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1 capture

21 Oct 2013

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International Law

Legal Issues in
Lea & Samaria

Military Justice

[Home page](#) ▶ [Areas of Practice](#) ▶ [International Law](#) ▶ [Operational Law](#)
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Human Shields

[Table of contents](#)
[Legal Framework](#) | [Examples](#)

Legal Framework

The use of civilians as human shields is a direct violation of the laws of war, violating the basic principle of distinction between combatants and non-combatants. Article 51 of the 1977 First Additional Protocol to the 1949 Geneva Conventions, for instance, specifically prohibits the use of human shields:

The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular attempts to shield military objects from attacks or to shield, favor or impede military operations.

In addition, according to Article 8(2)(xxiii) of the Rome Statute of the International Criminal Court, "[u]tilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations," constitutes a war crime.

Despite the fact that this tactic has been explicitly prohibited by international law, it is a practice commonly and extensively used by terrorist organizations, including Hamas during the recent armed hostilities in the Gaza Strip, as well as by Hezbollah during the Second Lebanon War (2006). Such blatantly illegal and exploitative conduct has been increasingly used in recent years, as the terrorist organizations are aware that the IDF is reticent to attack legitimate military targets where civilians are present.

[back to the top](#)

Examples

The Palestinian terrorist organizations' use of civilians as human shields is widespread in the Gaza Strip, and is manifested in the following ways:

- ▶ Palestinian rocket fire from densely populated areas such as Jabaliya and Beit Hanoun.
- ▶ Palestinian terrorist organizations locating their terrorist infrastructure within Palestinian civilian areas and civilian

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Go

SEP OCT NOV

◀ 21 ▶

2012 2013 2014



▼ About this capture

[1 capture](#)

21 Oct 2013

- ▶ Encouraging and enlisting Palestinian civilians, including women and children, to congregate in sites which are expected to be attacked by the IDF in order to serve as human shields.

In November 2006 during an IDF operation against Palestinian terrorist organizations in the Gaza Strip, dozens of terrorist operatives using the Al-Nasr mosque in Beit Hanoun barricaded themselves in the mosque and exchanged fire with IDF forces. Upon the arrival of approximately 200 women who were apparently sent there by the terrorist organization to serve as human shields, the terrorists were able to flee the scene as the media covered the event. Here, the terrorist operatives exploited the fact that they knew that the soldiers would not fire indiscriminately at women, and therefore escaped unharmed.

On February 29, 2008, Hamas MP Fathi Hammad delivered a speech broadcast on Al-Aqsa television stating, "[The enemies of Allah] do not know that the Palestinian people has developed its [methods] of death and death-seeking. For the Palestinian people, death has become an industry, at which women excel, and so do all the people living on this land. The elderly excel at this, and so do the mujahideen and the children. This is why they have formed human shields of the women, the children, the elderly, and the mujahideen, in order to challenge the Zionist bombing machine. It is as if they were saying to the Zionist enemy: "We desire death like you desire life."

Unfortunately, Palestinian terrorist organizations appear to have absolutely no qualms about endangering Palestinian civilians in order to facilitate their attacks; additionally, there seems to be a large number of Palestinians ready and willing to volunteer themselves as human shields. The motivation for this tactic is twofold: (1) to take advantage of the known sensitivity of the IDF to civilian casualties on the Palestinian side in the hope that the IDF will refrain from attacking legitimate military targets where civilians are present; and (2) in cases where the IDF does attack, Palestinian casualties serve as an excellent propaganda weapon to be used against Israel. Thus, the use of human shields essentially creates a cynical win-win situation for Palestinian terrorist organizations. Notably, in March 2008 and in response to this tactic, the U.S. House of Representatives passed House Resolution 951 strongly condemning "the use of innocent Palestinian civilians as human shields by those who carry out rocket and other attacks."

Palestinian terrorist organizations' use of civilians as human shields is a blatant violation of international law. Indeed, this cynical exploitation of civilians is indicative of the underlying asymmetry between Israel, a democratic state committed to moral conduct and to upholding legal norms, and terrorist organizations operating in direct contravention of international law, which cynically exploit the protections provided by those laws.

[back to the top](#)

<http://www.mag.idf.il/592-1521-en/Patzar.aspx>

Go

SEP OCT NOV

◀ 21 ▶

2012 2013 2014



[1 capture](#)

21 Oct 2013

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