analysis of fatalities demonstrates that while the 2014 Gaza Conflict did unfortunately result in civilian fatalities, the number and percentage of Palestinian civilian fatalities is actually much lower than has been reported in many channels. As discussed below, the IDF's preliminary analysis has determined that 2,125 Palestinians were killed during the 2014 Gaza Conflict. Of these fatalities, the IDF estimates that at least 936 (44% of the total) were actually militants and that 761 (36% of the total) were civilians; efforts are still underway to classify the additional 428 (20% of the total), all males aged 16-50.

B. Assessing Proportionality Under the Law of Armed Conflict

6. Claims that the IDF used disproportionate force during the 2014 Gaza Conflict reflect a flawed understanding of the principle of proportionality under the Law of Armed Conflict. The principle of proportionality requires a party planning an individual attack on a specific target to assess whether the expected incidental harm (to civilians, civilian objects or a combination thereof) would be excessive in relation to the concrete and direct military advantage anticipated. The total fatality count for the entire length of the hostilities is not on its own indicative of whether individual attacks were proportional. Thus, for example, an attack against a low-value military objective that is expected to result in one hundred civilian fatalities would be considered disproportionate, whereas one hundred attacks against military objectives of the same value that are expected to each result in one fatality per strike is likely to be regarded as proportionate — even though in each scenario, a total of one hundred civilian fatalities are expected to occur. In some cases, even minor expected collateral damage will be disproportionate, while in others much greater expected collateral damage will be proportionate. Because the *excessiveness* of collateral damage is not measured using absolute numbers, the *extensiveness* of collateral damage cannot determine its lawfulness.

7. The assessment of proportionality is a forward-looking, or prospective, inquiry, which requires considering the information that a military commander knew (or reasonably should have known) at the time of an attack. Proportionality is not assessed retrospectively by counting the number of fatalities that actually occurred. This number may be compounded by factors that the attacker cannot expect, such as hidden weapons arsenals or booby-traps that cause secondary explosions, incomplete or faulty intelligence, or the unexpected presence and movements of civilians. Accordingly, the actual number of civilian fatalities resulting from an attack does not indicate whether the attacker violated the principle of proportionality.



8. For these reasons, neither the total number of Palestinian civilian fatalities, nor a disparity between the number of Israeli and Palestinian fatalities, has direct bearing on the proportionality and legality of IDF operations.²

C. The Number of Palestinian Civilian Fatalities in the 2014 Gaza Conflict

9. Some critics of Israel's conduct during the 2014 Gaza Conflict have pointed to certain estimates of civilian fatalities published by the United Nations ("U.N.") and several non-governmental organisations ("NGOs").³ However, these estimates are highly suspect, because they are primarily based on daily fatality lists issued by the Hamas-controlled Gaza Health Ministry — lists that, among many other significant deficiencies, do not identify whether the deceased was a militant. Both during and after the 2014 Gaza Conflict, Hamas employed a policy — which it has applied during past hostilities as well — of deliberately hiding the identities of militants and the news of their deaths.⁴ Meanwhile, other published statistics regarding Palestinian fatalities during the 2014 Gaza Conflict are primarily based on data from Palestinian Authority sources that were compiled after the Conflict, that fail to take into account material information, and that suffer from other methodological flaws, including the use of information falsified by Hamas.

² While neither the overall number of civilian fatalities nor a comparison between the civilian fatalities on each side of a conflict is dispositive in an analysis of a state's particular use of force during hostilities (*jus in bello*), these statistics are even less dispositive when conducting an analysis of the proportionality of a state's resort to the use of force (*jus ad bellum*). In the *jus ad bellum* context, the principle of proportionality concerns the amount of force used by one side of the conflict in order to repel an armed attack. While the harm to the civilian population or to civilian property may be a factor in such a proportionality assessment, it is not the only factor and does not, on its own, establish that a response to an armed attack was disproportionate. (Nevertheless, as discussed in *The 2014 Gaza Conflict (7 July - 26 August): Factual and Legal Aspects Report*, Chapter II (Background to the Conflict), the legal justification for Israel's use of force in the 2014 Gaza Conflict is not dependent on an analysis of the *jus ad bellum*, given the existence of an ongoing armed conflict between Israel and Hamas and other Palestinian terrorist organisations.)

³ For example, the U.N. Office for the Coordination of Humanitarian Affairs ("OCHA") has estimated that approximately 67% of Palestinians fatalities were civilians (see <http://www.ochaopt.org/content.aspx?id=1010361>). This number has come down slightly from OCHA's initial estimate of 69%.

⁴ For more on Hamas's obfuscation during past hostilities in the Gaza Strip, see Meir Amit Intelligence and Terrorism Information Center ("ITIC"), *Analysis of the Ratio between the Names of Terrorist Operatives Killed during Operation Pillar of Defense and Civilians Killed in Error* (Dec. 9, 2012), available at http://www.terrorism-info.org.il/Data/articles/Art_20444/E_253_12_498339933.pdf (hereinafter: *The Gaza Operation 2012 Fatality Count*); ITIC, *Examination of the number of Palestinians killed during Operation Cast Lead* (Apr. 7, 2009), available at http://www.terrorism-info.org.il/data/pdf/PDF_09_105_2.pdf.



10. In light of the above — as well as the inherent logistical difficulties in maintaining and verifying data that arise from combat operations — it is unclear on what basis the U.N. and NGOs calculated their published ratios of militant-to-civilian fatalities.

1. Hamas's Strategic Manipulation

11. During the 2014 Gaza Conflict, Hamas deliberately blurred the distinction between militants and civilians.⁵ Hamas enlisted the wider Gazan public in implementing its policy of distortion, which sought to conceal that individuals were killed as a result of their involvement in the hostilities and qualification as legitimate targets. For example, on August 5, 2014, the Hamas-controlled Ministry of Interior in the Gaza Strip posted the following notice through social media:

The Ministry of the Interior and National Security [in the Gaza Strip] calls on all our [Palestinian] people and the resistance factions to be wary of disseminating information and pictures of fatalities of the resistance, and [about] mentioning details about [the circumstances of] their deaths as martyrs and where they died.⁶

⁵ For more on the topic, including Hamas's war crimes, see The 2014 Gaza Conflict (7 July - 26 August): Factual and Legal Aspects Report, Chapter IV (Hamas's War Crimes).

⁶ ITIC, "War of the Casualties:" the Hamas-controlled ministry of the interior in the Gaza Strip issued a warning not to divulge information about terrorist operatives killed in Operation Protective Edge (Aug. 6, 2014), available at http://www.terrorism-info.org.il/Data/articles/Art_20698/E_140_14_976270999.pdf.



Above: Screenshot of the Notice Published by the Ministry of Interior, August 5, 2014.

12. In a similar vein, on July 11, 2014, the Ministry uploaded to its website, Facebook and Twitter pages guidelines for “social media activists” in the Gaza Strip. An excerpt from the guidelines states that:

Anyone killed or martyred is to be called a civilian from the Gaza Strip or Palestine, before we talk about his status in jihad or his military rank. Don't forget to always add “innocent civilian” or innocent citizen in your description of those killed in Israeli attacks on the Gaza Strip.... Do not publish photos of military commanders. Do not mention their names in public, and do not praise their achievements in conversations with foreign friends.⁷

⁷ For the full text of the Social Media Guidelines, see Middle East Media Research Institute (“MEMRI”), *Hamas Interior Ministry to Social Media Activists: Always Call the Dead ‘Innocent Civilians’; Don't Post Photos Of Rockets Being Fired From Civilian Population Centers* (July 17, 2014), available at <http://www.memri.org/report/en/0/0/0/0/0/8076.htm>. This social-media-driven campaign of distortion was familiar from the Gaza Operation 2008-2009, when Hamas prohibited users of its web-forum PALDF.net from posting pictures, names or information about militants killed or injured while hostilities were ongoing. See ITIC, *Examination of the names of Palestinians killed in Operation Protective Edge – Part Three*, at p. 7 (Aug. 17, 2014), available at http://www.terrorism-info.org.il/Data/articles/Art_20704/E_147_14_1542981406.pdf (hereinafter: Operation Protective Edge Fatality Count – Part 3).



Above Left: Message posted on the Ministry of Interior’s website referring to the Social Media Guidelines. Above Right: Excerpt from the Social Media Guidelines (see translation above).

13. Hamas and other terrorist organisations sought to obscure the identities of their militants during combat, as well as after any such militants were killed. During combat, for example, militants often donned civilian clothing in efforts to deceive IDF soldiers.⁸ This unlawful conduct made attempts to distinguish between militant and civilian fatalities extremely difficult, including for the Gazan authorities. In another example, at the end of December 2014, the names of 50 Hamas militants who were killed during the 2014 Gaza Conflict — and who were all members of Hamas’s military wing, the Izz al-Din al-Qassam Brigades — did not appear on any Hamas fatality list. Furthermore, pursuant to Hamas policy, the daily fatality lists published by the Gaza Health Ministry failed to categorize the deceased as a member of an organised armed group or a person directly participating in the hostilities, even where this information was known to the Ministry, in order to create the false perception that all Palestinians who had been killed were civilians not involved in the hostilities.

14. Hamas’s policy of concealing militant fatalities had a dual purpose: first, to increase morale among Palestinians by presenting (artificially) low numbers of militant fatalities and thereby fuelling

⁸ See The 2014 Gaza Conflict (7 July - 26 August): Factual and Legal Aspects Report, Chapter IV (Hamas’s War Crimes), Section D.



the perception of a Hamas “victory” against the IDF; and second, to inflate the number of perceived civilian fatalities in order to discredit and delegitimize Israel.⁹ According to a Hamas combat manual found by IDF ground troops during the 2014 Gaza Conflict, “civilian deaths ... have no impact on our morale. To the contrary, this strengthens our commitment, in the knowledge that an increase in the number of civilian fatalities is likely to have negative ramifications on the enemy [the IDF], and he [the IDF] will act to shorten the length of the fighting.”

15. If past experience is any guide, Hamas likely will eventually admit to a high number of militant fatalities. Immediately after the Gaza Operation 2008-2009 (also known as “Operation Cast Lead”), Hamas denied having suffered extensive military fatalities: Abu Obeida, spokesman for Hamas’s Izz al-Din al-Qassam Brigades, claimed that only 48 of its members had been killed. Ten months later, however, Fathi Hamad, a Hamas spokesman and former Minister of Interior, finally admitted that 200-300 members of the Brigades had been killed, along with another 400 members of the military-security forces of Hamas and other terrorist organisations in the Gaza Strip (representing approximately 60% of the fatalities in the Gaza Operation 2008-2009). The figures cited by Fathi Hamad were significantly closer to those calculated by the IDF than to those published by the U.N. Fact-Finding Mission on the Gaza Conflict established by the Human Rights Council in 2009 (the “Goldstone Report”).¹⁰ Not coincidentally, Hamad’s admission came only after the Goldstone Report was published.¹¹

2. Additional Deficiencies in the Statistics Published by Palestinian Sources

16. Over the course of the 2014 Gaza Conflict, it became increasingly difficult for observers to determine whether a deceased individual had been a militant or a civilian uninvolved in hostilities. During the early stages of the Conflict, in July 2014, the Gaza Health Ministry published daily tallies of fatalities, and (to a limited extent) the names, ages, and circumstances of death of the deceased. The Gaza Health Ministry also, for the first few weeks of the Conflict, regularly updated a list of total fatalities. However, by the beginning of August 2014, the Health Ministry stopped publishing

⁹ *See id.*

¹⁰ Since the Goldstone Report was published, Justice Richard Goldstone has acknowledged that “[i]f I had known then what I know now, the Goldstone Report would have been a different document.” Richard Goldstone, *Reconsidering the Goldstone Report on Israel and war crimes*, Washington Post (Apr. 1, 2010), available at http://www.washingtonpost.com/opinions/reconsidering-the-goldstone-report-on-israel-and-war-crimes/2011/04/01/AFg111JC_story.html.

¹¹ *See* ITIC, *The War of the Casualties: During Operation Cast Lead it was Hamas policy to hide the real number of its casualties* (Aug. 10, 2014), available at http://www.terrorism-info.org.il/Data/articles/Art_20700/E_143_14_1770358890.pdf.



lists that purported to show total fatalities and instead issued daily reports with regard to certain fatalities from specific incidents that occurred that day. Only retrospectively did the Ministry compile additional lists purporting to include total fatalities, and these lists often lacked names, identifying details, and circumstances of death.¹² Hamas's strategy of deliberately concealing its militants' identities made assessments even more difficult, as did the "dual identities" of certain deceased militants who also served governmental functions that were seemingly civilian in nature.¹³ As a result, some NGOs have mistakenly counted militants as civilians on their lists of fatalities from the 2014 Gaza Conflict.

17. Indeed, a review of the Gaza Health Ministry's fatality lists from the 2014 Gaza Conflict, as well as from past rounds of hostilities, reveals the inclusion of duplicate names, non-combat related deaths, combat-related deaths attributable not to the IDF but to Palestinian armed groups, and misrepresented ages. The lists also have omitted the deaths of certain individuals known to have been militants.¹⁴

18. A few weeks after the end of the 2014 Gaza Conflict, on September 14, 2014, the Palestinian Authority Health Ministry in Ramallah issued what it claimed was a comprehensive list of fatalities, including information about the identity of the deceased and the date and location of death. This retrospective list, however, was based primarily on the partial fatality lists issued by the Gaza Health Ministry and other Hamas-affiliated sources in the Gaza Strip. While the Palestinian Authority's

¹² Many actors present in the Gaza Strip (including Palestinians, NGOs, and the ICRC) testified to the impossibility of keeping track of circumstances of death in real time. See, e.g., Anthony Reuben, *Caution needed with Gaza casualty figures*, BBC (Aug. 11, 2014), available at <http://www.bbc.com/news/world-middle-east-28688179>.

¹³ See ITIC, *Preliminary, partial examination of the names of Palestinians killed in Operation Protective Edge and analysis of the ratio between terrorist operatives and non-involved civilians killed in error*, at pp. 4-6 (July 28, 2014), available at <http://www.terrorism-info.org.il/en/article/20687>. Fatalities involving "dual identity" militants were also prevalent during the Gaza Operation 2012 (also known as "Operation Pillar of Defense"): 23 of the 25 members of Hamas's Internal Security Service who were killed were identified as belonging to the Izz al-Din al-Qassam Brigades and the remaining two were identified as being a senior commander and a militant, respectively, in the Popular Resistance Committees. See *The Gaza Operation 2012 Fatality Count*, *supra* note 4, at pp. 2-3, 19-20.

¹⁴ For example, strong indications exist that 26-year-old militant Ibrahim Jamal Kamal Nasr was incorrectly listed in the Gaza Health Ministry's July 18th list as being 13-years-old. See ITIC, *The War of Casualties: During Operation Protective Edge children and teenagers were exploited by terrorists as auxiliaries and operatives* (Sept. 17, 2014), available at <http://www.terrorism-info.org.il/en/article/20713> (containing other examples as well). In another example, strong indications exist that the militant Abdallah Fadel Mortaja was listed as a journalist. See ITIC, *Examination of the Names of 17 Journalists and Media Personnel Whom the Palestinians Claim Were Killed in Operation Protective Edge* (Feb. 12, 2015), available at <http://www.terrorism-info.org.il/en/article/20771>. For further examples, see *Operation Protective Edge Fatality Count – Part 3*, *supra* note 7, at pp. 3-5; *Preliminary, partial examination of the names of Palestinians killed in Operation Protective Edge and analysis of the ratio between terrorist operatives and non-involved civilians killed in error*, *supra* note 13, at p. 27.



estimate of total Palestinian fatalities matches the IDF's estimate, the credibility of the Palestinian Authority's list is highly questionable in light of its hindsight reliance on Hamas-affiliated lists that fail to categorize the deceased as civilians or militants, that fail to provide a percentage of civilian deaths, and that contain inaccurate information.

D. IDF Analysis of Palestinian Fatalities

19. The IDF has been conducting an ongoing, independent analysis of Palestinian fatalities.

1. Methodology

20. Since the beginning of the 2014 Gaza Conflict, a special team within the IDF Intelligence Corps has closely tracked information relating to Palestinian fatalities. This team has prior experience with counting fatalities and analysing relevant sources of information from previous IDF operations in the Gaza Strip. It consults not only classified sources but also a diverse array of publicly available information, including lists published by the Palestinian Authority Health Ministry and the Hamas-controlled Health Ministry in the Gaza Strip; other official reports of Hamas-affiliated medical personnel in the Gaza Strip; media reports, including from the Palestinian media; and local Palestinian websites and Facebook pages. The credibility of these sources, of course, varies. As of the date of this report, the team is still conducting a careful analysis of the Palestinian fatalities, including an examination of any new information that becomes available (such as statements by official Hamas leaders to local news outlets in the Gaza Strip).

21. Israel does not presume to be able to produce a definitive account of all fatalities that occurred during the 2014 Gaza Conflict. The complex, destructive, and multi-faceted nature of combat inevitably creates challenges for all militaries conducting reviews of military operations. Because the 2014 Gaza Conflict involved multiple forces operating simultaneously against terrorist organisations, often in close combat, it is all the more difficult, if not impossible, to determine the exact nature of specific incidents and the number and identity of resulting fatalities. Access to detailed information has been limited, and Hamas, moreover, has endeavoured to distort statistics. Nevertheless, the IDF strives to analyze fatalities on a professional basis, using the most reliable information available.

22. To estimate the number and identities of fatalities, the IDF has, among other things, undertaken the following exercises in order to ensure the reliability of its data:



- Cross-checking the identities of men aged 16 to 50 in Israeli intelligence community databases to check for involvement in hostilities;
- Matching names of the deceased to information that documented operational events (in particular, incriminating evidence of rocket launching or preparation);
- Continually updating information regarding fatalities in accordance with information that corroborates or refutes the degree of affiliation with armed groups and involvement in hostilities.

23. In this manner, the IDF compiled a tentative aggregate list of fatalities, incorporating all the names that were mentioned in reliable source materials.

24. The information gathered since the end of the 2014 Gaza Conflict reveals that the percentage of militants among the deceased is actually much higher than stated by Palestinian sources. The IDF has found significant disparities between highly credible sources and official Palestinian lists. These disparities reflect attempts to conceal the identity of militants as well as falsify ages and circumstances of death.

2. Interim Findings

25. According to the data gathered by the IDF (as of April 30, 2015), 2,125 Palestinians in the Gaza Strip were killed in the course of the 2014 Gaza Conflict. Out of this number: **936** (44% of total fatalities) have been identified as militants. Out of the number of militants, 631 (67% of the militants killed) were affiliated with Hamas, 201 (22% of the militants killed) were affiliated with Palestinian Islamic Jihad, and 104 (11% of the militants killed) were affiliated with other terror organisations.¹⁵

26. The IDF has classified **761** (36% of the total) fatalities from the 2014 Gaza Conflict as uninvolved civilians, either because there was no indication that they were involved in the hostilities or because they were assumed to be uninvolved based upon their age and gender.¹⁶ This number

¹⁵ For example, terror organisations affiliated with Global Jihad and the Al-Aqsa Martyrs' Brigades.

¹⁶ In all but a few rare instances, the IDF has categorized women, children and the elderly as "uninvolved," even though the media and IDF intelligence have documented cases of such persons providing combat assistance. *See,*

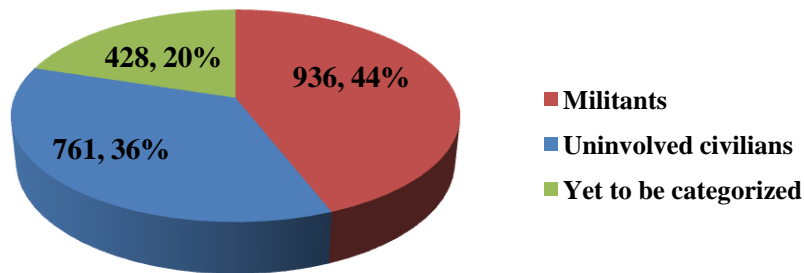
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regrettably includes 369 children under the age of 15 (16% of total fatalities), 284 women (13% of total fatalities), and 108 men (5% of total fatalities).

27. The IDF's identification process is ongoing. In particular, the IDF is still trying to make an accurate determination as to whether an additional **428** males between the ages of 16-50 (20% of total fatalities and almost all of the unclassified fatalities) were involved or uninvolved in the hostilities. Based on the IDF's past experience, it is highly probable that in the upcoming months, new information will surface demonstrating that some of these individuals were involved in combat against Israel in the 2014 Gaza Conflict.

Palestinian Fatality Figures in the 2014 Gaza Conflict



E. Conclusion

28. The number of fatalities in the course of the 2014 Gaza Conflict — though unfortunate — does not imply that IDF actions violated the principle of proportionality. Moreover, any estimation of the breakdown of civilian versus militant fatalities must be undertaken carefully, on the basis of reliable information and a rigorous methodology. The need for a careful examination of such statistics is especially important given Hamas's efforts to manipulate the number of civilian fatalities from hostilities with Israel.

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e.g., MEMRI, *Gazan Women Train in Military Wing of Popular Resistance Committees* (Feb. 20, 2015), available at <http://www.memritv.org/clip/en/4800.htm>.

