



TABLE OF CONTENTS

	<u>Page</u>
V. IDF Conduct of Operations during the 2014 Gaza Conflict.....	1
A. Applicable International Legal Framework	1
B. Integration of the Law of Armed Conflict into IDF Operations	2
C. The Nature of Urban Warfare in the Gaza Strip	11
D. IDF Conduct During the 2014 Gaza Conflict	16
1. Distinction	16
a. Targeting of Persons	17
b. Targeting of Structures and Other Objects	19
2. Precautions in Attack.....	29
a. Verification of the Nature of Targets	29
b. Provision of Effective Advance Warnings	30
c. Means and Methods of Attack	37
d. Cancellation and Suspension of Attacks	39
3. Proportionality	39
a. Military Advantage Assessment	40
b. Collateral Damage Assessment.....	41
c. Analysing the Proportionality of Strikes.....	43
d. The General Staff Directive for Contending with Kidnapping Attempts (“The Hannibal Directive”)	44
4. Means of Warfare	44
a. Munitions Containing Flechettes	45



b.	High-Explosive Artillery	46
5.	Detention	50
E.	Humanitarian Efforts	53
1.	The Coordination and Liaison Administration	54
2.	Specific Humanitarian Activities during the 2014 Gaza Conflict	55
3.	Suspensions of Hostilities	64
4.	Hamas's Actions to Obstruct Israel's Humanitarian Efforts	66
F.	Conclusion	68



V. IDF Conduct of Operations during the 2014 Gaza Conflict

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.

Consistent with this commitment, during Operation Protective Edge (hereinafter: the “Operation” or 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.¹

A. Applicable International Legal Framework

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.² 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.³ On the other hand, this classification is not without difficulty (as the Court itself acknowledged in a later case),⁴ 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.

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 Conflict⁵ and abides by all rules of

¹ 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.

² For a discussion of Israel’s ongoing armed conflict with Hamas and other terrorist organisations, see Chapter II (Background to the Conflict).

³ See *Public Committee against Torture in Israel v. Government of Israel*, H CJ 769/02, ¶¶ 16, 21 (Dec. 14, 2006), available at http://elyon1.court.gov.il/files_eng/02/690/007/A34/02007690.a34.pdf.

⁴ See *Physicians for Human Rights v. Prime Minister of Israel*, H CJ 201/09 (Jan. 19, 2009), available at http://elyon1.court.gov.il/files_eng/09/010/002/n07/09002010.n07.htm.

⁵ 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

Footnote continued on next page



customary international law, including rules embodied in conventions to which it is not party.⁶ 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

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.⁷

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 specialized instruction on the Law of Armed Conflict during their professional training. Moreover, advanced training in the Law of Armed Conflict is an essential component of operational courses for junior and senior commanders alike.⁸ 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.⁹

Footnote continued from previous page

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).

⁶ 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.

⁷ Law enforcement in the IDF is discussed separately in this document. For more information, see Chapter VII (Israel's Investigations of Alleged LOAC Violations).

⁸ 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).

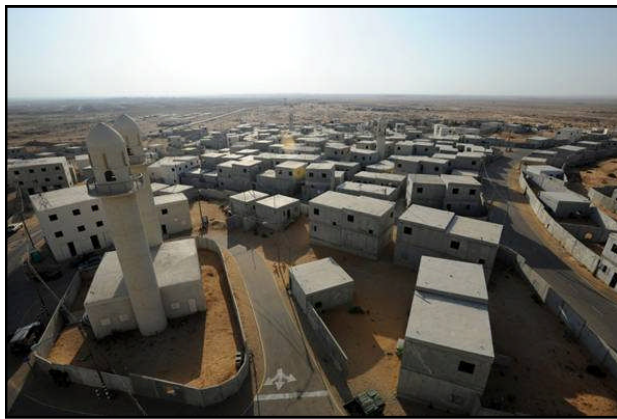
⁹ For example, in March 2015, the IDF facilitated the Air Missile Warfare Program of Legal Education (AMPLE) in Israel. This multi-day educational program, run by some of the world's leading academics and ex-practitioners of the Law of Armed Conflict, was attended by approximately 50 IDF operational commanders.



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).¹⁰



Above: IDF simulators in the Assembly and Staging area outside the Gaza Strip (Source: IDF)



Above: The IDF's Urban Warfare Training Centre (Source: IDF)

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.¹¹ The MAG is appointed by the

¹⁰ *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/>.

¹¹ This status is reflected in the Attorney General's Directives No. 9.1002, which states that “[w]hen exercising his 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; he is guided by considerations pertaining to the rule of law – and these considerations only – when fulfilling his role.” Attorney General's Directives No. 9.1002, section 3 (last

Footnote continued on next page



Minister of Defence (a civilian authority), not by the IDF Chief of General Staff.¹² IDF High Command Orders explicitly state that the MAG is “subject to no authority but the law.”¹³ 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.¹⁴

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.

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.¹⁵ 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.

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.¹⁶ 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

Footnote continued from previous page
updated April 2015), available at

<http://index.justice.gov.il/Units/YoezMespati/HanchayotNew/Pages/Hanchayot.aspx> (in Hebrew).

¹² Military Justice Law, 5715–1955, LA §§ 177(a), 178(1).

¹³ IDF Supreme Command Order 2.0613, The Military Advocate General Corps (March 5, 1976).

¹⁴ See Attorney General’s Directives No. 9.1002, *supra* note 11, 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 his interpretation of the law is the authoritative interpretation for all IDF authorities.”).

¹⁵ Commanders who do not have legal advisors 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.

¹⁶ See Attorney General’s Directives No. 9.1002, *supra* note 11, at section 2(b) (stating that “the Military Advocate General must... adopt the interpretation given by the Attorney General to the law”); *id.* at section 8(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 law”).



the legality of IDF operational conduct, including while active hostilities were taking place.¹⁷ The extent of judicial review over the IDF's activity is internationally recognised and unique.

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 attack, the capture and treatment of detainees, and the steps required to be taken in response to kidnapping attempts.¹⁸ 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.

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)

¹⁷ 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.

¹⁸ 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.



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.

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. First, the procedures call for the collection of intelligence about the nature of a potential target (whether it is a military compound, a residence, a mosque, *etc.*), its physical characteristics, and features that render it a military objective under the Law of Armed Conflict. Next, if the target meets the definition for a military objective, the IDF collects information regarding the surroundings of the target, paying special attention to civilians and civilian objects potentially in harm's way during an attack. Operational planners then study the target and assess what precautions for minimising collateral damage can feasibly be taken. 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. Based on 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) cancel the attack altogether.

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.¹⁹ 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 20-21).

¹⁹ 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>																								
<p>Intelligence by [REDACTED] Aerial footage taken on [REDACTED] Intelligence confirmed on [REDACTED]</p>	<table border="1"> <thead> <tr> <th data-bbox="803 693 1218 735">Operational Planning</th> <th data-bbox="1226 693 1404 735">Conditions</th> </tr> <tr> <th></th> <th></th> </tr> </thead> <tbody> <tr> <td></td> <td><input checked="" type="checkbox"/> Real-time visual surv.</td> </tr> <tr> <td></td> <td><input checked="" type="checkbox"/> Nighttime</td> </tr> <tr> <td></td> <td><input checked="" type="checkbox"/> Indiv. warning to civilians in target</td> </tr> <tr> <td></td> <td><input type="checkbox"/> Indiv. warning to civil. in surrounding structures</td> </tr> <tr> <td></td> <td><input checked="" type="checkbox"/> Legal conditions</td> </tr> <tr> <td></td> <td><input type="checkbox"/> [REDACTED]</td> </tr> <tr> <td></td> <td>[REDACTED]</td> </tr> <tr> <td></td> <td>[REDACTED]</td> </tr> <tr> <td></td> <td>[REDACTED]</td> </tr> <tr> <td></td> <td>[REDACTED]</td> </tr> </tbody> </table>		Operational Planning	Conditions				<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]		[REDACTED]		[REDACTED]		[REDACTED]		[REDACTED]
Operational Planning	Conditions																									
	<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]																									
	[REDACTED]																									
	[REDACTED]																									
	[REDACTED]																									
	[REDACTED]																									



- Top Secret -

Target ID: [REDACTED]

A - Greenhouse
 C, H, J, L, U - tin shack
 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

Date taken:
07.10.13

Distances from Target:
 A - 83m O - 77m
 C - 31m P - 72m
 D - 43m Q - 43m
 E - 41m R - 18m
 F - 59m S - 40m
 G - 58m 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

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 emphasize 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.

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.²⁰

²⁰ 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.



Above: Examples of military objectives situated in the vicinity of marked sensitive sites (Source: IDF).

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.²¹ As illustrated above, information pointing to the sensitive nature of a given site is also included in 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.

²¹ 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).



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.

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.²² 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 emphasize a preference for munitions that are equally effective yet expected to cause the least collateral damage to civilians and civilian property.²³

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.²⁴ 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.²⁵ 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.

C. The Nature of Urban Warfare in the Gaza Strip

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.

²² For more information on Civilian Affairs Officers, see *infra* section E.1.

²³ For information on the use of flechette munitions during the 2014 Gaza Conflict, see section D.4.a below.

²⁴ *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>.

²⁵ For a more detailed report on the case, see *id.*



Left: IDF ground forces entered the outskirts of the Gaza Strip, including the neighbourhood of Shuja'iyyeh (located in this aerial photograph to the west of the Israel-Gaza fenceline, 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 centers such as Nahal Oz (located in this aerial photograph to the right of the Israel-Gaza fenceline). (Source: Google Maps)

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 utilize 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 mechanized 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.

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.²⁶ The longer Hamas has controlled the Gaza Strip, the more it has invested in embedding its military operations within and under the urban terrain.²⁷

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

²⁶ 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.

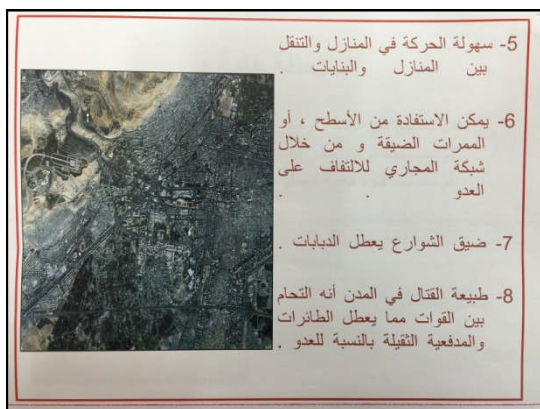
²⁷ For detailed information regarding the *modus operandi* of Hamas and the other terrorist organisations in the Gaza Strip, see Chapter IV (Hamas’s War Crimes).



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 specialized 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, firefights 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.

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 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)



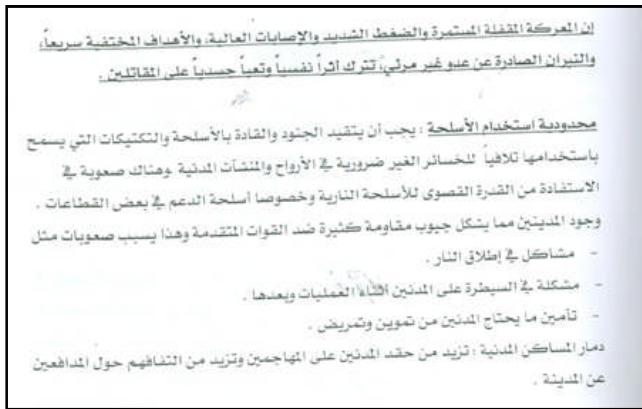
Similarly, IDF forces operating in Shuja'iyeh recovered a military doctrine manual titled “A Chapter in Urban Combat,” published by the Training Unit of the Shuja'iyeh Battalion of Hamas's Izz al-Din al-Qassam Brigades.²⁸ The manual describes, among other things, how co-opting the civilian presence into 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.

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)

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 of donning civilian garb and disguising militants as

²⁸ 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).



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.²⁹

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 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.

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

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.³⁰

1. Distinction

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.

²⁹ 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 *Palestinian Fatality Figures in the 2014 Gaza Conflict*, available at <http://mfa.gov.il/ProtectiveEdge/Documents/PalestinianFatalities.pdf>.

³⁰ 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-confrence#.VLLD40ZXec0>.



a. Targeting of Persons

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 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,³¹ unless they become *hors de combat* or serve a function (such as medical personnel) which entitles them to special protection.

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 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.

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.

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.³² 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 Palestinian Islamic Jihad militant, together with other members of organised armed groups.³³

³¹ 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/>.

³² *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>.

³³ 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

Footnote continued on next page



Targeting such individuals as members of organised armed groups is permissible under Law of Armed Conflict, subject to proportionality and other relevant legal rules.

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.³⁴

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.

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.³⁵ 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

Footnote continued from previous page

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>.

³⁴ 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.

³⁵ 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.



Hamas deliberately inflated the total number of civilian casualties, for example by including militants and civilians directly participating in hostilities.³⁶

b. Targeting of Structures and Other Objects

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.

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.

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.

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.

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

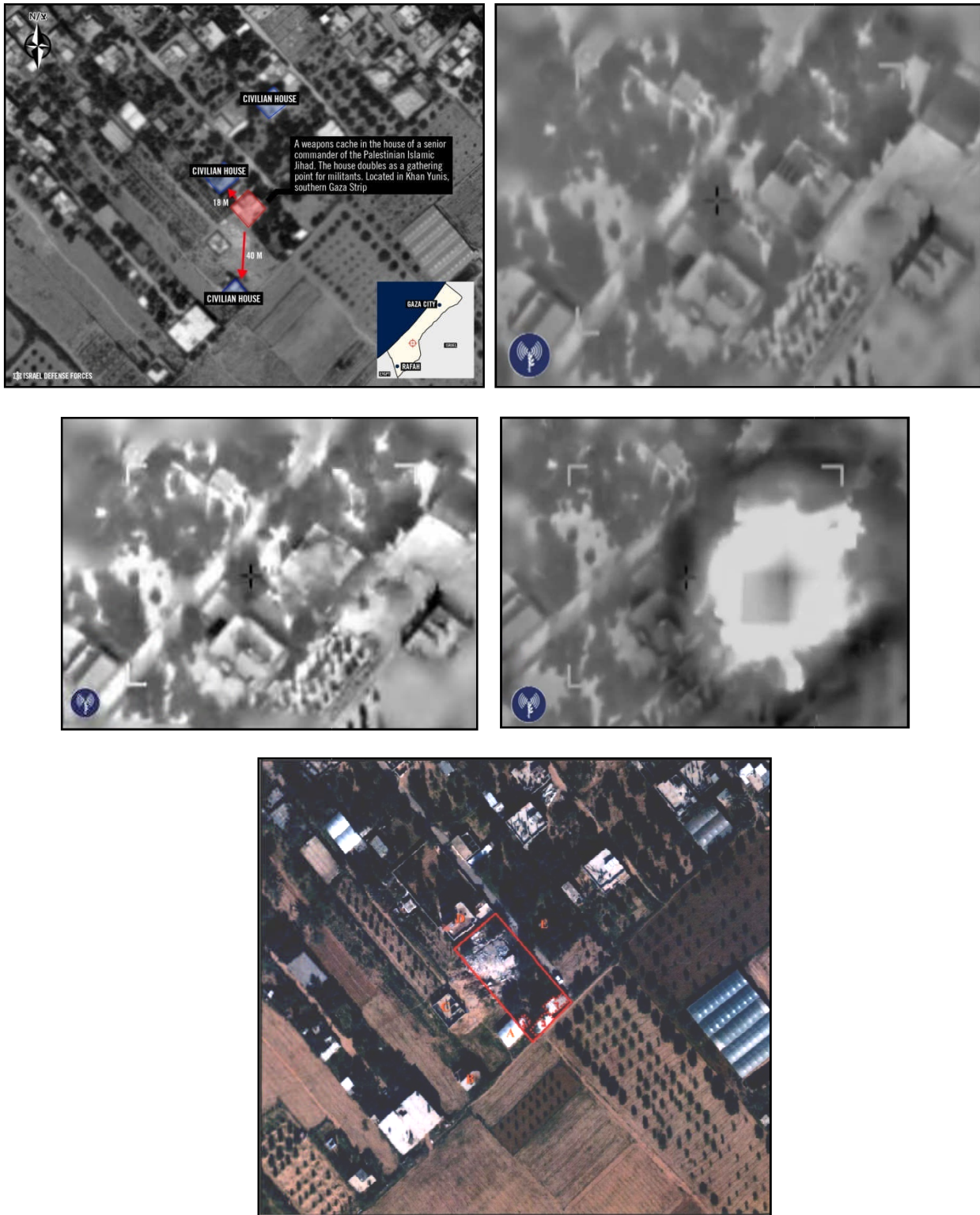
³⁶ For a discussion of Hamas’s inflation of “civilian” casualties, see *Palestinian Fatality Figures in the 2014 Gaza Conflict*, available at <http://mfa.gov.il/ProtectiveEdge/Documents/PalestinianFatalities.pdf>.



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.³⁷

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 6-8.) 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.

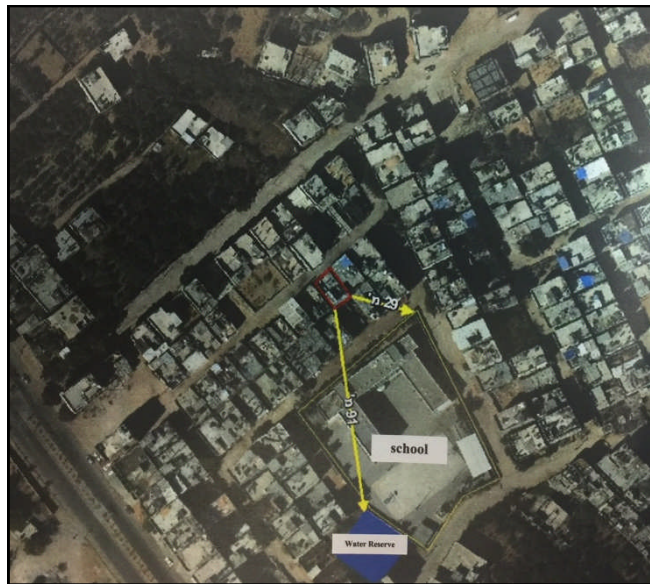
³⁷ Because the Law of Armed Conflict includes prohibitions regarding the use of civilians and/or civilian property in an effort to immunize otherwise lawful objectives from enemy attack (for example by co-mingling military assets among the civilian population or by using the movement of civilians to cloak military assets or activities), in many cases these Hamas tactics were themselves unlawful. For more information, see Chapter IV (Hamas's War Crimes).



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), available at <https://youtu.be/i5KJ3WMxArk>.)



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,³⁸ 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)

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-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.

³⁸ For more information regarding “roof knocking,” see *infra* section D.2.c.



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)

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,³⁹ and verifying that it was fully vacated, the IDF struck the building on August 23. No civilians were harmed in the attack.

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 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”), which found that weaponry was stored in a school in which hundreds of persons were present.⁴⁰ The IDF has also

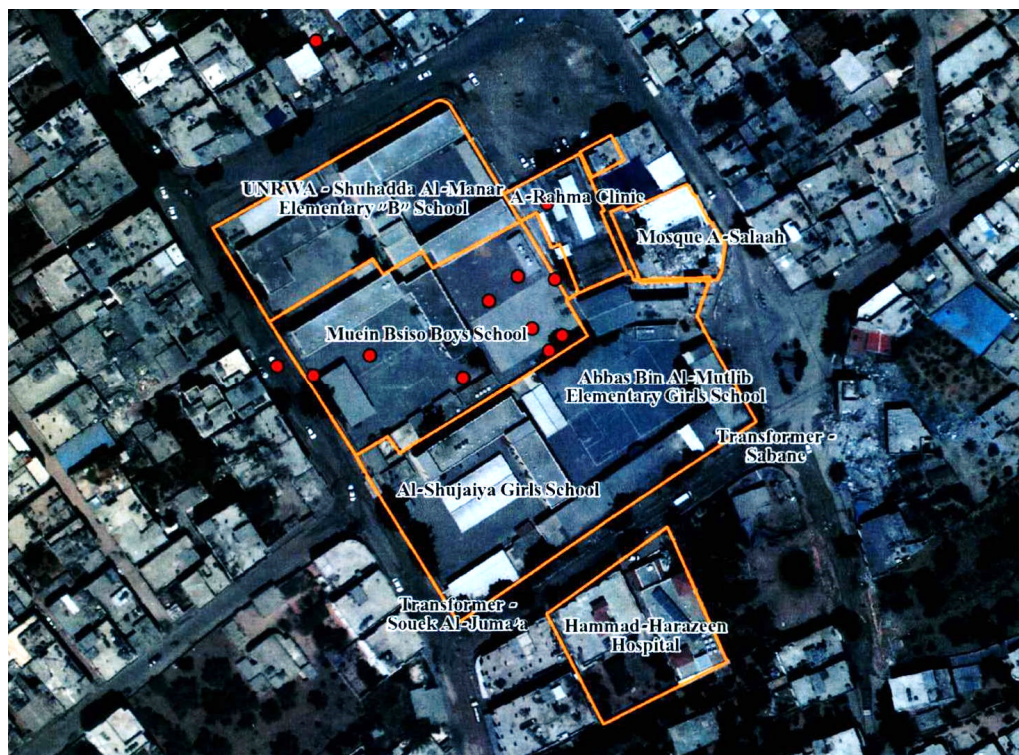
³⁹ These effective advance warnings included multiple phone calls to the building’s occupants and neighbours which began over an hour before the strike was carried out. The IDF also conducted a “roof knocking,” after which additional phone calls were made to ensure evacuation.

⁴⁰ 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.

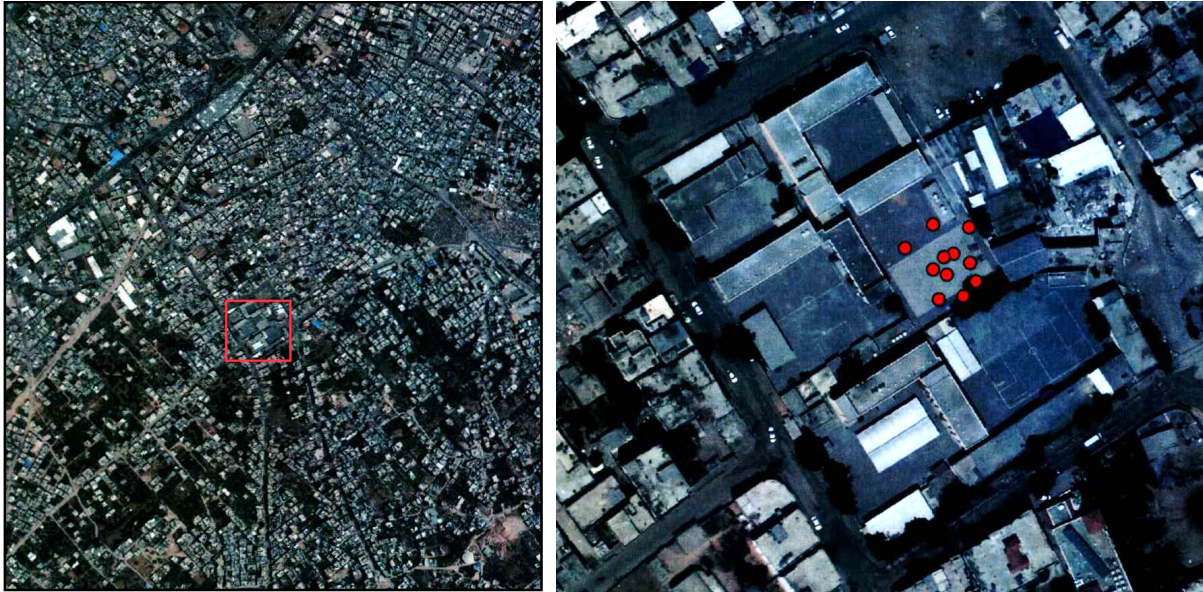


recorded instances of mortar fire from within UNRWA schools, which were acknowledged by the U.N. Board of Inquiry.⁴¹

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.



⁴¹ See Chapter IV (Hamas's War Crimes), section B; U.N. Board of Inquiry Summary, *supra* note 40, 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.



Above: 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 A-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)

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.⁴²

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.⁴³

⁴² 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'iyyeh referred to above.

⁴³ 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 Soldiers Find Mosque with Weapons and Tunnel Openings*, YouTube (July 31, 2014), <https://www.youtube.com/watch?v=aWkjwfkh-qM>)



Whenever the IDF attacked mosques that were legitimate military targets, it took all feasible precautions, including with regard to the timing of attacks.⁴⁴ 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 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 no civilians were present at the time of the attack.

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.⁴⁵

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.⁴⁶ 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 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 publicize detailed reasoning behind every attack without endangering intelligence sources and methods.⁴⁷

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

⁴⁴ 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.

⁴⁵ IDF, *Warning Call to Wafa Hospital Before IDF Targets Site*, YouTube (July 23, 2014), <http://youtu.be/8O9AHzUKYk8>.

⁴⁶ 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 40. 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."

⁴⁷ The Law of Armed Conflict does not include any requirement or obligation to publicize such information.



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.

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 meters 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.⁴⁸



Above: Rocket launch site situated adjacent to Red Crescent Station. (Source: IDF)

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

⁴⁸ For further details, see Chapter VII (Israel's Investigations of Alleged LOAC Violations), section D.



directed an attack against several individuals who were believed to be carrying anti-tank rockets intended for immediate use.⁴⁹

2. Precautions in Attack

Throughout the 2014 Gaza Conflict, the IDF took great care to mitigate the effects of hostilities on the civilian population⁵⁰ and, in accordance with the Law of Armed Conflict, used precautionary measures wherever feasible.⁵¹ These precautions included the verification of targets 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.⁵² 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

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.

⁴⁹ 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.

⁵⁰ 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>.

⁵¹ 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.

⁵² 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>.



b. Provision of Effective Advance Warnings

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.

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.⁵³ 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.

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.

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.

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.

⁵³ 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.



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.

For example, at 07:00 on July 13, the IDF warned the residents of Beit Lahia 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:

Military Notice
To the residents of Beit Lahia

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 العالوجا وهذا حتى الساعة ١٢ ظهر يوم الاحد ١٣ / ٧ / ٢٠١٤.
جيش الدفاع الاسرائيلي غير معني بالمس بكم وبابناء عائلتكم, هذه العمليات مؤقتة وقصيرة.
كل من سيخالف هذه التعليمات ولا يخلي بيته على الفور يعرض حياته وحياء ابناء عائلته للخطر!!!
اعذر من انذرا!

قيادة جيش الدفاع الاسرائيلي



Between 6:15 and 9:15 that morning, the IDF provided the same message via pre-recorded mass phone calls to residents of Beit Lahia. During this time, radio and TV stations in Beit Lahia repeatedly broadcast similar messages.⁵⁴ 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 Lahia in the early afternoon of July 13.

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 في 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

⁵⁴ 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 Lahia area.



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 17.⁵⁵

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 الحاق الاذى بكم وبافراد عائلاتكم

من اجل سلامتكم، انتم مطالبون بإخلاء منازلكم فورا والتحرك باتجاه مركز مدينة غزة.

إن التمرکز في مدينة غزة فهو محصور على التواجد غربا لطريق صلاح الدين وشمالا لطريق

عمر المختار وشرقا لطريق النصر وجنوبا 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

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:

⁵⁵ 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 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

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.⁵⁶ 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.

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.

⁵⁶ 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.



-- UNOFFICIAL TRANSLATION --

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].

Page 1 [redacted]

[redacted]

9

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'iyeh comprised of four schools, including UNRWA's Shuhadda al-Manar Elementary "B" School, as well as a medical clinic and mosque. See pages 24-25 above for further information regarding this incident. (Source: IDF)



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.

Although Hamas authorities actively encouraged civilians to ignore the IDF's warnings and refrain from evacuating,⁵⁷ 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.

الرئيسية أخبار الوزارة

نداء عاجل إلى أهلنا في شمال قطاع غزة...

الأحد 13 يولييه 2014 12:59 م.

تؤكد وزارة الداخلية والأمن الوطني أن التحذيرات والرسائل الصوتية والاتصالات التي يبثها الاحتلال على هواتف المنازل بشكل مكثف خاصة في مناطق شمال القطاع، وتطالبهم بإخلاء منازلهم، هي حرب نفسية ورسائل عشوائية للإرباك وبت الذعر في نفوس الناس.

وإن وزارة الداخلية تتابع كافة المجرىات على الأرض لحظة بلحظة وخاصة في المناطق الحدودية، وفي حال وجد ضرورة للقيام بأي خطوة من شأنها حماية أبناء شعبنا، سنقوم بتوجيه نداءات عاجلة وتعليمات عبر وسائل الاعلام المحلية للمحافظة على سلامتكم، وتوفير كل الإمكانيات اللازمة لذلك.

وإن الوزارة تتواصل مع كافة المؤسسات الحقوقية والإنسانية المحلية والدولية العاملة في قطاع غزة لتقديم الموقف، وحتى هذه اللحظة لا يوجد ما يستوجب إخلاء المنازل في تلك المناطق.

إن الاستجابة لنداءات الاحتلال إنما يساعده في تمرير مخططاته بإضعاف الجبهة الداخلية، وتخريب وتدمير ممتلكاتكم وبيوتكم حينما تقومون بإخلائها.

وإننا ندعو جميع أبناء شعبنا ممن أخلوا منازلهم بالعودة إليها فوراً، وعدم مغادرتها، واتباع التعليمات الصادرة عن وزارة الداخلية.

متمنين لكم الحفظ والسلامة.

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>)

⁵⁷ For more on this issue, see Chapter IV (Hamas's War Crimes), section C.



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.⁵⁸

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

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.

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 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.

⁵⁸ 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>.



- שומר -

דיווח מבצעי

המקבל:	שם המוסד:	מקור תיאום:	תאריך: 18/7/2014 שעה: 04:50
--------	-----------	-------------	-----------------------------------

הנדון: זמני תפילות בחודש הרמדאן בעזה

1. חודש הרמדאן בקרב חנם המוסלמי, הינו חודש של מנוחת תפילות וצום.
2. בחודש זה זמני התפילות וקיום מרקם החיים הינו שונה מהרגיל, אין שינוי בשעות הזמנים והינו בדומה לשעות ישראל. להלן נקודות חשובות שיש לייחס להם חשיבות:
 - א. 19:50 קריאת מואזין במסגדים.
 - ב. 20:00 " אפטאר" ארוחת.
 - ג. 21:15 – 22:30 תפילה מיוחדת במסגדים " תראווח".
 - ד. 3:15 – השקמה " סחור".
 - ה. 4:05 – 4:30 תפילות שחרית " אלפגרי".
3. תמ"ל, יש לעדכן [redacted]

**Coordination and Liaison Administration for the Gaza Strip
Operations Branch**
Phone: [redacted]
Fax: [redacted]

Operational Report

Date: 18/7/2014 Time: 04:50	Sender: Coordination	Name of sender: [redacted]	To: [redacted]
-----------------------------------	-------------------------	-------------------------------	-------------------

Subject: Prayer Times in the Gaza Strip during Ramadan

1. The month of Ramadan in the Muslim religion is a month of religious rituals, prayers and fasting.
2. During this month, prayer times and daily life are different from the remainder of the year. There is no difference in time zone; it is the same as in Israel. Below are pertinent points which should be provided with importance:
 - a. 19:50 Muezzin call in the mosques
 - b. 20:00 *Iftar* meal
 - c. 21:15-22:30 Special prayer service in mosques; *taraweeh*.
 - d. 03:15 Sunrise; *sahwa*.
 - e. 04:05-04:30 Morning prayer service; *al-fajer*.
3. Operations Room must update [redacted]

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)

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.⁵⁹ 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 below, the IDF deployed only legal means of warfare, and did so in a manner consistent with the Law of Armed Conflict.

“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

⁵⁹ The use of other means of warfare, such as high-explosive artillery shells, is discussed in *infra* section D.2.b.



imperfect, IDF assessments show that the employment of “roof knocking” was highly effective, preventing many civilian injuries and deaths during the 2014 Gaza Conflict.

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

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.

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.⁶⁰ 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.⁶¹

3. Proportionality

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.

⁶⁰ IDF, *IDF Aircraft Calls Off Strikes to Protect Gazan Civilians*, YouTube (July 14, 2014), available at <http://youtu.be/PuL-OA84p54> (first incident in video).

⁶¹ *Id.* (third incident in video).



a. Military Advantage Assessment

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.

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.

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 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.

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.⁶² Preventing such harm is a legitimate and important military advantage for Israel.

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

⁶² For more information on this subject, see Chapter V (The Threat to Israel's Civilian Population).



— as doing so would contravene the most basic humanitarian rationale behind the Law of Armed Conflict.

b. Collateral Damage Assessment

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.

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.

The IDF devotes significant resources to assessing and minimising the collateral damage that is expected as a direct or indirect result of attacks.⁶³ 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).

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.⁶⁴ 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.

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.

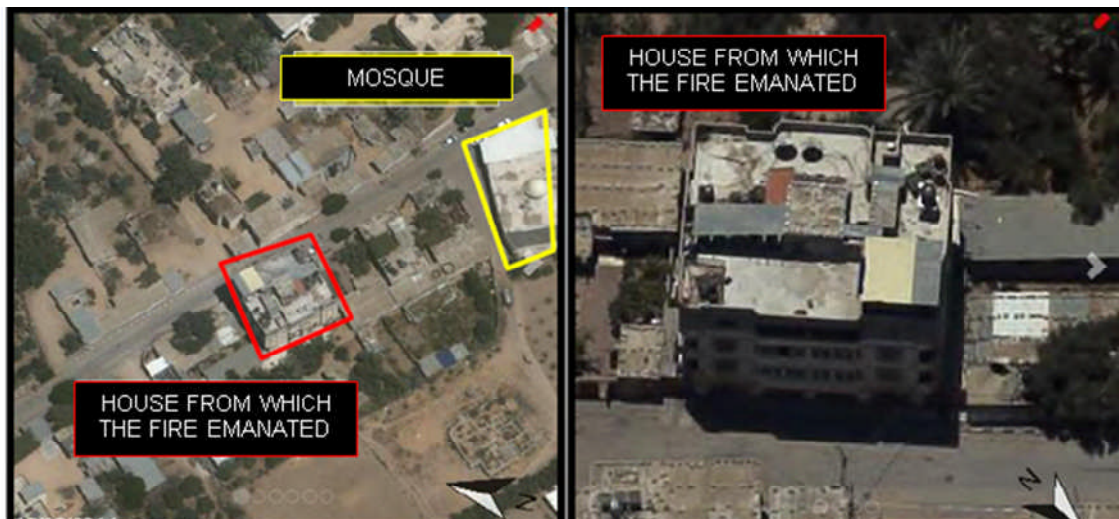
⁶³ Naturally, indirect effects are often unpredictable. When they may be reasonably expected, however, the IDF takes them into account as part of the proportionality assessment.

⁶⁴ See *infra* section C.



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.⁶⁵ 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.⁶⁶

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.



Above: The four-story apartment building from which the enemy fire originated on July 27, and the nearby mosque. (Source: IDF)

⁶⁵ 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.

⁶⁶ *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>.



c. Analysing the Proportionality of Strikes

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.

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.

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.

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”)

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.

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.

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 directives’ 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).⁶⁷

4. Means of Warfare

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.⁶⁸ The IDF deploys only legal means of warfare, and does so in a manner consistent with the Law of Armed Conflict.

⁶⁷ 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 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/InternationalRelations/Faq/The%20Hannibal%20Directive%20and%20its%20Implementation%20in%20Highly%20Populated%20Areas.pdf>.

⁶⁸ For relevant conventions to which Israel is a party, see footnote 5 above.



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.

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.

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.

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.⁶⁹

a. Munitions Containing Flechettes

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.

⁶⁹ 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.



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.

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.⁷⁰ 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.

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.

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.

b. High-Explosive Artillery

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

⁷⁰ *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.



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).⁷¹

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 maneuver. 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 persistence⁷² that cannot be achieved by other means; can provide a large variety of fire effects, such as disruption, suppression or neutralization of enemy forces, rather than being limited to the objective of destroying a nominated target;⁷³ and can dominate an entire area simultaneously, rather than being limited to a singular location.

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 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.⁷⁴ All these factors are relevant when considering the military advantage of fire support from the air.

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.

⁷¹ For discussion of the IDF’s mechanism for the examination of exceptional incidents, see Chapter VII (Israel’s Investigations of Alleged LOAC Violations).

⁷² 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.

⁷³ 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.



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.

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 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.⁷⁵

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).

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.⁷⁶ 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.

⁷⁵ 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 61, ¶¶ 1-114 to 1-116.

⁷⁶ 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.



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 such use, and, as general matter, are stricter than the practice of other law-abiding militaries facing comparable operational challenges.

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.

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 publicized 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 were 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.

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.

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.



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,⁷⁷ including alleged incidents occurring in Shuja'iyyeh 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.⁷⁸

5. Detention

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.

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 during the Conflict, the MAG has immediately ordered a criminal investigation (four such criminal investigations have been opened to date, and they are ongoing.)⁷⁹

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.⁸⁰

⁷⁷ 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).

⁷⁸ 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>.

⁷⁹ See *id.*

⁸⁰ 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 21 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

Footnote continued on next page



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.

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 defense attorney and the option to hire a private defense 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.

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.⁸¹ This law, enacted in 2002, provides legal tools for preventive detention in the specific context of hostilities, consistent with the requirements of the Law of Armed Conflict.⁸² 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.

Footnote continued from previous page

fenceline, 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.

⁸¹ 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 "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.

⁸² 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>.



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.⁸³ Under the Incarceration of Unlawful Combatants Law, Najar is entitled to a periodic judicial review every six months, until his release.⁸⁴

Notifications of Detention. Under the Fourth Geneva Convention,⁸⁵ 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 International Committee of the Red Cross ("ICRC"). The party also must reply to enquiries regarding protected persons in these circumstances.

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.

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.⁸⁶ After receiving various such inquiries, the Control Centre provided replies.⁸⁷

⁸³ 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>.

⁸⁴ 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.

⁸⁵ 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.

⁸⁶ Typically, the Control Centre deals with inquiries regarding residents of the West Bank.

⁸⁷ 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*, HCJ 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

Footnote continued on next page



Visits and Conditions of Detention in Israeli Incarceration facilities. Under the Fourth Geneva Convention,⁸⁸ 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.

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 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.⁸⁹ 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.

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.⁹⁰

E. Humanitarian Efforts

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.

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.⁹¹ 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.

Footnote continued from previous page

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*, HCJ 5243/14 (Aug. 4, 2014).

⁸⁸ Geneva Convention IV, Arts. 116, 143.

⁸⁹ To clarify, it is Israel’s position that detainees should receive ICRC visits also in the context of non-international armed conflicts.

⁹⁰ 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.

⁹¹ 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

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 specialized 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.

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.

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

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:⁹²

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



Above: Images of supplies for transfer into the Gaza Strip at the Kerem Shalom Crossing. (Source: IDF)

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.

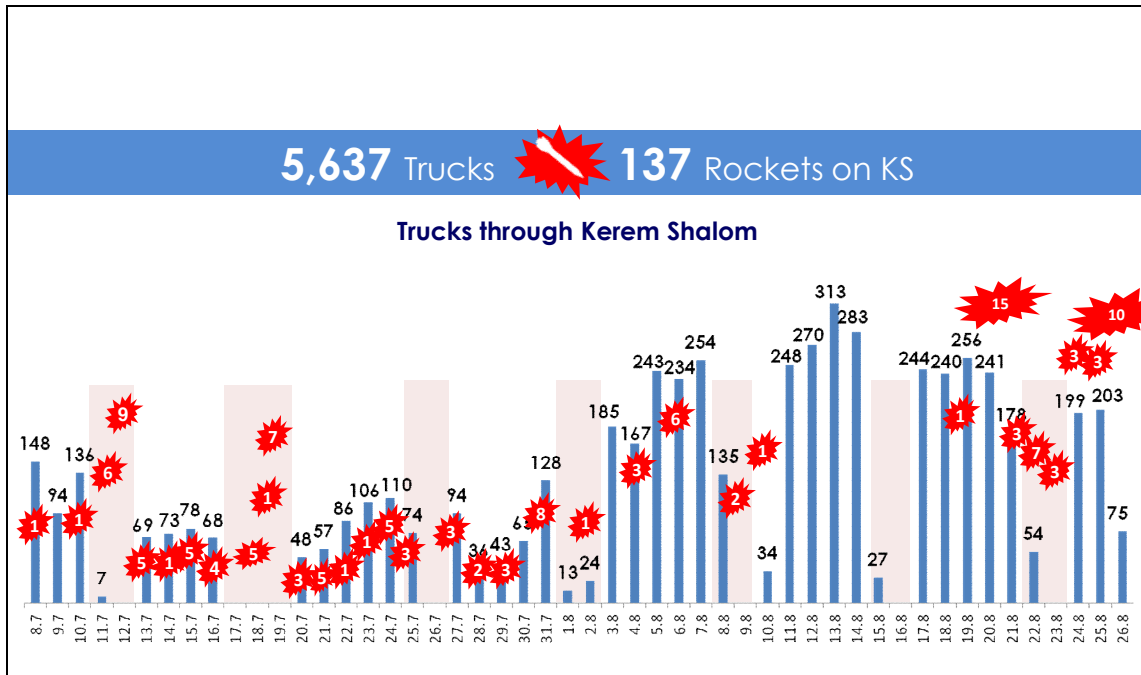
Beyond facilitating the passage of humanitarian supplies from international organisations and various donor countries, Israel donated eight truckloads of supplies containing 20 tons of rice, 20 tons of flour, 20 tons of sugar, 20 tons of cooking oil, and 20,000 water bottles. The source of these

⁹² 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.



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.

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).⁹³



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.

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;

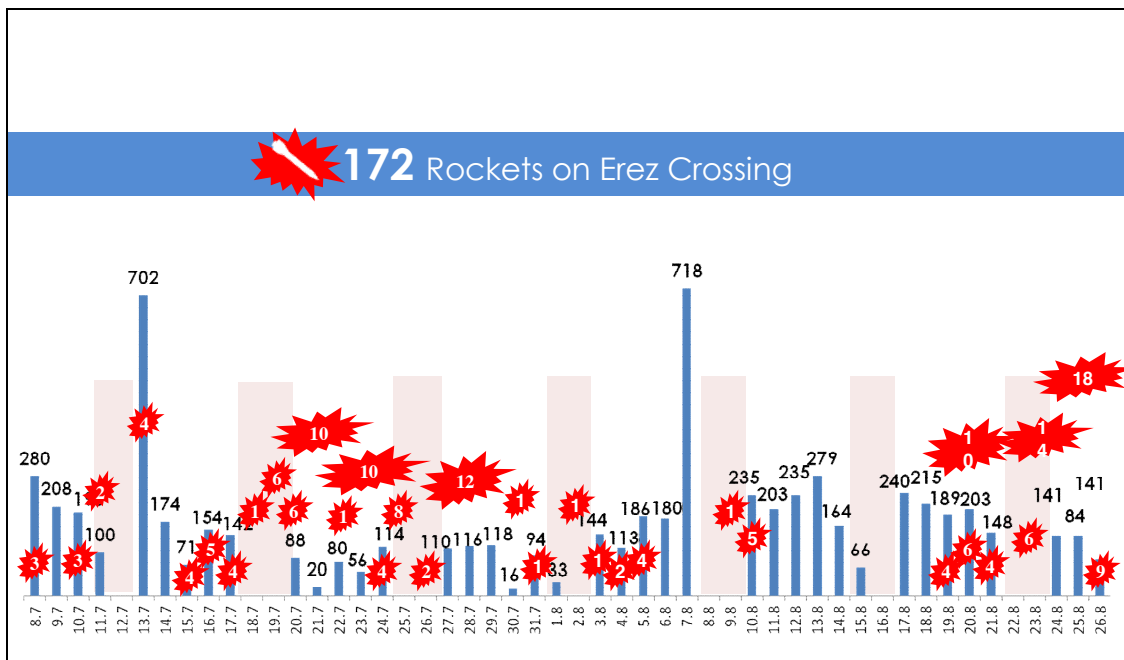
⁹³ Moreover, shortly after the 2014 Gaza Conflict, Israel, the Palestinian Authority, and the U.N. established a mechanism to ensure the necessary transfer of materials required to repair damaged buildings and services in the Gaza Strip, while respecting Israel’s legitimate security considerations. On 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>.



- 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 specialized 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.

Operating the Erez Crossing, like the Kerem Shalom Crossing, is a highly complex endeavor fraught with extreme danger and risk.

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.



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.⁹⁴ This field hospital treated 51 patients during the Conflict; more could have been admitted had Hamas 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)

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.⁹⁵ 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 Conflict⁹⁶ 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

⁹⁴ *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>.

⁹⁵ 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.

⁹⁶ For more on this operational order, see *infra* section B.



Pocketbook for Commanders” provided that all forces (medical or otherwise) must allow for medical evacuation and treatment of wounded persons, and if such treatment is unavailable and urgent, to provide first aid services themselves, where feasible.⁹⁷



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)

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.

⁹⁷ See page 5 above 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 hospitalized at Ashkelon's Barzilai Hospital. (Source: IDF)



Above: On the morning of July 18, Hamas militants attacked IDF ground forces near the Israel-Gaza fenceline, 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)

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.

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.

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 vehicles⁹⁸ 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.

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,⁹⁹ and the IDF's efforts undertaken in this regard were recognised publicly 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

⁹⁸ For more on this, see Chapter IV (Hamas's War Crimes), section B.

⁹⁹ See U.N. Board of Inquiry Summary, *supra* note 40, at ¶ 94.

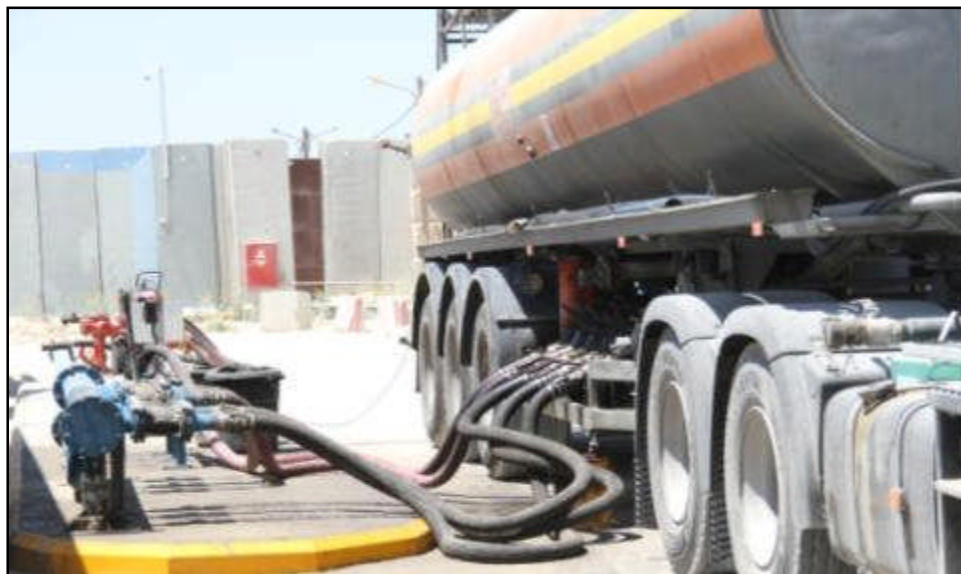


violence or ongoing political/ethnic/religious tensions – where the access for humanitarian organizations is as good as it is here.¹⁰⁰

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



Above: Fuel being provided for transfer into the Gaza Strip. (Source: IDF)

¹⁰⁰ 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/>



- *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,¹⁰¹ 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.



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 meters annually out of a total of about 170 million cubic meters 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

¹⁰¹ See *infra* section D.1.b.



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 fiber 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.

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

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	

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

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.¹⁰² 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 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 mortar shells landed near the Erez Crossing during the 2014 Gaza Conflict. These attacks

¹⁰² For more on Hamas's failures to take precautions to protect the civilian population, see Chapter IV (Hamas's War Crimes), section B.



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.¹⁰³ On August 10, deliberate, repeated firings on the Kerem Shalom Crossing resulted in delayed transfer of supplies.¹⁰⁴ 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. For more, see IDF, Rocket Attack Forces Closure of Israel-Gaza Border Crossing. (Source: IDF; <https://www.youtube.com/watch?v=GJBQ4h41bEQ>).

Hamas also refused to permit the transfer of wounded civilians into Israel for medical treatment.¹⁰⁵ In addition, Hamas and other terrorist organisations exploited the special protection afforded to medical facilities and vehicles in order to transfer weaponry and militants.¹⁰⁶ 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 them persistent hardship. Such actions also contravene Hamas's obligations to the Palestinian civilian population under customary international law.

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.¹⁰⁷ To date, Israel has allowed over 87,314 tons of construction materials to enter the

¹⁰³ For more information, see Chapter V (The Threat to Israel's Civilian Population).

¹⁰⁴ 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>.

¹⁰⁵ 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.

¹⁰⁶ 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.

¹⁰⁷ U.N. Office of the Special Coordinator for the Middle East Peace Process, *Gaza Reconstruction Mechanism: Fact Sheet* (October 2014), <http://www.unsco.org/Gaza%20Reconstruction%20Mechanism%20Fact%20Sheet%209%20October%202014.pdf>



Gaza Strip.¹⁰⁸ However, Hamas continues to frustrate these reconstruction efforts by diverting goods and supplies for military purposes,¹⁰⁹ by imposing additional taxes on donated materials, and providing relief only to Hamas members and affiliates.¹¹⁰

F. Conclusion

The above discussion demonstrates the IDF's ongoing commitment to observing the Law of Armed Conflict at all times.¹¹¹ 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 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.

As discussed above, an assessment of the legality of the IDF's actions during the 2014 Gaza Conflict must take the following into account:

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.

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).

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

¹⁰⁸ See Briefing to the Security Council on the Situation in the Middle East, *supra* note 93.

¹⁰⁹ 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.

¹¹⁰ For more on this, see Chapter II (Background to the Conflict) and Chapter III (Objectives and Phases of the Conflict).

¹¹¹ 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.



environment, the majority of Israel's more than 6,000 airstrikes during the Operation resulted in no civilian casualties. 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.

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.

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, mechanized 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.

Fifth, the extent of civilian casualties and property damage has been overstated.¹¹² 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.

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

¹¹² For more information on this topic, see *Palestinian Fatality Figures in the 2014 Gaza Conflict*, available at <http://mfa.gov.il/ProtectiveEdge/Documents/PalestinianFatalities.pdf>.



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.

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.