State of Israel

TABLE OF CONTENTS

Page

IV. Violations of the Law of Armed Conflict, War Crimes, and Crimes Against Humanity Committed by Hamas and Other Terrorist Organisations during the 2014 Gaza Conflict 58

A. Hamas and other Terrorist Organisations in the Gaza Strip Committed War Crimes and Crimes Against Humanity by Deliberately Attacking Israeli Civilians 60

B. Hamas and Other Terrorist Organisations in the Gaza Strip Embedded their Military Activities amongst the Civilian Population and Exploited Hospitals, U.N. Facilities, Schools, Mosques, and Homes for Military Operations 73

C. Hamas and other Terrorist Organisations in the Gaza Strip Directed the Movement of Civilians in Order to Shield Military Assets and Operations 97

D. Hamas and Other Terrorist Organisations in the Gaza Strip Utilised Additional Unlawful Tactics 101

E. Conclusion 105



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

107. Throughout Operation Protective Edge (hereinafter: "the 2014 Gaza Conflict"), Hamas and other Palestinian terrorist organisations in the Gaza Strip [172] intentionally and systematically employed military strategies designed to maximise harm to civilian life and property, both in Israel and in the Gaza Strip. These military strategies gave rise to violations of the Law of Armed Conflict,[173] war crimes, and crimes against humanity.

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

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

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

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

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

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

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

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

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

[176] *See* Chapter V (The Threat to Israel's Civilian Population).
[177] *See* Chapter III (Objectives and Phases of the Conflict).
[178] This IDF estimate refers to projectiles launched within 25 metres of the following "sensitive sites": educational institutions, U.N. facilities, medical facilities, places of worship, post offices, cemeteries, sports facilities, governmental buildings, fire stations, and prisons.

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

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

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

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

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

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

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

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

Israeli civilians. These organisations launched approximately 4,000 rockets and mortars at Israel,[184] threatening six million Israeli civilians (almost 70% of Israel's population) within range of the attacks.[185] On average, Israeli civilians faced the threat of almost 80 rocket and mortar launches per day during the 2014 Gaza Conflict — double the intensity of rocket and mortar attacks against Israel during the Gaza Operation 2008-2009 (also known as Operation "Cast Lead").[186] These rockets and mortars killed six civilians in Israel, including a four-year-old child who was killed by a mortar strike while playing inside his family home on August 22.[187] Additionally, rocket and mortar attacks injured approximately 1,600 civilians in Israel, over 270 of whom were children.[188] Across Israel, rockets, mortars, and shrapnel hit apartment buildings, schools, houses, cars, and power lines, causing approximately 150 million NIS (over 39 million USD) in direct damage to civilian property and approximately 1.7 billion NIS (approximately 443 million USD) in indirect damage to civilians.[189]

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

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

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

[187] On July 15, a mortar strike killed 37-year-old Dror Hanin at the Erez Crossing. On July 19, a rocket struck near Dimona, killing 32-year-old Ouda al-Waj and injuring three family members. On July 23, a mortar struck near Ashkelon, killing 36-year old Narakorn Kittiyangkul, a foreign worker from Thailand. On August 22, a mortar killed four-year-old Daniel Tregerman in his home in Nahal Oz. On August 26, an hour before a negotiated ceasefire was to begin, a mortar struck Kibbutz Nirim, killing 55-year old Ze'ev Etzion and 43-year old Shahar Melamed. *See Israel under fire July-August 2014 - A Diary*, *supra* note 185. Many more civilians were killed and injured by rocket and mortar fire from the Gaza Strip in the years preceding the 2014 Gaza Conflict. For information on fatal projectile attacks, see http://www.mfa.gov.il/mfa/foreignpolicy/terrorism/palestinian/pages/victims%20of%20palestinian%20violence%20and%20terrorism%20sinc.aspx. *See also* Chapter V (The Threat to Israel's Civilian Population).

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

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

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



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

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

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

State of Israel





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

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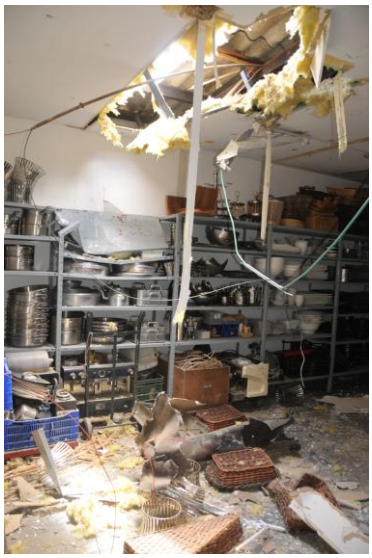
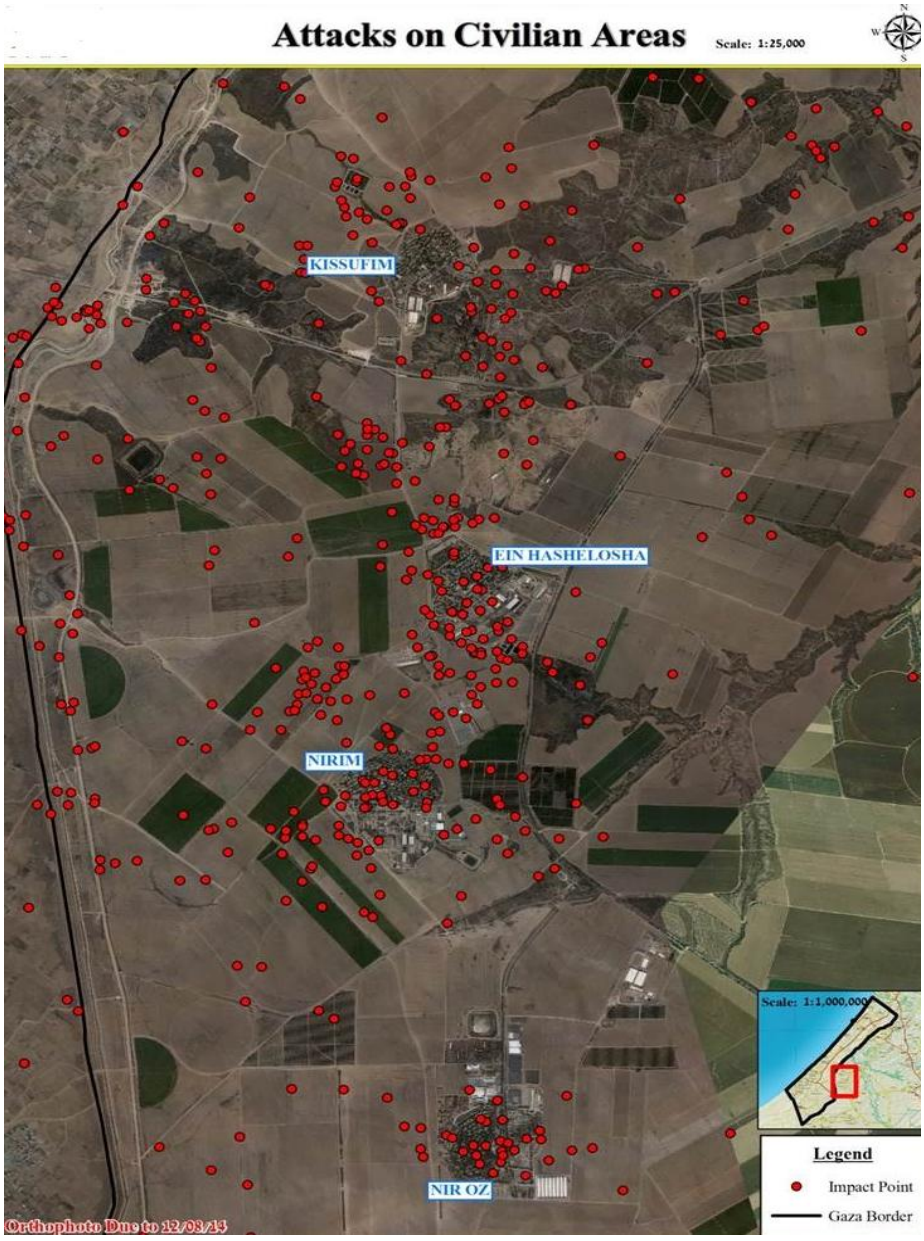


Above left: A house in the Israeli town of Yehud (near Ben Gurion International Airport) hit directly by a rocket from the Gaza Strip on July 22. (Source: IDF) Above right: A communal kitchen of a residential community in central Israel hit by a rocket on July 17. (Source: Israel Police)

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

[191] *Hamas Leader Khaled Mashal: Israel Perpetrated a Holocaust Worse than Hitler's in Gaza*, MEMRI TV (Aug. 28, 2014), available at http://www.memritv.org/clip/en/0/0/0/0/239/0/4466.htm (video content from Al-Quds TV).
[192] On July 12, Hamas uncharacteristically announced its intention to fire 80-km range J-80 rockets at Tel Aviv within the hour, at 21:00, instructing "the enemy to wait for our rockets at this time" and the media "to direct cameras at the skies of Tel Aviv." As opposed to warnings issued by the IDF preceding attacks of military objectives in the Gaza Strip, this notice preceded an unlawful strike deliberately targeting the civilian population of Israel.
[193] *Map of Early Warning Alerts*, Home Front Command, available at http://www.oref.org.il/1096-en/Pakar.aspx.
[194] Otef Aza refers to the region of Israel surrounding the Gaza Strip and reaching 7 kilometres into Israel.
[195] *Map of Early Warning Alerts*, Home Front Command, *supra* note 193.



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

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

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

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

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

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

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

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

[200] Unsuccessful launches constituted attempted crimes against humanity of murder.

keeping with the definition of crimes against humanity under customary international law, these rocket and mortar launches were conducted by Hamas and other terrorist organisations knowingly and as a matter of policy, as part of a widespread or systematic attack directed at a civilian population.[201] Among other indications, the sheer number of rockets and mortars launched towards Israel; the persistence of such launches for over a decade; the consistent statements of intent to harm Israeli civilians dating back to Hamas's establishment;[202] and the frequent declarations of responsibility and boasting that followed launches, particularly those directed towards major Israeli cities, all confirm that the attacks were widespread, systematic, and a matter of organisational policy. For example, Hamas and other terrorist organisations in the Gaza Strip declared responsibility for launches directed at Jerusalem, Tel Aviv, Ashdod, Ofakim, Be'er Sheva, Netivot, and Ashkelon on July 8;[203] launches directed at Tel Aviv and Haifa on July 11 and again at Haifa on July 13;[204] and launches directed at Tel Aviv and Rishon LeZion on July 13.[205] Less than an hour after a rocket seriously injured a 16-year-old Israeli boy outside Ashkelon on July 13, Hamas took credit.[206] Even Palestinian officials have acknowledged that these rocket and mortar launches constitute international crimes: in a television interview, Ibrahim Khreisheh, the Palestinian envoy to the U.N. Human Rights Council, confirmed: "The missiles that are now being launched against Israel — each and every missile constitutes a crime against humanity, whether it hits or misses, because it is directed at a civilian target."[207]

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

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

[203] For Hamas's admissions of responsibility, see Yoav Zitun, *Israel under attack: Over 100 rockets fired in one day*, YNet News (July 9, 2014), available at http://www.ynetnews.com/articles/0,7340,L-4539418,00.html; *Live updates, July 7, 2014: Rockets bombard south, Hamas claims responsibility*, Haaretz (July 8, 2014), available at http://www.haaretz.com/news/diplomacy-defense/1.603472. For the Palestinian Islamic Jihad's admission of responsibility, see *Live Updates: Operation Protective Edge, day 1*, Haaretz (July 8, 2014), available at http://www.haaretz.com/news/diplomacy-defense/1.603677.

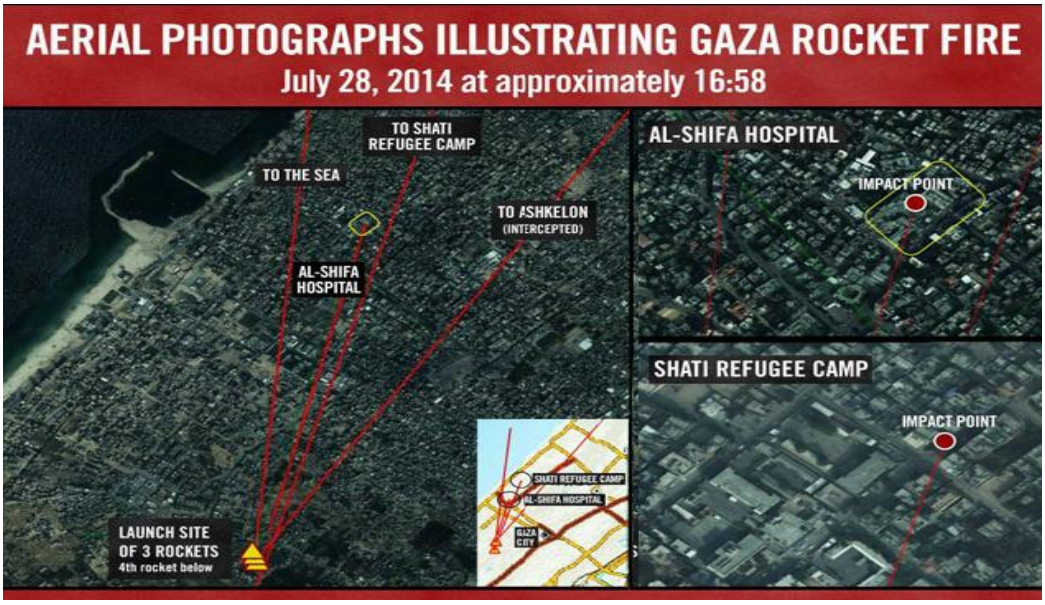
[204] For Hamas's admissions of responsibility, see *Live updates: Operation Protective Edge, day 4*, Haaretz (July 12, 2014), available at http://www.haaretz.com/news/diplomacy-defense/1.604437; *Live updates: Operation Protective Edge, day 6*, Haaretz (July 14, 2014), available at http://www.haaretz.com/news/diplomacy-defense/1.604714.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

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

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

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

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



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

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

[208] *See* Matan Tzuri, *IDF responds after Gaza rockets fired at Israel*, Ynetnews (June 24, 2014), available at http://www.ynetnews.com/articles/0,7340,L-4534166,00.html.
[209] *See* Sharon Udasin, *For second in time in days, Gazan rocket hits electricity line to Gaza*, Jerusalem Post (July 15, 2014), available at http://www.jpost.com/Operation-Protective-Edge/For-second-in-time-in-days-Gazan-rocket-hits-electricity-line-to-Gaza-362925; *see also Live Updates*: *Operation Protective Edge, day 6*, *supra* note 204.
[210] *See also Decisions of the IDF Military Advocate General regarding Exceptional Incidents that Occurred during Operation 'Protective Edge' – Update No. 2*, IDF, MAG Corps (Dec. 7, 2014), available at http://www.law.idf.il/163-6958-en/Patzar.aspx.



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

- On July 17, thirteen Hamas militants infiltrated Israel through a tunnel that opened just 1.5 kilometres from civilian homes in an Israeli community, Kibbutz Sufa. In light of the imminent danger, the residents of 12 nearby residential communities were instructed by the IDF to barricade themselves in their homes for hours.

- Two days later, on July 19, approximately 10 Hamas militants emerged from a tunnel opening 4.7 kilometres from civilian homes in Kibbutz Be'eri armed with lethal weapons as well as tranquillizers and handcuffs for kidnapping Israelis. The residents of five residential communities near the border with the Gaza Strip were instructed by the IDF to barricade themselves in their homes for hours.

- On July 21, approximately 12 Hamas militants infiltrated Israel via a cross-border assault tunnel that opened in the territory of Kibbutz Nir Am, just 1.3 kilometres from civilian homes in the Kibbutz and 1.1 kilometres from civilian homes in the city of Sderot, communities bordering the Gaza Strip. Militants disguised as IDF soldiers and armed with lethal weapons headed towards Nir Am. To ensure civilians' protection, the IDF instructed the residents of all of the communities in the Otef Aza border region to barricade themselves in their homes for hours.

- On July 28, nine Hamas militants infiltrated Israeli territory through a tunnel opening in the territory of Kibbutz Nahal Oz, just two kilometres from civilian homes in the Kibbutz. The residents of the residential communities of Nahal Oz and Alumim were instructed by the IDF to barricade themselves in their homes in the hours surrounding the attack. Following the attack, three ready-to-use motorcycles and deadly weapons were found inside the tunnel,

[211] For more in-depth information on the tunnel threat and kidnapping threat, see Chapter III (Objectives and Phases of the Conflict).
[212] The IDF struck the tunnel on July 5, 2014 in order to prevent the planned attack. *See also* Chapter II (Background to the Conflict).
[213] *Operation Protective Edge: General Information*, IDF (Updated Aug. 25, 2014), available at http://www.idfblog.com/operationgaza2014/#Genralinformation.

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

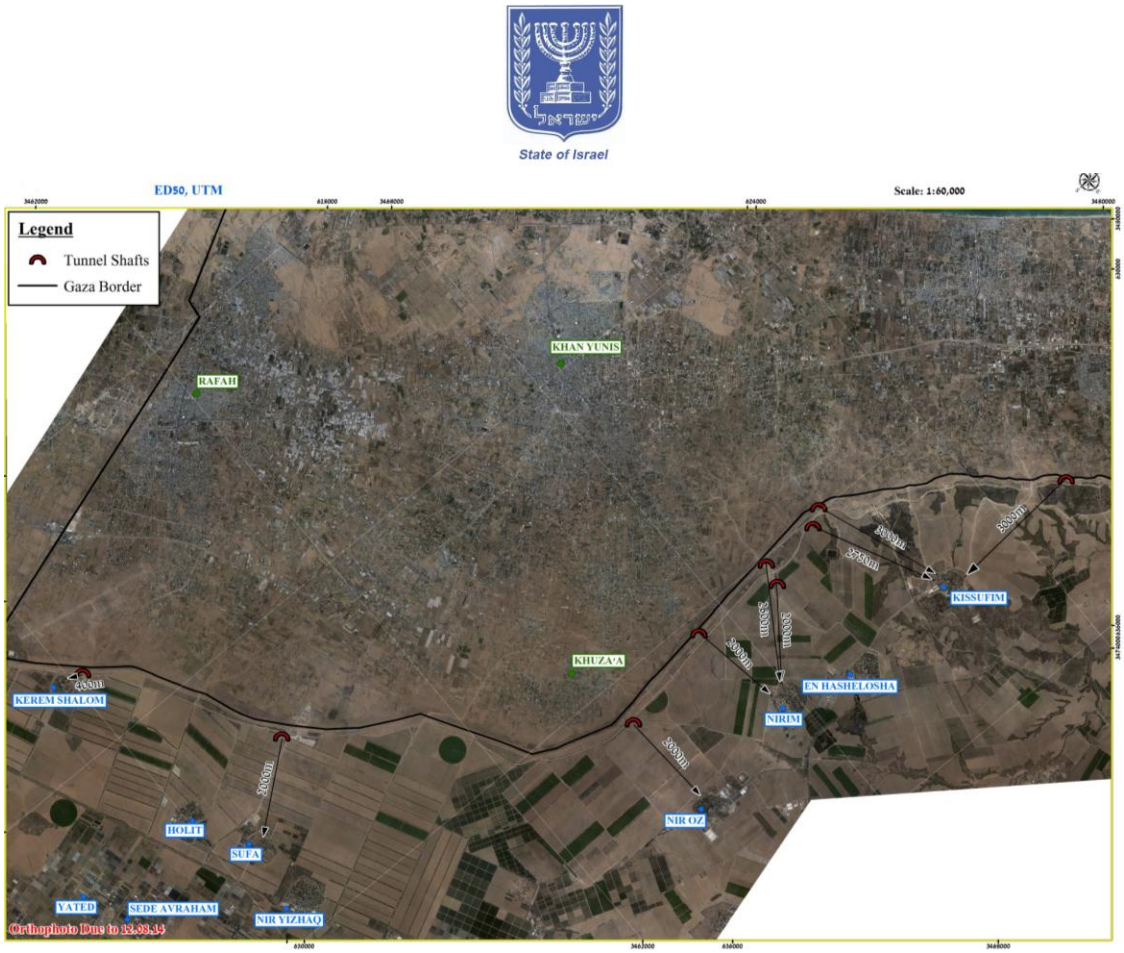
120. In all of these cases, infiltrators encountered IDF troops stationed near these border towns, obstructing their ability to carry out attacks against civilians. Any deliberate targeting of civilians by way of these tunnels violates the customary international prohibition against intentionally making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

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

[214] *Israeli forces unearth 'terror motorcycles' from alleged Hamas tunnel in new video*, Telegraph (London) (Aug. 4, 2014), *available at* http://www.telegraph.co.uk/news/worldnews/middleeast/gaza/11010380/Israeli-forces-unearth-terror-motorcycles-from-alleged-Hamas-tunnel-in-new-video.html. *See also* Chapter III (Objectives and Phases of the Conflict).
[215] This customary rule is also reflected in Additional Protocol I, art. 51(2); Additional Protocol II, art. 13(2); Rome Statute, arts. 8(2)(b)(i), 8(2)(e)(i).
[216] For personal accounts of Israeli civilians terrorised by tunnel infiltrations, see IDF, *An Inside Look Into Life Under Hamas' Tunnel Threat*, YouTube (July 27, 2014), https://www.youtube.com/watch?v=wMzMkSpXAcw.
[217] *Hamas' Construction of Tunnels Continues*, MEMRI (Oct. 14, 2014), available at http://www.memri.org/report/en/0/0/0/0/0/0/8189.htm.
[218] *See also* Chapter V (The Threat to Israel's Civilian Population).



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



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

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

[219] Hamas Spokesman Fawzi Barhoum. *Video: Hamas to Israeli Arabs: Have No Fear, Our Missiles Target Only the Hebrews*, MEMRI (July 11, 2014), available at http://www.memri.org/clip/en/0/0/0/0/0/0/4350.htm (video from Al-Aqsa TV (Hamas-Gaza)).
[220] Hamas Spokesman Fawzi Barhoum, *Video: Hamas Spokesman Fawzi Barhoum Calls to Carry Out Terror Attacks in Israel and the West Bank*, MEMRI (July 30, 2014), available at http://www.memritv.org/clip/en/4408.htm (video from Al-Quds TV (Lebanon)).



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

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

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

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

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

[221] This customary rule is also reflected in Additional Protocol I, art. 58 and Additional Protocol II, art. 13(1).
[222] The International Committee of the Red Cross Commentary to Additional Protocol I, art. 58, ¶ 2253.



their assets and operations from attack. A Hamas Izz al-Din al-Qassam Brigades urban-combat manual found by the IDF during the ground operation clearly attests to a deliberate strategy of exploiting Gazan civilians in order to impede IDF attack and shield military activities. The manual explains to militants that "the presence of civilians creates many pockets of resistance" that create "difficulties in opening fire" for the IDF.[223] Another Izz al-Din al-Qassam Brigades combat manual found during the ground operation instructs militants "to lay ambushes in residential areas and to transfer combat from open areas to built-up, closed areas, which serves the 'resistance' and Jihad activities."[224] Using the presence of civilians to shield military targets from attack is prohibited by customary international law[225] and constitutes a war crime.[226]

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

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

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

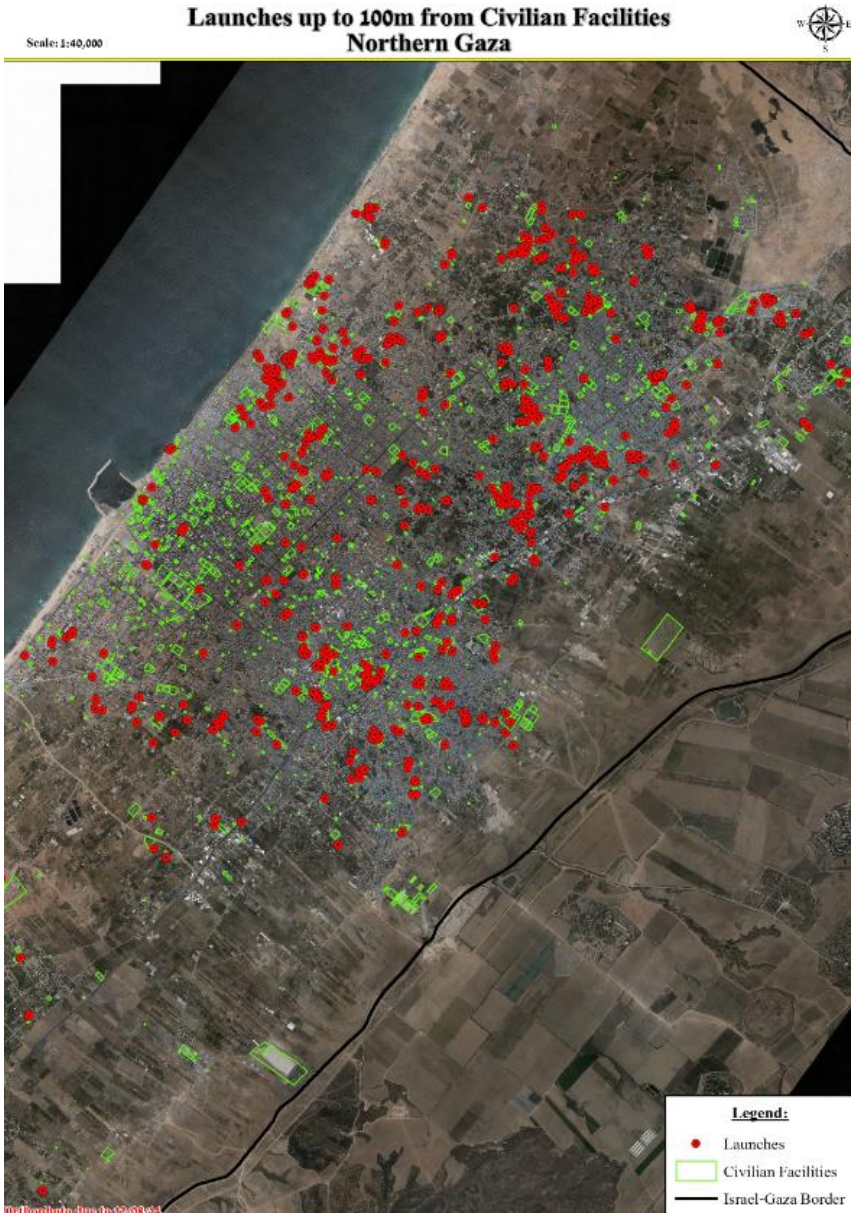
[225] This rule of customary law is also reflected in Additional Protocol I, art. 51(7). *See also* Additional Protocol II, art. 13(1).

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

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

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

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



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

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

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

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

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

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

[230] *See* Chapter VI (IDF's Conduct during the Conflict), Sections D.2.d and D.3.b.
[231] *Id.* at Sections D and E.
[232] This customary rule is also reflected in Additional Protocol I, art. 12(1), art. 21; Additional Protocol II, art. 11; Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949 (hereinafter: "Geneva Convention IV"), art. 18; Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Geneva, 12 August 1949 (hereinafter: "Geneva Convention I"), art. 19.
[233] This customary rule is also reflected in Additional Protocol I, art. 10, art. 21; Additional Protocol II, art. 8; Geneva Convention IV, art. 18, Geneva Convention I, art. 19.
[234] William Booth, *While Israel held its fire, the militant group Hamas did not*, Washington Post (July 15, 2014), available at http://www.washingtonpost.com/world/middle_east/while-israel-held-its-fire-the-militant-group-hamas-did-not/2014/07/15/116fd3d7-3c0f-4413-94a9-2ab16af1445d_story.html. *See also* Daniel Bettini, *Foreign*



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

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

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

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

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

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



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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[248] *See id*. at ¶¶ 70, 82.

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

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

- On July 10, three projectiles were launched approximately 30 metres from an UNRWA kindergarten in Beit Hanun.

- On July 13 and 14, two projectiles were launched from within the UNRWA Jabalia Preparatory Boys School (see aerial map below). On July 15, a projectile was launched within 10 metres of the UNRWA compound in which that school, as well as three other UNRWA schools, were situated. On July 16, another projectile was launched approximately 20 metres from the UNRWA compound, and on July 19, a projectile was launched from the exterior wall of the compound, and likely from within the compound itself. [251]

- On July 13, a projectile was launched approximately 15 metres from the UNRWA Nuseirat School for Boys, towards the greater Tel Aviv area.

- On July 14 and 23, eight projectiles were launched at other major Israeli cities from within 25 metres of the UNRWA Shuhada Primary School in central Gaza City.

- On July 21, a projectile was fired from within 25 metres of an UNRWA distribution centre situated near the UNRWA Jabalia Elementary Girls A and B School.

- On July 25, a projectile was fired from within 25 metres of the UNRWA Gaza Beach Elementary Co-Educational B School.

- On August 2, a projectile was launched approximately 10 metres from the UNRWA Jabalia Elementary Co-Educational School.

- On August 4, a projectile was launched approximately 20 metres from the UNRWA Nuseirat Preparatory Co-Educational B School.[252]

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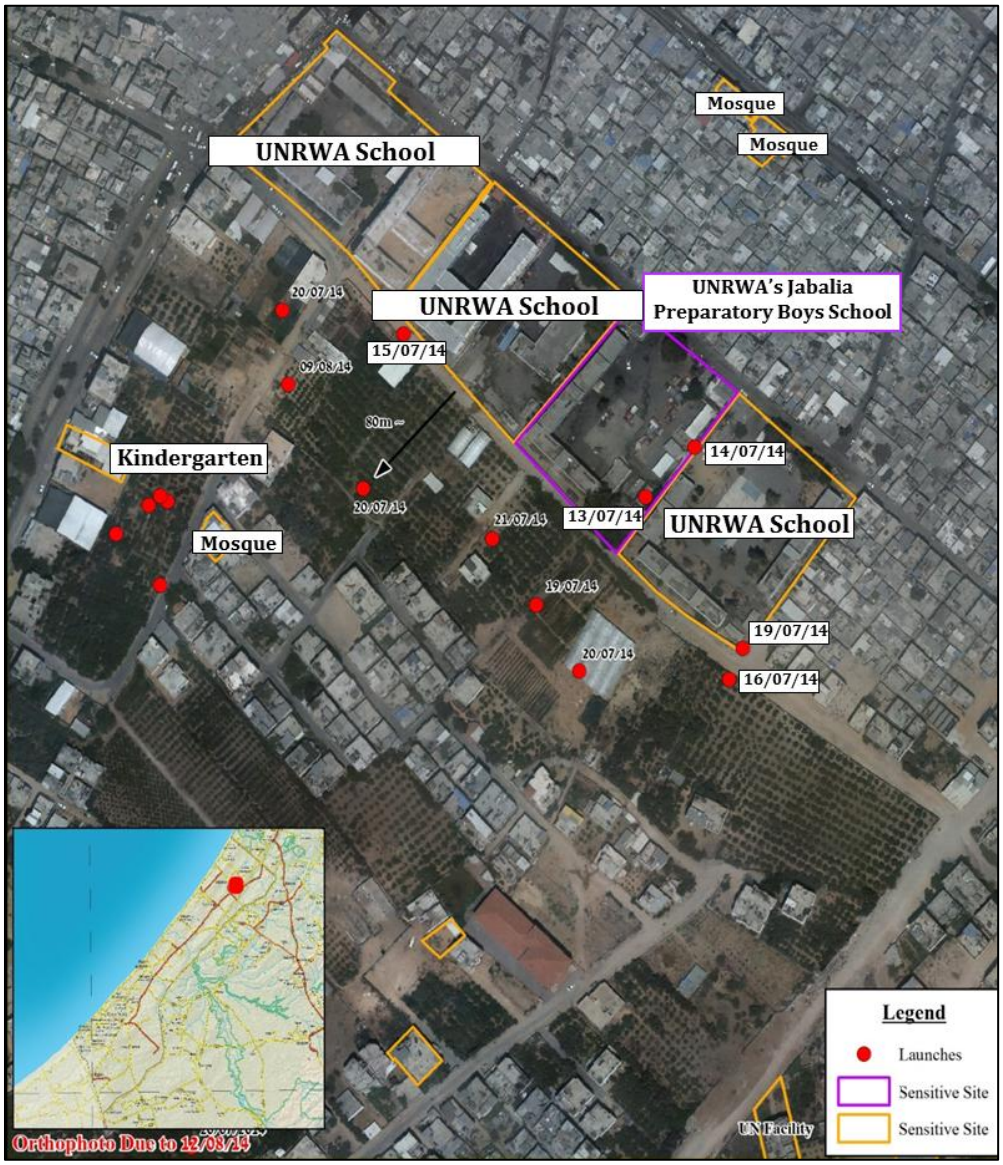
[249] *U.N. Director on Gaza School Shelling* (interview with John Ging), CBC News (Jul. 30, 2014), available at http://www.cbc.ca/player/News/Politics/Power+%26+Politics/ID/2479781349/ (at 4:19).
[250] The evidence that follows in this sub-section was provided by IDF intelligence, unless otherwise noted.
[251] *See* U.N. Board of Inquiry Summary, *supra* note 247, at ¶¶ 65, 70 (finding that "it was highly likely that an unidentified Palestinian armed group could have used the school premises to launch attacks on or around 14 July" and that "[t]he area behind the [UNRWA Jabalia Preparatory Boys] school wall was known at the time for being used by militants, including for the firing of projectiles.").
[252] *See id*. at ¶ 82 (finding that "it was likely that such a [Palestinian armed] group may have fired from within the premises of the [UNRWA Nuseirat Preparatory Co-Educational B] school.").

State of Israel



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

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



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

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

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

[254] *Id.*

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

- On July 31, a rocket was launched right behind a journalist reporting from a civilian area, 100 metres from a U.N. building.[255]

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



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

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

[255] *Hamas rocket launch pad lies near Gaza homes*, France24 (Aug. 7, 2014), available at http://www.france24.com/en/20140805-exclusive-video-hamas-rocket-launching-pad-near-gaza-homes-un-building/ (video of July 31 rocket launch near U.N. facility).
[256] For more information, see Chapter VI (IDF's Conduct During the Conflict), Section D.1.b.

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



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

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

[257] *See* U.N. Board of Inquiry Summary, *supra* note 247, at ¶¶ 55, 67, 76, 80.
[258] *UNRWA strongly condemns placement of rockets in school*, UNRWA, (July 17, 2014), available at http://www.unrwa.org/newsroom/press-releases/unrwa-strongly-condemns-placement-rockets-school. The weapons found at the school were a 120 MM mortar tube, a mortar bipod and twenty 120 MM mortar-round containers, with ammunitions. *See* U.N. Board of Inquiry Summary, *supra* note 76, at ¶ 55.
[259] *UNRWA condemns placement of rockets, for a second time, in one of its schools*, UNRWA, *supra* note 253.
[260] Secretary-General Ban Ki-Moon Statement on Weapons at UNRWA School in Gaza (July 23, 2014), available at http://www.un.org/sg/statements/?nid=7885.
[261] For the July 29 finding, see, *U.N. says more rockets found at one of its Gaza schools*, Reuters (July 29, 2014), available at http://af.reuters.com/article/egyptNews/idAFL6N0Q45TO20140729. On 29 July, a 120 MM mortar tube, a 120 MM bipod and three 120 MM mortar containers were found; and on 17 August, a 120 MM mortar tube, a 120 MM mortar bipod and twenty 120 MM mortar containers were found. *See* U.N. Board of Inquiry Summary, *supra* note 247, at ¶¶ 76, 80.
[262] This customary rule is also reflected in Additional Protocol I, art. 52, Rome Statute, 8(2)(b)(ii and iii) and 8(2)(e)(iii).



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

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

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

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





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

- On July 21 and 30, two projectiles were fired from within El-Fhheed Raied Kindergarten in Sheikh Radwan.

- On July 23, two projectiles were fired simultaneously from within Al Quds University in Beit Lahiya.

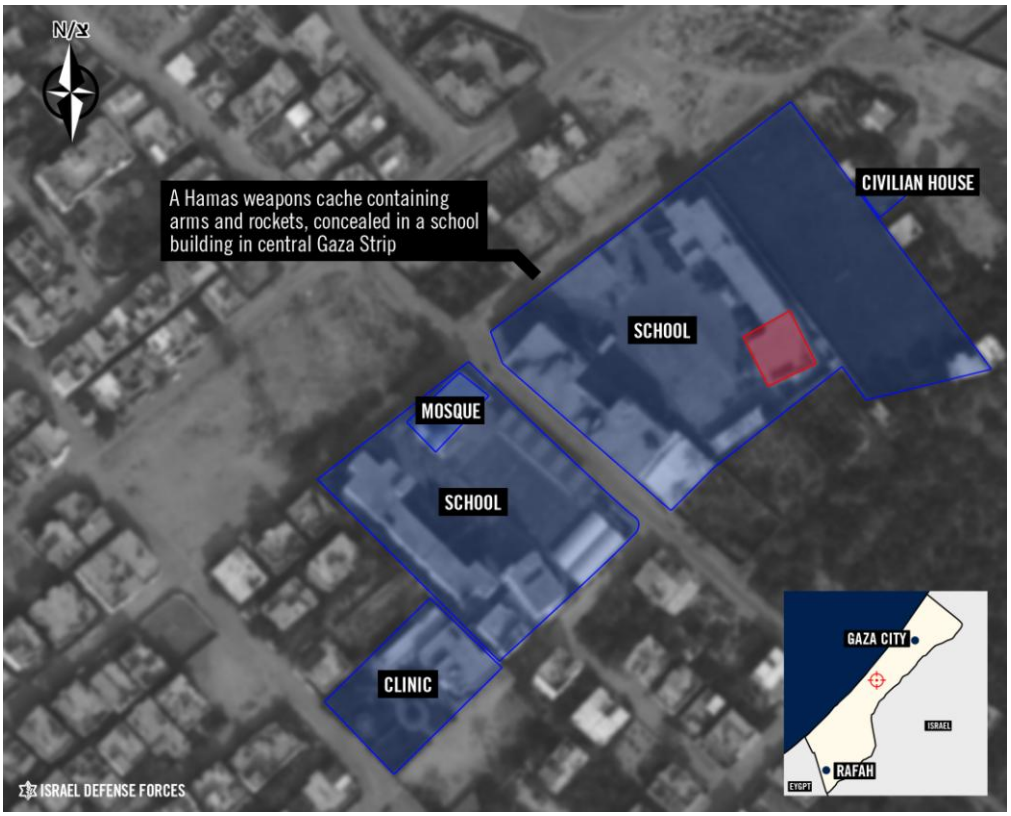
[264] For video footage filmed by the IDF, see *IDF Special Report: Hamas' Illegal Use of Civilian Infrastructure During Operation Protective Edge*, IDF (Aug. 19, 2014), slide 13, available at http://www.idfblog.com/blog/2014/08/20/new-declassified-report-exposes-hamas-human-shield-policy/.

- On July 29, two projectiles were fired from within 25 metres of the Dalal al-Maghribi school in Al-Tuffah. On July 30, a projectile was fired from within the school itself.

- On August 3, three projectiles were fired 40 metres from a kindergarten in Jabalia.

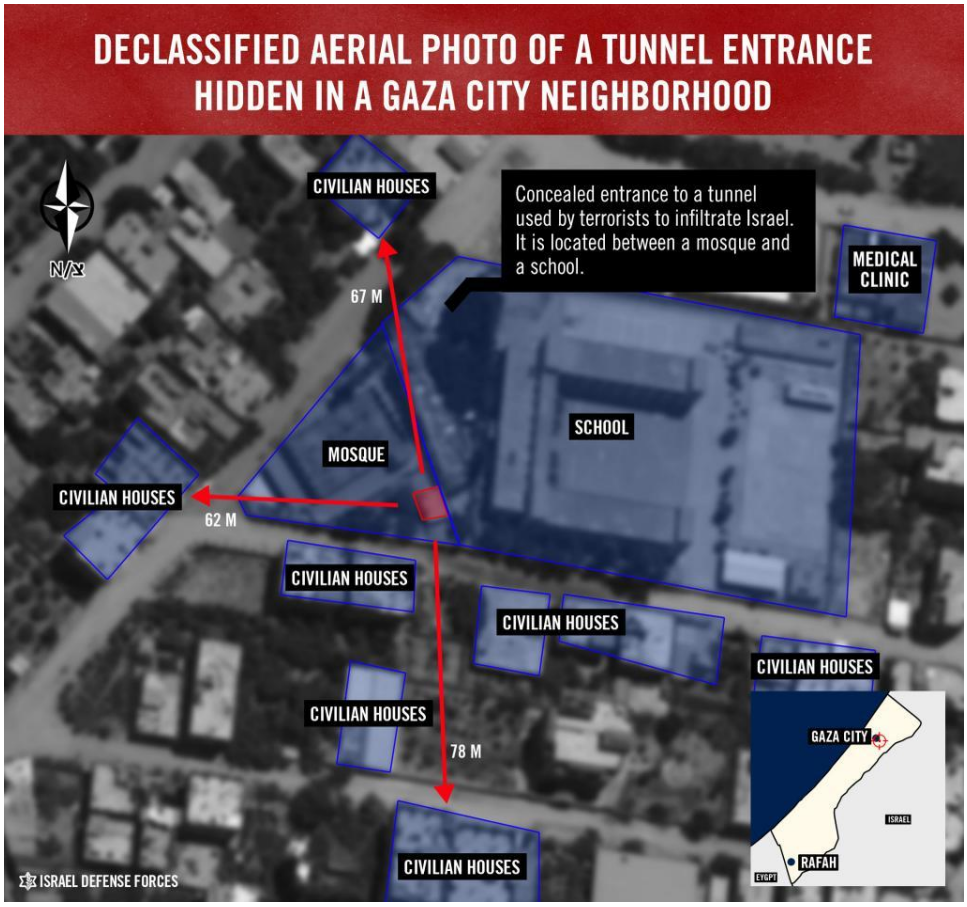
- On August 3, one projectile was fired from within a school in Al-Darraj.

- On August 3, two projectiles were launched from within the Basheer Al-Riss Secondary School for girls in Sheikh Radwan.



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

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



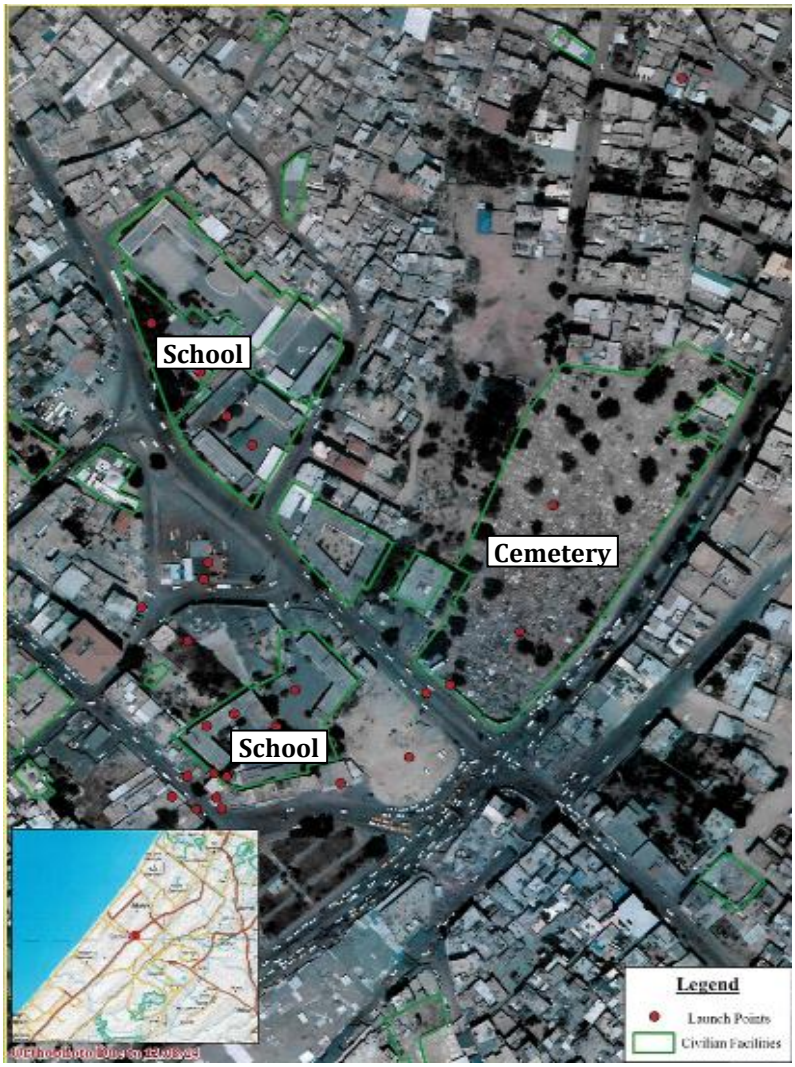
Above: An aerial photograph depicting an entrance to a combat tunnel situated between a mosque and a school in a neighbourhood of Gaza City. (Source: IDF)

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

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

[265] *Hamas' exploitation of civilian and medical facilities for terror*, Israel Ministry of Foreign Affairs, *supra* note 240 (detailing interrogations of Afif Jerajh and Amad Jerakj).
[266] *Id.* (statement of Muhammad Abu Daraz).

objects under customary international law and rendered them legitimate military targets[267] Operating near these schools further endangered these structures by drawing IDF counter-strikes, increasing their susceptibility to incidental damage.



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

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



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

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

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

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

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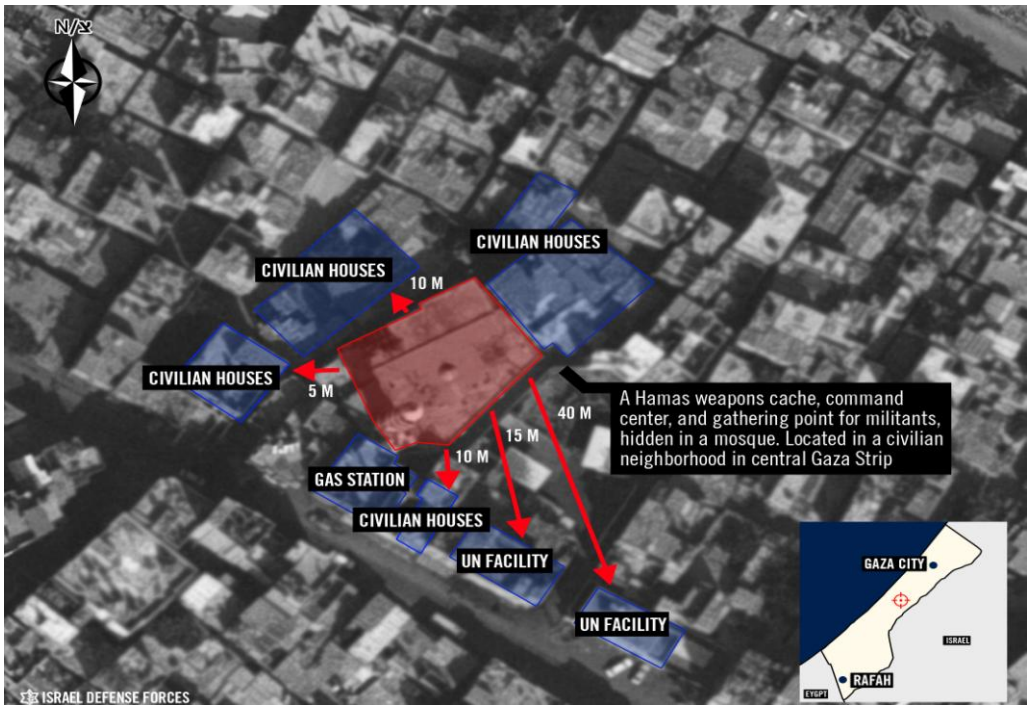
[268] IDF, *IDF Soldiers Find Mosque with Weapons and Tunnel Openings*, YouTube (July 31, 2014), https://www.youtube.com/watch?v=aWkjwfkh-qM.
[269] William Booth et al., *Israel launches ground invasion of Gaza*, Washington Post (July 17, 2014), available at http://www.washingtonpost.com/world/gaza-residents-scramble-to-make-most-of-five-hour-truce/2014/07/17/e5485fce-0d7e-11e4-8341-b8072b1e7348_story.html (eyewitness account of militants moving small rockets into mosque).
[270] *Live Updates: Operation Protective Edge, day 24*, Haaretz (Aug. 1, 2014), available at http://www.haaretz.com/news/diplomacy-defense/1.608121.
[271] The evidence that follows in this sub-section was provided by IDF intelligence, unless otherwise noted.

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



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

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

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

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

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







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

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

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

- Iyad Abu Rida from Khuza'a stated that a Hamas-affiliated armed group called Jamaat Asnad operated from the second floor of the Al-Taqwa mosque in Khuza'a.

- Khatem Abu Rida from Khuza'a said that militants also used Khuza'a's Al-Taqwa mosque as a lookout and command centre for passing instructions to militants about where to plant IEDs.[276]

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

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

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

[276] *Hamas' exploitation of civilian and medical facilities for terror*, Israel Ministry of Foreign Affairs, *supra* note 240.
[277] This customary rule is also reflected in Additional Protocol I, art. 52, Rome Statute, 8(2)(b)(ii and ix) and 8(2)(e)(iv).
[278] *Hamas rocket launch pad lies near Gaza homes*, France 24 (Aug. 7, 2014), *supra* note 255.
[279] Sreenivasan Jain, *NDTV Exclusive: How Hamas Assembles and Fires Rockets*, NDTV (Aug. 5, 2014), available at http://www.ndtv.com/article/world/ndtv-exclusive-how-hamas-assembles-and-fires-rockets-571033?pfrom=home-lateststories.

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



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

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



[280] *Id.*

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

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

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

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

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

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

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

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

156. This embedding strategy gave rise to additional violations of customary international law and war crimes. Specifically, on the many occasions in which these organisations exploited medical units and transports for military use and used these specially-protected facilities to shield their assets and operations from IDF attack, they violated norms of customary international law mandating respect and protection of these facilities[285] and prohibiting the use of these facilities for shielding military objectives from attack.[286] Moreover, on the many occasions in which Hamas and other terrorist organisations deliberately exploited the presence of civilians in and around the civilian sites in which they operated in order to shield their military assets from attack, they violated the prohibition under customary international law against relying on the presence of civilians to shield military targets from attack[287] and committed war crimes.[288]

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

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

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

[285] This customary rule is also reflected in Additional Protocol I, art. 12(1), art. 21; Additional Protocol II, art. 11; Geneva Convention IV, art. 18; Geneva Convention I, art. 19.
[286] This customary rule is also reflected in Additional Protocol I, art. 12(4).
[287] This customary rule is also reflected in Additional Protocol I, art. 51(7). *See also id.* at Article 13(1).
[288] This customary rule is also reflected in the Rome Statute, art. 8(2)(b)(xxiii).
[289] This customary rule is also reflected in Additional Protocol I, art. 51(7). *See also id.* at Article 13(1).
[290] This customary rule is also reflected in the Rome Statute, art. 8(2)(b)(xxiii).



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

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

- On July 10, Hamas's Ministry of Interior instructed the thousands of civilians who had received phone messages from the IDF warning them to evacuate, to ignore these warnings. The Ministry assured civilians that the messages were designed merely to frighten them and to "weaken the home-front." This message was relayed repeatedly throughout the day on Hamas's media outlets, including Al-Aqsa radio and television, as well as Al-Resalah news website.

- On July 12, Hamas's Ministry of Interior spokesman Iyad Al-Buzum posted on the Ministry's Facebook page an "important and urgent message: The Ministry of the Interior and National Security calls upon our honorable people in all parts of the Strip to ignore the warnings … as these are part of a psychological warfare."

- On July 13, responding to continued evacuations, Al-Buzum reiterated in the following directive: "We call upon all our people who left their homes to return to them immediately."[292]

- On July 13, in a press conference broadcast on the Hamas TV channel Al-Aqsa, a representative of the Palestinian National and Islamic Forces, an umbrella organisation including representatives of Hamas and other terrorist organisations in the Gaza Strip, exhorted residents "not to obey what is written in the pamphlets distributed by the Israeli…army. We call on them to remain in their homes and disregard the demands to leave, however serious the threat may be."[293]

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

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

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

State of Israel



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

- On July 14, Adnan Okal, head of the Hamas-affiliated Popular Committee of Palestinian Refugees, called upon civilians in the northern Gaza Strip who had complied with IDF evacuation warnings to leave UNRWA shelters and return to their homes.[294] The Committee called IDF warnings "psychological warfare" and demanded that the residents of the northern Gaza Strip "take responsibility" in resisting IDF activities by refraining from evacuating the border region in favor of U.N. shelters. The Committee also instructed UNRWA not to open shelters without consulting the Hamas authorities. In discussions with the IDF's Gaza District Coordination and Liaison Administration, a senior UNRWA official confirmed that Hamas demanded that UNRWA close shelters, and that Hamas sent messages to Gaza residents, including via SMS, threatening them not to evacuate their homes or seek shelter in UNRWA facilities.

- On July 16, Hamas spokesman Mushir al-Masri instructed Gazan civilians not to leave their homes and to ignore the IDF's warnings: "Stay in your homes…. Do not comply with the war of rumors that the Zionist enemy is waging upon you."[295]

- Prior to the July 19 entry of IDF ground troops into Shuja'iyeh, neighbourhood mosques instructed civilians to remain in the area despite IDF warnings to evacuate, assuring civilians that Hamas was strong and no harm would befall them.

- International organisations reported to the IDF's Coordination and Liaison Administration that Hamas had used megaphones to exhort residents of the northern Gaza Strip, particularly Shuja'iyeh, not to evacuate their homes.

- On July 16, Fatah officials reported to the Palestine Press News Agency that Hamas security services had placed Fatah members under house arrest in order to prevent them from assisting civilian evacuations.

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

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

[295] *Id.*



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

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

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

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

[296] Aside from issuing official directives, leaders of Hamas and other terrorist organisations also generally encouraged Gazan civilians to shield military assets and operations from IDF attack. On July 8, Hamas spokesperson Sami Abu Zuhri praised civilians for gathering on the roof of a house that the IDF had warned civilians to evacuate, stating: "The policy of people confronting the Israeli warplanes with their bare chests in order to protect their homes has proven effective … We in Hamas call upon our people to adopt this policy." *Video: Hamas Spokesman Encourages Gazans to Serve as Human Shields: It's Been Proven Effective*, MEMRI (July 8, 2014), available at http://www.memri.org/clip/en/0/0/0/0/0/0/4340.h. Encouraging civilians to use their bodies as shields against IDF strikes was by no means unique to the 2014 Gaza Conflict, and has for years been a recurring mantra in official Hamas rhetoric. For example, in 2008, prior to the Gaza Operation 2008-2009, Hamas spokesman Fathi Hammad appeared on Hamas television and brazenly praised the practice of forming "human shields of the women, the children, the elderly, and the Mujahideen in order to challenge the Zionist bombing machine." *Hamas MP Fathi Hammad: We Used Women and Children as Human Shields*, MEMRI TV (Feb. 29, 2009), available at http://www.memritv.org/clip/en/1710.htm (video from Al-Aqsa TV). During the Gaza Operation 2008-2009, senior Hamas militant Abu Bilal al'Jabeer testified on television that after receiving a telephone warning from the IDF that his house was being targeted for attack, rather than evacuating his family, "I immediately shut the cell phone and phoned some friends, who called the people via the loudspeakers, and they gathered on the roof of the house, and remained up until now to defend the roof of the house, until Allah so wants." *See* IDF, *Hamas Terrorists Use Innocent Civilians as Human Shields*, YouTube (Jan. 19, 2009), https://www.youtube.com/watch?v=giJlG3KXq8c#t=103.

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

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

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

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

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

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

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

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[298] *An IDF Soldier's Experiences in Gaza*, IDF (Sept. 21, 2014), available at http://www.idfblog.com/blog/2014/09/21/an-idf-soldiers-experiences-in-gaza/.
[299] *A Soldier's Account from Gaza: How Hamas Used Human Shields*, IDF (Aug. 25, 2014), available at http://www.idfblog.com/blog/2014/08/25/soldiers-account-gaza-hamas-used-human-shields/.
[300] This customary rule is also reflected in Additional Protocol I, art. 51(7). *See also id.* at Article 13(1).
[301] This customary rule is also reflected in Rome Statute, art. 8(2)(b)(xxiii).
[302] *Id.*

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

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

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

[303] Adam Ciralsky, *Did Israel Avert a Hamas Massacre?*, Vanity Fair (Oct. 21, 2014), available at http://www.vanityfair.com/politics/2014/10/gaza-tunnel-plot-israeli-intelligence# (quoting Colonel Ghassan Alian, commander of the Golani Brigade).
[304] *An IDF Soldier's Experiences in Gaza*, IDF, *supra* note 298 (eyewitness testimony of Sgt. Aviv, an IDF commander injured in the explosion).
[305] *See* IDF, *IDF Soldiers Uncover House Rigged with Explosives*, YouTube (Explosives, published July 26, 2014), https://www.youtube.com/watch?v=0fze6qHvzgQ. *See also* IDF, *Gaza Streets and Homes Rigged with Explosives*, YouTube (July 27, 2014), https://www.youtube.com/watch?v=QiclM2pM29k&list=UUawNWlihdgaycQpO3zi-jYg&index=4.
[306] *Hamas Manual Calls for Hiding Bombs in Civilian Homes*, IDF, *supra* note 224.
[307] This customary rule is also reflected in Additional Protocol I, art. 58 and Protocol II, art. 13(1).
[308] This customary rule is also reflected in Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on May 3, 1996, art. 7.
[309] On this, and similar conduct in the past, *see Hamas Attacks Israeli Soldiers with Explosive Donkey*, IDF (July 19, 2014), available at http://www.idfblog.com/blog/2014/07/19/hamas-using-animals-perpetrate-terror-attacks/.

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

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





Above left: Explosive device hidden inside a kitchen in a civilian home. (Source: IDF)
Above right: Palestinian Authority health clinic under which an explosive device was hidden. Damage from the detonation is visible on the clinic's exterior. (Source: IDF)

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

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

[310] Patrick Martin, *Death tolls mount as Israel expands offensive, Hamas resistance hardens*, The Globe and Mail (July 20 2014), available at http://www.theglobeandmail.com/news/world/thousands-flee-gaza-homes-as-israel-expands-ground-assault/article19683732/.
[311] *See* James Estrin, *Looking for the Enduring Photo in Gaza*, New York Times (Aug. 5, 2014), available at http://lens.blogs.nytimes.com/2014/08/05/looking-for-the-enduring-photo-in-gaza/?_php=true&_type=blogs&smid=tw-share&_r=0.

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

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

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

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[312] This customary rule is also reflected in Additional Protocol I, art. 48 and Additional Protocol II, art. 13.
[313] This customary rule is also reflected in Additional Protocol I, art. 37(1)(c), Convention (IV) respecting the Laws and Customs of War on Land and its annex, the Hague, 18 October 1907, regulations: art. 23(b).
[314] *Hamas Interior Ministry To Social Media Activists: Always Call The Dead 'Innocent Civilians'; Don't Post Photos Of Rockets Being Fired From Civilian Population Centers*, MEMRI (July 17, 2014), available at http://www.memri.org/report/en/0/0/0/0/0/0/8076.htma (quoting Hamas guidelines). *See also* Annex: *Palestinian Fatality Figures in the 2014 Gaza Conflict*, also available at http://mfa.gov.il/ProtectiveEdge/Documents/PalestinianFatalities.pdf.
[315] For IDF video footage, see IDF, *IDF Thwarts Terrorist Infiltration to Israel*, YouTube (July 22, 2014), https://www.youtube.com/watch?v=6pkhUyEOXXE (video at 00:40).
[316] IDF, *Gaza Streets and Homes Rigged with Explosives*, *supra* note 305 (video at 00:44).
[317] IDF, *IDF Paratroopers Expose Weapons and Tunnel Openings*, You Tube (Aug. 1, 2014), https://www.youtube.com/watch?v=3lNp6vho_jM (video of search of Hamas hideout revealing weapons cache and IDF uniforms).



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

E. Conclusion

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

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

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