



AN ASSESSMENT OF THE 2014 GAZA CONFLICT

HIGH LEVEL MILITARY GROUP

OCTOBER 2015

HLMG
HIGH LEVEL MILITARY GROUP



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HIGH LEVEL MILITARY GROUP

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FOREWORD

Lawfare, the abuse of international norms and procedures and the judicialisation of international institutions to attain strategic goals that cannot be achieved by political and military means, has become a common feature in modern conflicts. It has evolved into a new weapon in the hands of our enemies seeking to constrain and limit the ability of Western armies to pursue our national security interests.

No case demonstrates the possibilities for perversion of our current legal system by an adversary better than military operations involving Israel. No matter how effective and lawful the Israel Defense Forces' (IDF) conduct, there is always a barrage of allegations against it. Concepts like "crimes against humanity", "genocide", and accusations in bodies like the UN and the International Criminal Court, are widely and readily used for the purposes of gaining political advantage.

The Friends of Israel Initiative (FoII) was founded to defend Israel against delegitimation campaigns not because we felt a moral obligation or a historical debt to Israel as the State of the Jewish people. Rather, we seek to defend the existence of the State of Israel because in doing so we are defending ourselves and the security and prosperity of the Western world, of which Israel is an integral part.

We believe the West faces a number of serious challenges and threats today. And we believe we will need to defend ourselves at some point, as we have done in the past. Furthermore, we ought to be inclined to help others in difficult circumstances. Preserving the freedom of action of our soldiers when conducting their missions has been a paramount feature of battlefield success in the past. But the enemies we are facing today are very different to the ones we fought then, and the realities on the ground tend to differ to the combat we tried to tame and regulate through the laws of war.

In order to clarify the conditions under which armed forces must operate today, and to expose the vulnerability that the abuse of international law by our adversaries presents to our own armies, FoII resolved to sponsor an independent study about how our militaries can deal with the realities of combat under these conditions. This is the first part of that study: a report on the IDF's Operation Protective Edge carried out by the IDF against Hamas in Gaza. It will be followed shortly by a study examining other operations, exploring comparative national approaches in a variety of modern conflict scenarios that Western nations have fought in recently. Finally there will be a comparative report about how democratic armed forces perform in times of war faced with new types of enemies and battlefields.

We relied on well respected professionals chosen for their extensive relevant experience. They drew their own conclusions contained in this report, with FoII's sole responsibility being to make the necessary means available to the High Level Military Group to conduct its research.



Rafael L. Bardaji

Director, Friends of Israel Initiative





Israel and Gaza

EXECUTIVE SUMMARY

The High Level Military Group

1. The High Level Military Group (HLMG) was formed in early 2015 with a mandate to examine Israel's conduct of the 2014 Gaza Conflict, in the context of a larger project seeking to address the implications for warfare where democratic nations are engaged in fighting enemies who disregard the Law of Armed Conflict (LOAC) but exploit our own nations' adherence to LOAC for their gain. It is comprised of top-level practitioners from democratic nations whose expertise covers the entire gamut of the conduct of warfare and who are intimately familiar with the battlefield scenarios, operational and legal imperatives, and military and humanitarian duties relevant to the 2014 Gaza Conflict.
2. Between June and August 2015 HLMG members and staff undertook two extensive fact-finding trips and four additional research trips to assess every aspect of Israel's conduct in the 2014 Gaza Conflict. The State of Israel granted us unprecedented access, undoubtedly in excess of what our own countries would afford in similar circumstances. The Prime Minister, Defence Minister, Chief of Staff of the Israel Defense Forces (IDF) at the time of the 2014 Gaza Conflict, all ranks of the IDF, the Internal Security Agency (ISA), other relevant retired officials, as well as civilians affected by the fighting were made available to us. The necessary absence of some classified material did not impede our ability to form a comprehensive professional assessment in line with our mandate. No topic was off limits and interlocutors gave frank and detailed responses throughout. In addition we were able to draw on a wide range of supplementary expertise, open and closed sources and were supported in our study by a Rapporteur and full staff.
3. The resultant report at hand constitutes our professional assessment as to whether Israel acted as a reasonable country would, within the norms and laws governing warfare, and on the basis of appropriate military conduct in the legal, operational and ultimately moral realm. The conclusions we have arrived at are our own, formed on the basis of only our professional experience and the exhaustive fact-finding we were able to engage in.



The Gaza-Israel Border Region

Background

Israel and Hamas

4. Following Israel's disengagement in 2005, Hamas, a terrorist organisation proscribed by the United States and the European Union among others, gained full control of Gaza in a violent coup in 2007. Hamas's charter explicitly obligates the organisation to destroy Israel through Jihad in order to establish Islamic rule. Its military leadership and most of the organisation's manpower are in Gaza while its political leadership is split between Gaza and Doha, Qatar. External actors play an important role in supporting Hamas, with Iran in particular being responsible for upgrading Hamas capabilities through the supply of weapons and training.

5. The 2014 Gaza Conflict was the third major conflagration between Israel and Hamas in the past decade. The firing of rockets from Gaza started in 2001 and since Israel's disengagement from Gaza in 2005, more than 11,000 rockets have been fired at Israel's civilian population from the territory. In response, Israel has pursued diplomatic efforts, defensive measures short of full military operations, and fought two prior conflicts with Hamas, in 2008/9 and 2012.

Strategic Goals

6. The domestic and geo-political pressures brought on Hamas by the politics of the Arab Spring by the summer of 2014 led it to seek a major violent escalation intended to significantly improve its position vis-a-vis Israel, its relationship with the Palestinian Authority, its external sponsors and its own population. Israel's objective was the cessation of rocket fire from Gaza and the neutralisation of the threat from Hamas's extensive network of cross-border infiltration tunnels. It made multiple attempts at de-escalation in the weeks leading up to the fighting and when these failed conceived a limited operation aimed at ending Hamas attacks on Israel and re-establishing deterrence against future aggression from Gaza.

Hamas's Strategic Concept and Battlefield Complexity

7. Hamas's strategic concept rests in large part on a deliberate unlawful tactic of embedding its military operations deep within the urban civilian infrastructure of Gaza and drawing the IDF into that territory's urban centres. Hamas thus exploits the advantages of fighting on pre-prepared urban terrain in addition to exploiting the constraints brought about by the IDF's strict adherence to the Law of Armed Conflict (LOAC). Fighting in urban terrain is one of the most complex, dangerous and challenging operations of war. Physical infrastructure in urban settings conceals an adversary's operations effectively and allows it to predict and potentially channel the movement of advancing ground forces. Mitigating these advantages necessitates significant firepower while the need to protect civilians hampers the deployment of force and complicates battlefield decision making, in particular in an asymmetric setting where one side deliberately hides among civilians while the other seeks to protect them. Faced with these conditions the IDF showed significant restraint, often accepting higher levels of risk for its own forces with Rules of Engagement that were more restrictive than necessary under LOAC.

Legal Concepts

8. Israel's adheres to the accepted norms and rules that make up the Law of Armed Conflict (LOAC), including rules embodied in conventions to which Israel is not party, where these form part of customary international law. Despite debate about these norms in this context, Israel accepts the applicable law related to both international and non-international armed conflicts and further holds that these stipulations are not contingent on Hamas behaving reciprocally. Hamas rejects LOAC by definition based on its charter and modus operandi, which however does not release it from accountability for its violations thereof. The organisation operates a hybrid model, blending traditional means of warfare with the modus operandi of a terrorist movement. It thus incorporates violations of LOAC and the exploitation of Israeli adherence to LOAC as significant enablers in its strategic concept.
9. It is important to note in this context that LOAC does not prohibit all harm to civilians or their property. Where civilians or civilian locations are involved in hostilities they can lose their protected status, and subject to the concept of *proportionality*, become legitimate military targets or, where such persons or objects are not legitimate targets according to the law, become accepted collateral damage. Adherence to these rules cannot be determined by considering the effects of an attack or relative casualty figures between belligerents in a conflict. The legality of military action has to be measured on the full spectrum of contextual understanding existent at the time of decision making and whether a commander made a reasonable judgement based on this information.

The 2014 Gaza Conflict

Escalation and Hostilities

10. The 2014 Gaza Conflict was preceded by a dramatic increase in rocket fire from Gaza against Israeli civilian targets - a deliberate decision by Hamas's leaders to break the modus vivendi established on the basis of a set of principles and understandings that concluded the previous conflict they had fought with Israel in 2012. Despite these indiscriminate attacks on its population, Israel communicated its desire for de-escalation to Hamas through third-party intermediaries and public diplomacy, before ultimately being forced to launch an operation to defend itself against the untenable threat to its population from Hamas's rocket and tunnel assaults.

11. Hostilities in the 2014 Gaza Conflict were divided into three phases. Averaging nearly 150 launches daily carried out by Hamas and other terror organisations, roughly 70 percent of Israel's population was a potential target during the first phase. Israel, in turn, made intense use of its Iron Dome rocket-defence system and significantly increased the number of Israel Air Force (IAF) sorties carrying out targeted attacks in Gaza. With Hamas rejecting Israel's attempts to de-escalate the conflict, phase two of the conflict began on July 17 when Israel determined that the continued rocket fire and the threat from Hamas's assault tunnels necessitated a limited ground operation. Contained to the outskirts of Gaza's urban neighbourhoods and the Hamas strongholds of Shejaiya and Beit Hanoun, IDF forces did not penetrate into Gaza further than three kilometres. The IDF discovered 32 cross-border infiltration tunnels mainly originating in urban neighbourhoods on the outskirts of the Gaza Strip. Destroying these necessitated heavy fighting in close combat with Hamas on the ground in Gaza. Rocket fire against Israel's civilian population continued on a daily basis throughout this period and Hamas additionally staged a number of successful cross-border infiltrations. After the IDF brought its ground operation to a close unilaterally on August 5, a third phase of the conflict began with Hamas continuing rocket fire against Israel and the IDF striking launch sites and other military objectives in Gaza. Following repeated violations of ceasefires by Hamas, Israel also expanded its list of targets to the most senior Hamas military leaders. A final ceasefire agreed on August 26 brought the hostilities to a close.
13. Conversely, the deliberate disregard of the stipulations of LOAC was a matter of tactical and strategic calculation in Hamas's conduct of the war. Hamas embedded its military assets within civilian structures in Gaza, from where it engaged in widespread, systematic and indiscriminate rocket attacks aimed at Israel's civilian population. During the second phase of hostilities, Hamas deliberately sought to engage the IDF within Gaza's densely populated areas, turning civilian neighbourhoods into pre-prepared battlegrounds, with elaborate networks of tunnels and firing positions. It additionally made extensive use of protected and sensitive sites such as UN facilities, schools, hospitals and mosques for military purposes. Hamas plainly considers civilian deaths a benefit in terms of aiding its war against Israel in the realm of public opinion. It pursued a deliberate and effective wide-ranging misinformation effort aimed at eroding Israel's legitimacy by constraining press freedom in Gaza through surveillance and intimidation, proactive fabrication of information and visuals, and directives to its operatives about behaviour and language that would portray casualties of its fighters as civilian deaths.

Humanitarian Efforts

Concepts of Operations

12. Israel's concept of operations is premised on a long-standing investment in its civil defence systems which significantly helped to reduce harm to Israel's population during the conflict. It initially sought to counter Hamas's rocket fire and tunnel assaults primarily through air strikes on Hamas's military objectives. Israel instituted an exemplary multi-layered system of precautions in conducting these operations, built on an extensive multi-input picture of tactical expertise, legal checks and balances, intelligence, training, command and control and military professionalism. In conducting its limited ground operation, the IDF pursued well-defined objectives under appropriately restrictive Rules of Engagement, employing exhaustive protocols that fully comply with, and in several aspects exceed, the requirements of the Law of Armed Conflict, to the detriment of the IDF's tactical advantage on a highly challenging battlefield.
14. Throughout the hostilities of the 2014 Gaza Conflict, Israel engaged in extensive humanitarian efforts to aid the civilian population of Gaza, drawing on its standing special unit of military and civilian personnel tasked with identifying, monitoring and facilitating the humanitarian needs of the civilian population of Gaza. Additionally, the IDF set up a sophisticated coordinating structure incorporating military, NGO and civilian representatives during the conflict in order to facilitate humanitarian access and movements. In the course of the conflict, Israel facilitated the movement of over 100,000 tons of supplies into Gaza from Israel. Many of Israel's humanitarian efforts went well beyond its obligations, for example, providing electricity and fuel to Gaza, in spite of their military use by Hamas, operating the crossing points for humanitarian aid convoys while under fire from inside Gaza and setting up a field hospital for Gaza residents. Hamas actively sought to obstruct these efforts, preventing its population from making use of the medical facilities Israel provides, firing at crossings to deliberately impede the transfer of humanitarian supplies as well as at civilian workers working to repair the lines supplying electricity to Gaza.

Casualty Figures

15. While it is clear that a regrettable number of persons died during the fighting in the 2014 Gaza Conflict, there are serious questions about the classifications of these deaths and valid concerns over inaccurate figures. Problems with published lists include the inclusion of duplicate names, incorrect ages, combat-related deaths caused by Hamas or its affiliate organisations, such as in the case of misfired rockets, and deaths not related to the hostilities but classified as such. Hamas also committed war crimes by executing persons it accused of collaborating with Israel, while militants known to have been killed in battle during the war are not listed.
16. Israel is in the process of conducting thorough methodological analysis of the casualty figures based on IDF intelligence, which closely tracks information on Palestinian fatalities, not only for operational requirements but also to combat Hamas's strategic concept seeking to fuel a narrative about IDF operations causing significant civilian fatalities. In this context it is important to note the accuracy of Israel's assessment of the casualty count following the Gaza conflict of 2008-9 when Hamas ultimately confirmed the validity of Israel's figures. Indications so far are that the majority of Palestinian casualties in the 2014 Gaza Conflict were militants.

Post-Conflict Reconstruction and Hamas Rearmament

17. Since the 2014 Gaza Conflict was fought largely in a dense urban environment it caused considerable destruction inside Gaza. The international community sought to address this in the immediate aftermath of the conflict through the UN-established Gaza Reconstruction Mechanism (GRM), founded on an agreement between the UN, Israel and the Palestinian Authority (PA). Due to its status as a terrorist organisation, Hamas is not part of the mechanism but informally acceded to its creation. Israel has taken substantial measures to enable the construction process, despite valid security concerns given that Hamas's military infrastructure is partially built on diverted aid material. The process nevertheless faces serious obstacles in implementation, primarily on account of the large gap between donor country pledges and actual funds delivered.
18. In line with its behaviour following previous conflicts, Hamas has exploited the relative period of calm since the end of the conflict to undertake rearmament efforts focused on rebuilding its tunnel network and intensifying its recruitment as well

as rocket and mortar production efforts. It has further erected new fortifications near the border with Israel and is conducting infantry and urban warfare exercises.

Military and Judicial Structures and Processes of the State of Israel

The Israel Defense Force and the Rule of Law

19. Israel's military justice system consists of the Military Advocate General's Corps (MAG Corps), the Military Police Criminal Investigation Division (MPCID) and the Military Courts. The strict insulation of these military legal institutions and officers from commanders outside of the MAG chain of command is a fundamental tenet of the system, designed to assure no improper influence is exerted on the legal process within the IDF. Further, the State of Israel's military justice system is subject to civilian oversight through three principal avenues: review by the Attorney General, review by the Supreme Court and review by an Independent Public Commission of Inquiry.
20. The integration of LOAC is a linchpin of IDF conduct, from basic training to the most senior levels of command, closely tracking the progression through the ranks of officers and their increasing command responsibilities. Compliance with LOAC in the IDF is further ensured by the integration of the MAG Corps into all aspects of IDF activity, through binding advice as well as special mechanisms activated during active hostilities that integrate Legal Advisers from the MAG Corps throughout the IDF, including the General Staff Command and deployment at the Regional Command and Divisional levels. Where Commanders do not have specific legal advisers they are able to request legal advice through the MAG Corps situation room which operates 24/7. Authorisation for pre-planned targets for attack against military objectives follows a multi-stage process for approval in order to ensure LOAC compliance, while additionally detailed regulations exist in the IDF to ensure the appropriate safeguarding of sites that have special protection from attack under LOAC.

Investigations Related to the 2014 Gaza Conflict

21. In line with the extensive mechanisms integrating adherence to the Law of Armed Conflict (LOAC) into IDF operations as standard, Israel instigated a thorough process of investigation of allegations of wrongdoing during Operation Protective

Edge, directed by the Military Advocate General (MAG) and incorporating requisite oversight by the civilian judicial institutions of the State of Israel. Where warranted, criminal investigations are carried out by a special investigation team within the Military Police, which collects evidence from IDF soldiers and commanders, as well as from Palestinians and other relevant witnesses. Complainants are entitled to challenge decisions, and cases can be reopened if new relevant material emerges. In the final instance, the entire process and resultant decisions in an investigation are subject to judicial review by the Supreme Court of Israel. Israel's effective investigative mechanisms stand in stark contrast to a total absence of any effort or investigative system on the part of Hamas and the Palestinian Authority.

Conclusions and Implications

Conclusions

22. The responsibility for the outbreak of the 2014 Gaza Conflict lies with Hamas, which sought violent confrontation in an effort to seek to improve its strategic situation. Israel did not want this conflict and sought actively to avoid it, pursuing avenues of de-escalation in every phase of the conflict. Ultimately, Israel had no choice but to defend its citizens from the rocket assault launched by Hamas and other Palestinian terrorist groups and the threat posed by the cross-border assault tunnels.
23. No country would accept the threat against its civilian population that these rockets and tunnels present to Israeli population centres. Members of the High Level Military Group, some of whom had never visited the country prior to our fact-finding visits, were united in our view that Israel's efforts were entirely necessary and justified in the defence of that country's national security.
24. We can further be categorically clear that Israel's conduct in the 2014 Gaza Conflict met and in some respects exceeded the highest standards we set for our own nations' militaries. It is our view that Israel fought an exemplary campaign, adequately conceived with appropriately limited objectives, displaying both a very high level of operational capability as well as a total commitment to the Law of Armed Conflict. The IDF not only met its obligations under the Law of Armed Conflict, but often exceeded these on the battlefield at significant tactical cost, as well as in the humanitarian relief efforts that accompanied its operation.
25. Where the high standards of conduct the IDF sets for its personnel have not been met, incidents are investigated, including criminal investigations, through an independent mechanism under the oversight of the democratic institutions of the State of Israel. This mechanism clearly meets the requirements of legal recourse, judicial independence and democratic oversight that our own nations set for ourselves.
26. Hamas in turn not only flagrantly disregarded the Law of Armed Conflict as a matter of course as part of its terrorist-army hybrid strategic concept, but rather it abused the very protections afforded by the law for military advantage. Embedding its entire military machinery in civilian locations and sensitive sites, including those of the United Nations, Hamas indiscriminately targeted Israeli civilians throughout the conflict with extensive rocket fire and willfully sought to draw the IDF into battle in a prepared urban stronghold amid the Palestinian civilian population in Gaza, for which it located its operational headquarters in Gaza's main hospital.
27. It is important to note that Hamas's strategic concept actively seeks the death of its own civilians as an advantageous reinforcement of its strategy aimed at the erosion of Israel's legitimacy. In this context, Hamas conducted a highly effective information campaign which included coercion of Gaza based journalists, as well as the staging of visual scenes and other measures aimed at projecting a narrative that challenged the legitimacy of Israel's actions, including the inflation of the proportion of non-combatants in casualty figures.
28. It is further evident that the factional disputes within Hamas were a contributing factor to the prolongation of a conflict in which Hamas broke every ceasefire. Hamas finally agreed to terms that it had been offered on the basis of an Egyptian ceasefire proposal, accepted by Israel, throughout. This means the vast majority of casualties could have been avoided had Hamas heeded Israel's repeated appeals through third party intermediaries prior and during the conflict to de-escalate. Since the conclusion of the 2014 Gaza Conflict, Hamas is making evident attempts at rearming, abusing the provisions of the reconstruction process for military purposes and rebuilding its military infrastructure and cross-border assault tunnels. Rockets have been fired from its territory and Israel has responded by targeting Hamas's weapons production capabilities on at least one occasion. Thus the risk of renewed conflict remains.

Implications

29. The High Level Military Group is of the view that the 2014 Gaza Conflict gives rise to implications for the security of our own nations that are important to consider.
30. Following our professional assessment of IDF conduct, several members of the HLMG expressed strong concerns that the actions and practices of the IDF to prevent collateral damage were so extensive, over and above the requirements of the Law of Armed Conflict, that they would curtail the effectiveness of our own militaries, were they to become constraining norms of warfare enacted in customary law.
31. In reference to the disparity of our findings with the widely noted condemnations of the IDF's conduct during the 2014 Gaza Conflict by the United Nations Human Rights Council, (UNHRC) Commission of Inquiry, Amnesty International and other NGOs, and parts of the international media, we believe that, where ideological motivation can be discounted, the principal reason for this disparity is the absence of the appropriate military and legal expertise and judgement. The cumulative failure of these institutions and organisations to come to a more accurate assessment of events during the 2014 Gaza Conflict, their attempt to impose unwarranted legal norms, and their failure to make important moral distinctions between the adversaries is a problem not just for Israel. The normative potential of these institutions and organisations in the international community makes these concerns valid for all democratic nations whose armies are today faced with threats from adversaries with no regard for the Law of Armed Conflict.
32. The challenges presented by the absence of a clear framework for warfare where democratic states are forced to fight hybrid movements that share attributes of state and non-state actors and employ traditional military methods as well as terrorism are universal in our era. Israel's experience carries important strategic, tactical and operational lessons for other democratic nations' armies battling some of the most brutal and dangerous adversaries since the Second World War. The alarming misrepresentation of its actions, fuelled not only by shared enemies but further by institutions and organisations ostensibly committed to our highest common values is a cautionary tale for all democratic nations and their militaries.



THE HIGH LEVEL MILITARY GROUP



HLMG members in conversation with the IDF Deputy Chief of Staff, Ministry of Defense, Tel Aviv, Israel



HLMG delegation at Israel's Ministry of Defense overlooking Tel Aviv, Israel

1.1 High Level Military Group Purpose and Background

33. The High Level Military Group was formed in early 2015 with a mandate to examine Israel's conduct of the 2014 Gaza Conflict, in the context of a larger project seeking to address the implications for Western warfare of fighting enemies who disregard the Law of Armed Conflict (LOAC) but exploit our own nations' adherence to LOAC for their gain. HLMG members have a wealth of experience at the very highest operational and policy levels as regards the conduct of warfare and its attendant policies. Our purpose is to add a professional military and legal element to this debate, which at times has been ill-informed and politicised, and which is of vital importance to our own armies and alliance partners.

HLMG delegation in discussion with Prime Minister Netanyahu at the Prime Ministers Office, Jerusalem, Israel



34. In the context of Israel and the 2014 Gaza Conflict, this is a particularly acute problem. In the wake of that conflict, inaccurate interpretations of LOAC have been used effectively to delegitimise Israel's conduct in a manner that, were it to be applied to our own armies, would put our countries at risk. Concern about the appropriate constraints on the conduct of warfare in accordance with laws and norms developed over centuries are necessary and laudable. They are however very different from misguided or concerted attempts to misrepresent the requirements of the law in order to harness it as a strategic weapon, a dynamic that has become known as 'Lawfare'. Such efforts are often intended to constrain legitimate military activity, and if successful will put in jeopardy outcomes deemed necessary for our own nations' respective and collective national security.

35. We are thus concerned by the propagation of mis-applied legal concepts in conjunction with narratives that are geared towards political outcomes in the debate about the 2014 Israel-Gaza Conflict. The propagation of these through international forums and governmental and non-governmental actors poses a serious risk to the Law of Armed Conflict and thus ultimately to the minimisation of harm caused through warfare. This is a vital debate not just for Israel, but for all democratic nations seeking to combat enemies that exploit LOAC for their gain at the same time as showing a total disregard for it. An accurate assessment of Israel's conduct in Gaza is thus an important first step in this wider debate.

1.2 High Level Military Group Report Parameters

36. This report forms an assessment of Israel's conduct during the 2014 Gaza Conflict, based on an extensive fact-finding visit to Israel of the High Level Military Group (HLMG) in early June 2015 and several follow-up visits by individual HLMG delegates and staff.
37. The HLMG had unprecedented access to Israel's decision makers, from the Prime Minister and Defence Minister, through the military top-level leadership to individual unit commanders and soldiers as well as civilians affected by the fighting. Former officials who have retired since the conflict took place were also made available. The HLMG was able to extensively examine all pertinent aspects of Israel's conduct, as well as the country's political, military and legal structures. Israel's government and military offered a level of cooperation in seeking to illuminate their actions that is highly unusual in such a context, offering open, clear responses to an examination that went far beyond what our own countries would expect to have to reveal even to allied militaries. Some political and military aspects of the conflict are naturally classified and the examinations and investigations processes following the conflict are still ongoing. The HLMG did not however perceive these to be impediments to its gaining a full and frank understanding of Israel's conduct during the conflict.



HLMG members pictured with Defense Minister Ya'alon of Israel following one of several discussions the group held with him during fact-finding visits

38. Based on this comprehensive examination, the report constitutes a professional assessment as to whether Israel acted as a reasonable country would, within the norms and laws governing warfare, and on the basis of appropriate military conduct in the legal, operational and ultimately moral realm.



HLMG members discussing the 2014 Gaza Conflict with an IDF soldier on a field visit in southern Israel

2

**THE 2014 GAZA
CONFLICT
– BACKGROUND**

2.1 Israel and Hamas

39. Founded by Sheikh Ahmed Yassin, Hamas - an acronym for *Harakat al-Muqawama al-Islamiya* ("Islamic Resistance Movement") - was established as the Palestinian branch of the Muslim Brotherhood in 1987. Combining Palestinian nationalism with Islamic fundamentalism, antisemitism and conspiracy theories - the Jews control the media and were behind the French Revolution and both world wars, according to the document - the Hamas charter, known as *The Covenant of the Islamic Resistance Movement*, places an explicit obligation on the organisation to destroy Israel and states that Hamas "...strives to raise the banner of Allah over every inch of Palestine... [and] believes that the land of Palestine is an Islamic Waqf... [and that] it, or any part of it, should not be given up... as long as earth and heaven remain... There is no solution for the Palestinian question except through Jihad. Initiatives, proposals and international conferences are all a waste of time and vain endeavors."¹ The atrocities the organisation has committed against Israel in the pursuit of this mission, in particular its campaign of suicide bombings prior to the construction of Israel's security barrier, have made Hamas one of the most prominent terrorist organisations on the planet, proscribed among others by the US, EU, Canada and Australia.
40. The military leadership of Hamas and most of the organisation's manpower are in Gaza. Led by Marwan Issa and Mohammed Deif, the armed wing, the *Izz ad-Din al-Qassam Brigade*, is a capable contingent of police, security and intelligence personnel. It operates both in a traditional military structure organised into brigades, as well as through special terror operations including naval commandos and tunnel squads. Gaza's de facto prime minister is Ismail Haniyeh, while the organisation's political leadership is split between two political centres: one which operates in Gaza, and a second that is based abroad. Run by Khaled Meshaal, who has served as Hamas's political chief since 1996, this is currently headquartered in Doha, Qatar. Another leader, Salah al-Aroui, directs Hamas's armed activities in the West Bank from Turkey.
41. External actors play an important role in supporting Hamas. Long-term support from Iran has been a vital help in not only supplying weaponry, but also upgrading Hamas capabilities through training and knowledge transfer. The relationship between Hamas and Iran remains strong despite a serious fallout over the Syrian civil war, with Qatar and Turkey taking more prominent roles recently as part of their increased regional support for the Muslim Brotherhood.²
42. While Hamas's commitment to terrorism and its core rejectionism of any accommodation and territorial compromise with Israel remains unmodified, the organisation can and does agree to temporary suspensions of hostilities when expedient, making possible periods of de facto accommodation on the basis of a modus vivendi understood and agreed by both Israel and Hamas. Such arrangements are marked by Hamas's ongoing efforts to prepare for offensive action against Israel and are viewed by the organisation as a tactical necessity in waiting for a more advantageous time to achieve a decisive victory against Israel.
43. The 2014 Gaza Conflict was the third major conflagration between Israel and Hamas in the past decade. Following Israel's disengagement from the territory in 2005, Hamas gained control of Gaza in January 2006, and solidified its hold with a violent coup against its governing coalition partner, Fatah, in 2007. Hamas refused to recognise, renounce violence against, or accept previous accords with Israel - the key conditions demanded by the Quartet diplomatic group of nations in the hope of starting a process of bringing Hamas into the arena of negotiations. The Israeli government has since considered Hamas the governing authority solely responsible for any and all violence and terrorism emanating from Gaza, including any violations of temporary ceasefire understandings Israel and Hamas may informally agree. However, due to the existence of a unity government between Hamas and the Palestinian Authority during the 2014 Gaza Conflict, the latter can also be considered to possess a measure of responsibility over Gaza during the conflict.

Rocket Fire from Gaza

44. The firing of rockets from Gaza started in 2001, prior to Israel's disengagement, when Hamas originally introduced the *Qassam* short range rocket to its arsenal. Rocket attacks against Israel increased from 2002 through 2005, when Hamas dramatically reduced the number of rockets fired so they would not inhibit Israel's pullout from Gaza. At the time, then-Israeli Prime Minister Ariel Sharon made several statements alluding to an overwhelming response to any rocket attacks from Gaza, seeking to deter Hamas from launching attacks once Israel vacated the strip. Yet after Israel's disengagement from Gaza, the number of rocket strikes against Israel increased by more than 500 percent.³ Since Israel's withdrawal from Gaza in 2005, more than 11,000 rockets have been fired at Israel's civilian population from the territory.

45. In response, Israel initially pursued diplomatic efforts. From 2000 to 2008, Israel sent more than 100 letters to the Secretary General of the UN and the President of the UN Security Council, describing the Palestinian rocket fire against Israel, as well as suicide attacks. The UN took no action. In 2008, Hamas and other terrorist groups in Gaza fired 3,278 rockets and mortar shells at Israel, including at major cities such as Ashkelon, where a shopping mall was hit by an Iranian-made Grad rocket, wounding 90.⁴ By December 2008, Hamas had amassed more than 20,000 armed operatives and implemented a vast network of underground tunnels throughout Gaza, primarily for smuggling weapons and launching terrorist attacks. It intensified rocket fire, firing 440 rockets in December 2008 compared to 150 in November 2008. After repeated diplomatic overtures failed to prevent Hamas attacks against its citizens and its territory, Israel launched Operation Cast Lead in December 2008. The operation consisted of an initial aerial bombardment followed by a ground operation before Israel declared a unilateral ceasefire on January 18, 2009, with its withdrawal completed on January 21, 2009. Notably, during this conflict, Israel additionally came under attack from Katyusha rockets fired from an area under the control of the United Nations Interim Force in Lebanon (UNIFIL). Authorised by UN Security Council resolution 1701, the UN's failure to enforce its mandate in Lebanon led to the potential opening up of a second front on Israel's northern border during this conflict. This raises grave questions about the adequacy of UN mechanisms and their ability to curb violence against Israeli civilians, an issue that arose again in the 2014 Gaza Conflict, with the abuse of UN sites for military purposes by Hamas.⁵

Rocket Type and Range in Gaza

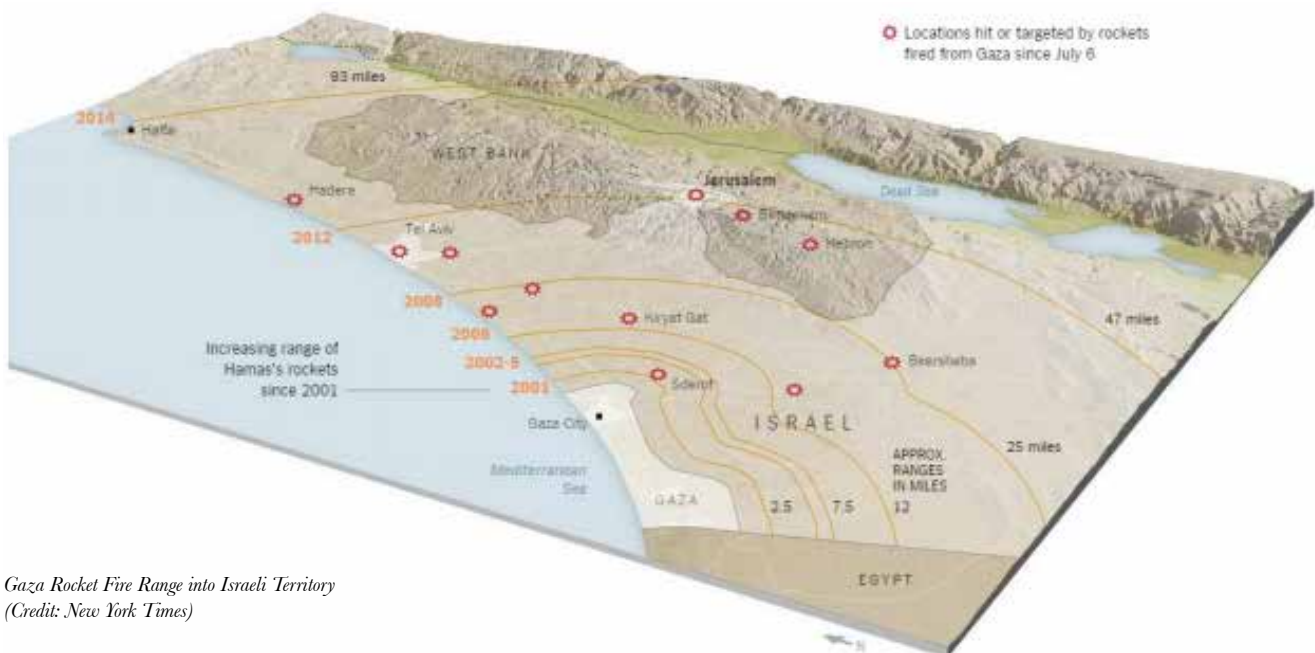
Model	Name	Range
4 Inch	Qassam	10-25KM
6 Inch	Qassam	20-40KM
8 Inch	S-55 (Seagil)	55-85KM
	M-75 (Hamas)	
	J-80	
	Buraq-70 (PIJ)	
12 Inch	R-160	160KM
Mortars	60mm	Up to 12KM
	81mm	
	120mm	
Grad		20KM
		40KM
Fajr-5		75KM

(Source: IDF)

Rocket Supplies in Gaza

Range	End of 2012 Gaza Conflict (November 2012)	Prior to 2014 Gaza Conflict (July 2014)	Post 2014 Gaza Conflict
0-25KM	4500-6000	6500-8000	~2100
25-45KM	1500-2200	1800-2500	~550
75KM	Several Dozens	~290-340	~70
160KM	0	Several Dozens	

(Source: IDF)



Gaza Rocket Fire Range into Israeli Territory
(Credit: New York Times)

46. Following an uneasy truce marked by low intensity conflict, from October 2012 Hamas again began to escalate rocket attacks against Israeli civilians. The Israeli government appealed to the UN on at least 20 separate occasions with no effect. With the rocket attacks continuing, Israel launched Operation Pillar of Defense on November 12, 2012. During the operation, Hamas and other Palestinian terrorist groups in Gaza fired over 1,700 rockets, including long-range rockets such as the Iranian Fajr-5, into Israel, with Israel making extensive use of its improved rocket defence capability in the form of the Iron Dome system. An Egyptian-brokered ceasefire on November 21 officially ended the hostilities between Israel and Hamas. According to the text released by the Egyptians, Hamas agreed to stop rocket fire into Israel and attacks along the border, and Israel agreed to stop military activities and targeted killings of terrorist leaders in Gaza. The year following the truce agreement saw the lowest attack rate from Gaza against Israel in more than a decade, though sporadic rocket fire continued, with 33 rockets fired at communities in southern Israel.

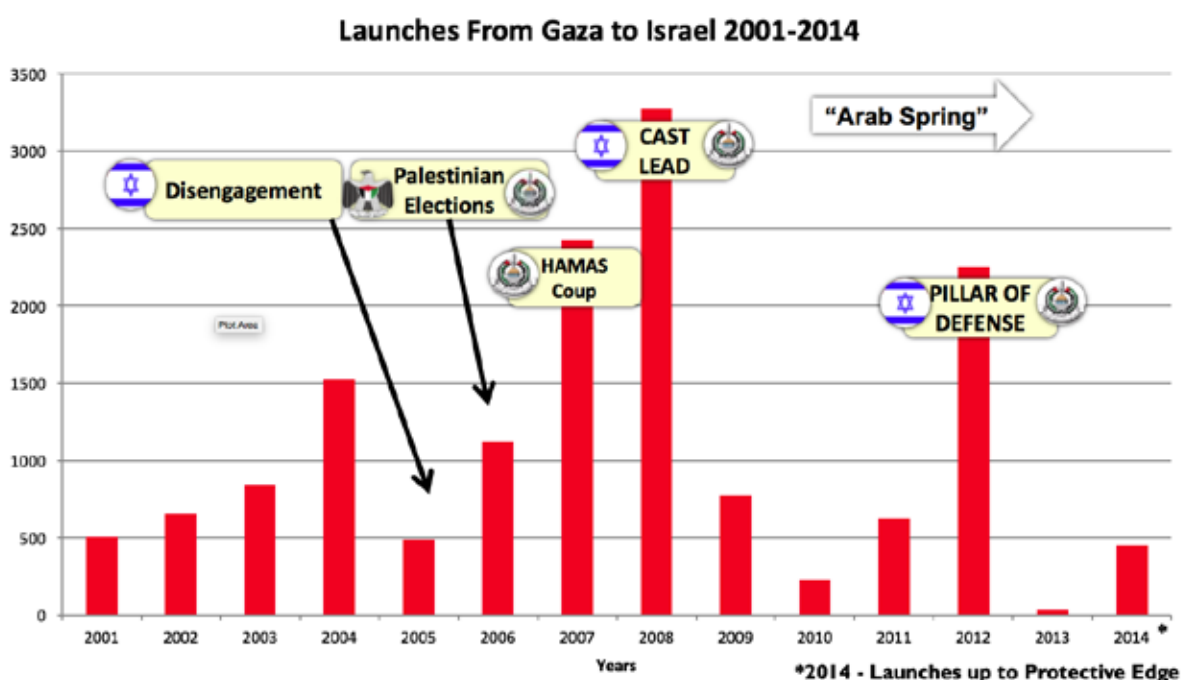
The Arab Spring - A Challenge for Hamas

47. The paradigms that have existed around the Middle East were shaken severely by the advent of the so-called Arab Spring in 2010. Though this is manifested less in the specific Israeli-Palestinian

arena, the momentous changes in the region did have an effect on Israel and Hamas. While Israel adopted a policy of becoming a vigilant bystander to regional events, the changes brought about by the Arab Spring left Hamas in a position of considerable strategic isolation, a predicament which was a major contributing factor to the renewed outbreak of hostilities.

48. The principal problem for Hamas was the loss of its two main regional pillars of support - the Muslim Brotherhood in Egypt and the Islamic Regime in Iran. Iran had previously provided Hamas significant financial support, weaponry and military training, delivered not least through its proxy Hizballah in Lebanon. With the onset of the Arab Spring and Hamas's endorsement of the revolt against Syria's Bashar al-Assad, Iran's closest regional ally, a period of intense friction between Hamas and Iran as well as Hizballah ensued. As a result, Iran reportedly cut funding to Hamas and the group was forced to relocate its headquarters from Damascus, Syria to Doha, Qatar. Though Hamas's relationship with Iran has since begun to improve once more, Palestinian Islamic Jihad (PIJ), a separate terrorist organisation in Gaza active during the 2014 Gaza Conflict, has been supported by Iran throughout.

49. The events of the so-called Arab Spring in Egypt affected Hamas even more severely. Following the removal from power of the short-lived Muslim



Rockets and Mortars fired into Israel from Gaza 2001-2014 (Source: IDF)

Brotherhood led government under Mohamed Morsi, the Egyptian army under the country's new President Abdel Fattah al-Sisi launched a major crackdown on Hamas. Threatened by Hamas's allegiance to the Muslim Brotherhood and increasing instability and terrorist attacks emanating from the Sinai bordering Gaza, Egypt enforced a buffer zone along its border with Gaza and closed the Rafah crossing terminal between Egypt and Gaza almost permanently. At the same time, Egypt launched a campaign to eliminate Hamas's smuggling tunnels on its borders, cutting off a major economic lifeline and key source of tax revenue and arms for Hamas.

50. Finally, Hamas's situation was compounded due to its political struggle with its Palestinian rival, Fatah. Since 2007, the two groups have often been in a state of open conflict, interspersed by attempts at making common cause. Prior to the 2014 Israel-Gaza Conflict, Hamas and the Palestinian Authority formed a unity government - in part a function of Hamas's increasing problems. However, President Mahmoud Abbas refused to allow Hamas the ability to participate in the Palestinian decision-making process, and he refused to pay the salaries of tens of thousands of Hamas employees in Gaza, whom he considered a threat to his own Fatah movement. As a result, Hamas's political isolation continued to be compounded by a financial squeeze putting in jeopardy its hold over its organisation and territory and posing a serious strategic challenge to the organisation.

2.2 Strategic Goals

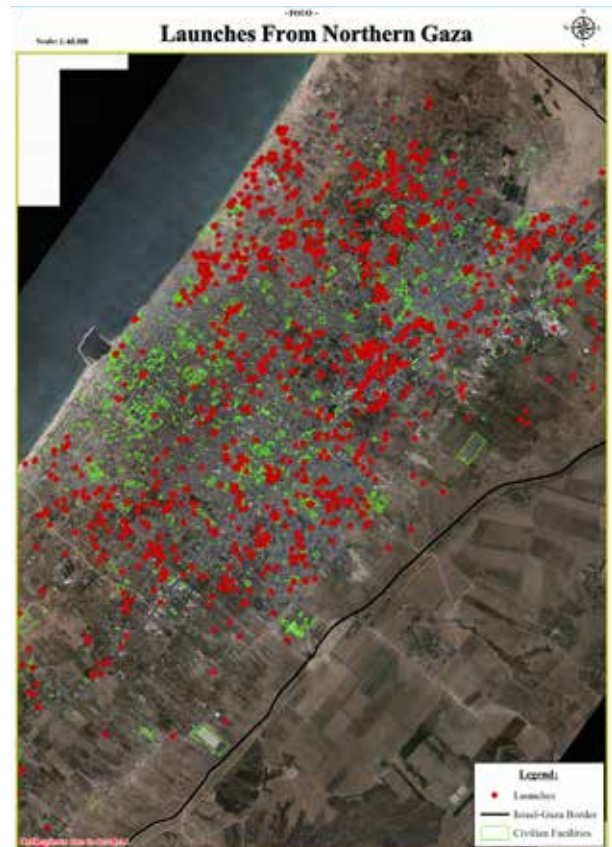
51. Hamas's domestic and geo-political pressures thus meant its war aims sought to achieve a major change in the status quo. Having lost key allies in the region and becoming increasingly squeezed both in strategic and financial terms, it resolved to use violence in an attempt to break its isolation and end the blockade imposed by Israel and Egypt, aimed at curtailing its efforts to smuggle arms into Gaza and export terrorism into Israel and Egypt. It sought to open the Rafah crossing with Egypt, demanded the restoration or construction of both an airport and seaport and sought various other changes of the territorial status quo on land and at sea. Additionally, it required the financial means to pay overdue salaries on its extensive payroll - a requirement aimed principally at the Palestinian Authority. As such, its overall war aim was of a major escalation intended to significantly improve
- its position vis-a-vis Israel, its relationship with the Palestinian Authority, its external sponsors and its own population.
52. As in each previous conflagration, Israel's overriding objective was the cessation of rocket fire from Gaza. It further sought, at a later stage, to neutralise the more recently emerged threat from Hamas's extensive network of infiltration tunnels. The HLMG was briefed in detail on the diplomatic efforts, including diplomacy through third parties, in which Israel made multiple attempts at de-escalation in the weeks leading up to the fighting. Following the intensification of Hamas attacks and the resultant escalation into a full military operation, Israel's objectives were the re-establishment of security for its citizens, principally by stopping the rockets and mortars, degrading the Hamas command, control, communications and intelligence apparatus and destroying Hamas's infiltration tunnel network and other related Hamas infrastructure. HLMG members consider it the case that Israel did not seek to topple Hamas but rather sought to re-establish deterrence and, though it maintains the necessity for Gaza to be demilitarised, did not seek to achieve this goal in Operation Protective Edge. Rather, it conceived the campaign as a limited operation aimed at ending Hamas attacks on Israel only and deterring future aggression.

2.3 Battlefield Complexity

53. Urban warfare presents a serious challenge to military operations in several important ways that are relevant to the 2014 Gaza Conflict. Physical infrastructure in urban settings conceals an adversary's operations effectively, at the same time as offering increased locations for the adversary to embed within and attack from. It further allows an adversary to predict and potentially channel the movement of advancing ground forces. Battle complexity is greatly increased by these factors, and is further significantly compounded by the presence of civilians in the battle space. Hamas's unlawful deliberate tactic of embedding its operations deep within the urban civilian infrastructure of Gaza thus presented the IDF with an immensely complex battlefield during the 2014 Gaza Conflict. These operational challenges are significant and the resultant military conduct and outcomes require substantial military expertise to assess. The HLMG was able to extensively review the ground operation and its inherent challenges.



Hamas and other armed groups' rocket and mortar launches from within civilian facilities in Gaza (Source: IDF)



Hamas and other armed groups rocket and mortar launches from northern Gaza adjacent to civilian facilities (Source: IDF)



Hamas and other armed groups rocket and mortar launches from southern Gaza adjacent to civilian facilities (Source: IDF)

54. Hamas's operational doctrine contains a deliberate tactic to draw the IDF into urban centres of Gaza. It is notable that Hamas training compounds are self-contained military installations outside urban areas, while its battle posture consists of exploiting the urban terrain of Gaza extensively, deliberately putting civilians in harm's way. Hamas thus sought to exploit the advantages of fighting on pre-prepared urban terrain, in addition to exploiting the constraints brought about by the IDF's strict adherence to LOAC, as well as seeking to highlight for its strategic communications effort the destruction and toll on civilian life that are in large part the result of Hamas's own unlawful tactics.
55. Specifically, this means that it pre-prepared strongholds in a variety of locations - such as Shejaiya and Rafah, for example - where the terrain was heavily populated by civilians, which Hamas abused to mask an extensive military infrastructure. From pre-prepared arms depots and firing positions, to extensive booby trapping and its tunnel network, Hamas had built a battlefield embedded in the civilian urban terrain that necessitated tactical responses to mitigate the specific challenges inherent in this situation.

56. The physical infrastructure density of urban terrain necessitates close-quarter combat meaning the force applied is concentrated in a small area, intensifying its effects. With the addition of tunnel warfare specifically, the battlefield Hamas prepared in Gaza's built up neighbourhoods was essentially a 360 degree space at all times. Areas cleared of military targets could become live again on account of unknown tunnel shafts, necessitating the location and destruction of such infrastructure. The targeted destruction of physical infrastructure more broadly is also a tactical necessity in mitigating some of the threats Hamas's tactics present. This is the case for example where forces must create alternative routes to advance through heavily mined and booby-trapped terrain or where mechanised and armoured forces are required to move through dense urban terrain for force protection reasons.
57. Force protection itself is a major factor in the intensity of battle on a complex urban battlefield, where both air support and the movement of armour is constrained. Such a situation substantially increases the time pressures on commanders for decision making, the risks to forces and thus the need to exercise force to neutralise threats. This context compounds the universal challenges of warfare such as locating the origins of enemy fire, avoiding pre-prepared enemy actions such as traps and ambushes and maintaining sufficient oversight of the battlefield to operate towards mission objectives, avoid friendly-fire incidents and maintain the requirements of LOAC and applicable directives.
58. Finally, the presence of civilians is one of the gravest potential challenges of close urban combat, in particular in a situation such as in the 2014 Gaza Conflict, where Hamas deliberately abused their

Hamas military infrastructure embedded in civilian neighbourhood of Jabalia, northern Gaza



A message from Hamas's Ministry of Interior to the civilian population in Gaza, dated July 13, 2014, calling on the population to ignore warnings in order to impede IDF operations (Source: Palestinian Interior Ministry of Gaza)

presence while the IDF had strict orders to protect them. Differentiating between legitimate military targets and civilian sensitive sites under the conditions described is a difficult task for commanders even with all of the manpower, precautions and battlefield mapping and intelligence resources the IDF committed to the ground operation. The need to protect civilians significantly hampers the deployment of force and complicates battlefield decision making. Israel employed a range of precautions aimed at clearing areas where fighting was taking place, including warnings by leaflets, broadcast and telephone. Hamas in turn not only failed to seek to evacuate its civilians but actively sought to prevent their flight to safer locations. Israel observed the presence of civilians closely and made operational decisions such as delaying actions, as well as adjusting the means and direction of firepower and, where necessary, aborting attacks. The IDF did not operate any "buffer zones" during its operations, seeking to direct its ground forces to contained, mission specific locations only. However, in particular as related to the destruction of Hamas tunnels, which are located in Hamas's fortified positions, and require static IDF engineering forces to operate for long periods of time, legitimate force protection efforts can result in significant destruction of property. It is evident that where this is the case, it is however contained to specific areas of operations that comprised legitimate military targets on account of the actions of Hamas and other terrorist organisations fighting in the Gaza Strip.

59. Every experienced military commander knows that fighting in urban terrain is one of the most complex, dangerous and challenging operations of war. It is recognised throughout modern military history as being the most expensive in human life and destruction. The urban environment rebalances asymmetric conflict to a considerable extent, depriving the technologically and numerically superior combatant of advantage. Especially where an adversary has had significant time to plan and prepare the battlefield, heavy casualties can very easily be inflicted in a battle space where the dangers are truly 360 degrees, with enemy infiltration of flanks and to the rear possible through buildings and tunnels; and high rise blocks used as firing positions from above. Competent military commanders who need to attack through urban terrain would seek to level parts of urban areas, to allow relatively clear corridors and protect their forces. A force attacking in an urban area must also use significant firepower from small arms, artillery, mortars, tanks and air support, compared to the usage in open terrain, in order to destroy or force out enemy forces who are able to shelter and gain protection from high density physical infrastructure. In this context, from a military perspective, it is abundantly clear the IDF not only carried out a carefully planned and executed, appropriate and lawful operation under difficult conditions, but in fact showed significant restraint - at times giving up important tactical advantages and, in seeking to mitigate Hamas's manipulation of civilian space at great risk to the population of Gaza, often accepting higher levels of risk for its own forces with Rules of Engagement that were more restrictive than necessary under LOAC.

2.4 Legal and Strategic Concepts

Applicable Legal Framework

60. As is the case of the law in general, international law and the Law of Armed Conflict (LOAC) lag behind events, and can by definition only address events and conflicts that have occurred in the past. Hence, for example, the 1949 Geneva conventions addressed issues that arose during the Second World War and the attendant 1977 Additional Protocols addressed problems that were experienced during the Vietnam conflict. Accordingly, today several active legal debates exist as relevant to the 2014 Gaza Conflict and its applicable legal framework. These are crucial debates in our current era of warfare, with potentially far-reaching implications on the battlefield. As such,

though the HLMG's principal concern lies in the military realm, the legal considerations and their implications were of significant interest to members during our fact-finding.

61. The two primary questions related to the legal framework of warfare that arise for the militaries of democratic states in the current era are an acute feature of the conflict between Israel and Hamas. Principally, these are constituted first of the absence of a clear framework for conflict where a responsible state striving to abide by the norms and rules that make up LOAC finds itself involved in a conflict with a state or non-state actor that deliberately and openly flouts the very norms and rules that bind the other party. Second, there is the additional problem of much greater fluidity and thus diminished clarity in the character of warfare against hybrid movements that share attributes of state and non-state actors for the purposes of legal interpretation.

62. The challenges for the legal framework of warfare that these two problems present are not unique to Israel, but rather are an increasingly important feature of the conflicts our own militaries are fighting and are likely to continue to have to fight in this century. These are important debates, in particular in ensuring democratic armies are able to defend our nations and values unconstrained by outdated legal concepts. Attempts, whether well-intentioned or nefarious, to utilise legal concepts in a normative fashion that exceeds their scope, intent and reasonable application, or promote narratives that will lead to outright mis-application, are cause for concern, in particular as they have the potential to impose unreasonable constraints on democratic nations' abilities to defend themselves against some of the most brutal adversaries fighting today.

63. In Israel, as in the international community more widely, legal arguments over the implications of a conflict where Israel adheres to the highest standards of LOAC and Hamas flagrantly disregards them as a matter of strategy are a topic of debate, as is the question over whether the conflict is to be characterised as of an international character or considered under the lesser LOAC restrictions pertaining to non-international armed conflicts. However, Israel's government has been very clear that despite these valid debates the standard of conduct it applied to its military operations in the 2014 Gaza Conflict adhered to LOAC as related to both international and non-international armed conflicts. Israel has also taken the position that one's legal obligations are not contingent on the adversary behaving reciprocally.

64. As such, the applicable law in the context of the 2014 Gaza-Israel Conflict are the accepted norms and rules that make up the Law of Armed Conflict (LOAC) as set out in the 1907 Hague Rules, the 1949 Geneva Conventions, the 1977 Protocols thereto and other relevant international instruments and protocols governing the use of weapons and treatment of combatants. Israel is party to many international conventions that form part of the LOAC and further regards itself bound by all rules of customary international law, including rules embodied in conventions to which it is not party (such as the 1st Additional Protocol to the Geneva Conventions, 1977). Conversely, Hamas rejects LOAC by definition based on its charter and *modus operandi*, and as a matter of strategy, which however does not release it from accountability for its violations thereof.

The Law of Armed Conflict and the Concept of Reasonableness

65. The customary and treaty laws and principles applicable to the conduct of armed conflict in international law that make up the Law of Armed Conflict (LOAC) are a bedrock of democratic civilisation, deeply rooted in history and developed over centuries. This important body of law aims to mitigate the human cost and impact of warfare by setting forth a set of principled understandings for its conduct. At bottom, LOAC requires belligerents to desist from deploying any degree of force not necessary for military purposes, and mandates the conduct of hostilities with appropriate respect for innocent human life.

66. More specifically, the treaties and customary law that govern the realm of armed conflicts are divided into two separate legal frameworks: *jus ad bellum* determines when it is lawful for a nation to use military force; and *jus in bello* regulates the application of that military force. It is principally the latter framework that is in danger of being harmed by the developing narratives around the 2014 Israel-Gaza Conflict.

67. Our concern about the discussions and narratives that emerged from the 2014 Gaza Conflict arises from incorrect interpretations and pronouncements, whether misguided or politically motivated, about the meaning of and legal requirements contained within several of these principles as applied to the 2014 Gaza Conflict.

Jus in bello consists of five principles:

1. *Necessity* permits measures within the parameters of international law aimed at achieving an enemy submission as quickly as possible.
2. *Precaution* requires commanders to take all feasible measures to mitigate the risk to civilians and civilian property.
3. *Humanity* prohibits any infliction of suffering that is not justified by military necessity.
4. *Distinction* requires military forces to distinguish between lawful military objectives and all other persons and locations.
5. *Proportionality* requires that an attack is not inherently anticipated to cause excessive harm to persons or locations in the vicinity of a valid military objective, as measured against the expected military advantage.

68. In particular, it is vital to understand that LOAC does not prohibit all harm to civilians or civilian property. The protection of civilians inherent in the concept of *distinction* is not absolute - where civilians or civilian locations are directly involved in hostilities they lose their protected status, as per Article 51 of the 1st Additional Protocol of the Geneva Convention. Further, though deliberately attacking civilians and their property is illegal, incidental or collateral damage when attacking a legitimate military target is accepted, as per Articles 51, 52 and 57 of the 1st Additional Protocol (subject to the anticipated collateral harm not being excessive in relation to an attack's expected military advantage). This is the essence of the concept of *proportionality*, adherence to which cannot in any way be determined by considering the relative casualty figures between belligerents in a conflict, which is misleadingly and yet frequently asserted to be the case in this conflict.

69. Finally, the legality of military action has to be measured on the full spectrum of contextual understanding existent at the time of decision making, on whether a commander made a reasonable judgement based on this information. It cannot be judged retrospectively, on effect. Specifically, this means that it is not possible to discern whether specific actions or military campaigns were compliant with LOAC or not on the basis of television images of destruction, casualty figures (even where these can be verified as accurate and appropriately classified between combatants and civilians) and assertions made on the basis of an incomplete picture of the military context to an action.

Hamas's Strategic Concept and the Law of Armed Conflict

70. Hamas's strategic concept is particularly notable in this context. The organisation operates a hybrid army model, blending traditional means of warfare with the modus operandi of a terrorist movement. It thus not only rejects outright the tenets of the Law of Armed Conflict, but also incorporates violations of LOAC and the exploitation of Israeli adherence to LOAC as significant enablers in its strategic concept. Hamas operates its military assets like a conventional force, with a Brigade structure, Intelligence Corps, Special Operations Forces, and tactical capabilities such as UAVs, pre-prepared fortifications, indirect fire support and a large network of strategic tunnels for combat and infiltration into Israel. Yet it not only fires its arsenal of rockets indiscriminately at Israeli civilian population centres, but a crucial part of its strategy is to deeply embed its military structure among its own civilians in Gaza. Thus its strategic concept not only shows a flagrant disregard for LOAC and the safety of its own population in principle, but further turns Israel's adherence to LOAC into a significant strategic advantage for Hamas.

"Hamas has a sophisticated understanding of the impact of its terrorist atrocities on the Israeli public and the resultant democratic manifestations in Israel's political system."

71. By co-locating much of its warfighting machine in sensitive locations enjoying special protection under LOAC - Hamas's main operational headquarters during the 2014 Gaza Conflict was in the al-Shifa hospital, for example - Hamas's strategic concept thus simultaneously disregards and exploits LOAC.⁶ It is able to operate with impunity on account of its readiness to engage in terrorism, which means it does not have to adhere to legal checks and balances in the international arena in the conduct of its operations. At the same time it exploits these checks and balances for strategic advantage. By abusing civilian infrastructure and the protections afforded to it for operational purposes, it not only puts a serious tactical constraint on IDF operations,

but further creates a strategic advantage in a perverse win-win scenario for its objectives. Where civilian structures become legitimate military targets on account of Hamas action, or where it uses medical facilities or similar objects with clear connotations of immunity in the minds of general observers, though not necessarily under the terms of LOAC, it can turn defeat into victory by presenting damage to military objectives, or legitimate collateral damage, in the context of its long-term strategic goal of eroding Israel's legitimacy through a concerted effort at misinformation.

72. A prominent specific illustration of the application of this concept is Hamas's unlawful tactic of encouraging the use of human shields to avert strikes on its military infrastructure embedded in urban Gaza. For example, at the outset of the conflict, a senior Hamas spokesman was asked on television what his reaction to civilians gathering at a house to prevent "warplanes from targeting it" was, and in response asserted that "The policy of people confronting the Israeli warplanes with their bare chests... has proven effective... We in Hamas call upon our people to adopt this policy."⁷ The IDF further released a page from a seized Hamas training manual on "Urban Warfare", that illustrates several relevant aspects of Hamas's tactics, in particular how Hamas militants deliberately use the cover of civilian residential areas to increase the effectiveness of their combat operations, setting out guidelines on how to hide weapons and ammunition in civilian areas, how to transport them into buildings and how to conceal or camouflage explosives.⁸

73. Though Hamas sought to deny authorship of the document, the credibility of such denials is hampered significantly by the fact that the tactics described are clearly reflective of Hamas's modus operandi.⁹ Indeed, evident in Hamas's strategic concept is the active encouragement of harm to its own civilians. Hamas understands clearly that it benefits from harm to its own civilians not only in seeking to galvanise Palestinians for its war on Israel, but rather by pursuing an asymmetric strategy aimed at the court of international public opinion, where Hamas's tactic of drawing Israel into fighting in civilian urban areas with the resultant casualties and television pictures is a targeted attempt to erode Israel's legitimacy at the cost of Gaza's civilian population, whom Hamas's strategy thus purposefully endangers. Hamas thus ultimately seeks to limit Israel's ability to exercise military force legitimately. This hybrid strategy combining terrorist tactics with traditional military capabilities is a targeted and alarmingly effective effort on the part of Hamas to exploit the protections of, and misguided notions in international forums about, LOAC.



A Mosque used as Hamas base of operations, Gaza City



Hamas military infrastructure embedded in the civilian neighbourhood of Nuseirat, Central Gaza

74. The terrorist-army concept affords the organisation other strategic advantages also. Two obvious examples are the infiltration tunnels and terrorist attacks. The tunnels can be deemed in one way to be a traditional means of warfare - manoeuvre, used to outflank an enemy army. But coupled to a terrorist modus operandi, they further gravely increase the menace the tunnels pose to Israel by putting at risk the Israeli civilian communities on the border with Gaza. Hamas has a sophisticated understanding of the impact of its terrorist atrocities on the Israeli public and the resultant democratic manifestations in Israel's political system.

75. In particular this has meant that Hamas has developed a doctrine of 'strategic' terror attacks and kidnappings. Strategic terror attacks used terrorism in order to achieve a particular game-changing effect as part of its campaign against Israel - the tunnel network was intended to be used for one such attack, with many communities attacked simultaneously, dealing a heavy psychological blow to the Israeli population's concept of its security and the IDF's superior capability to protect from Hamas assaults.¹⁰

76. Similarly, Hamas is intensely aware of the immense long-term tactical gains it can achieve by kidnapping Israeli soldiers and civilians. Due to Israel's doctrine of not leaving these people behind, Hamas has in the past been able to extract extreme advantage from kidnap operations, most prominently in kidnapping the Israeli soldier Gilad Shalit in 2006 and exchanging him for 1027 Palestinian prisoners in 2011. The outsize gain of this exchange in particular meant that Hamas now considers kidnapping an explicit feature of its strategic concept against which Israel has to protect.

Hamas operatives infiltrating Israel, as well as the hideouts in the tunnel network, have repeatedly been revealed to be equipped with tranquilisers and handcuffs for this purpose.¹¹



Members of the HLMG inside a Hamas cross-border assault tunnel under Israeli territory

“Strategic terror attacks used terrorism in order to achieve a particular game-changing effect as part of its campaign against Israel - the tunnel network was intended to be used for one such attack”



A Hamas cross-border assault tunnel discovered by the IDF inside Israel (Source:IDF)

3

**THE 2014
GAZA
CONFLICT
– ACTIVE
HOSTILITIES**

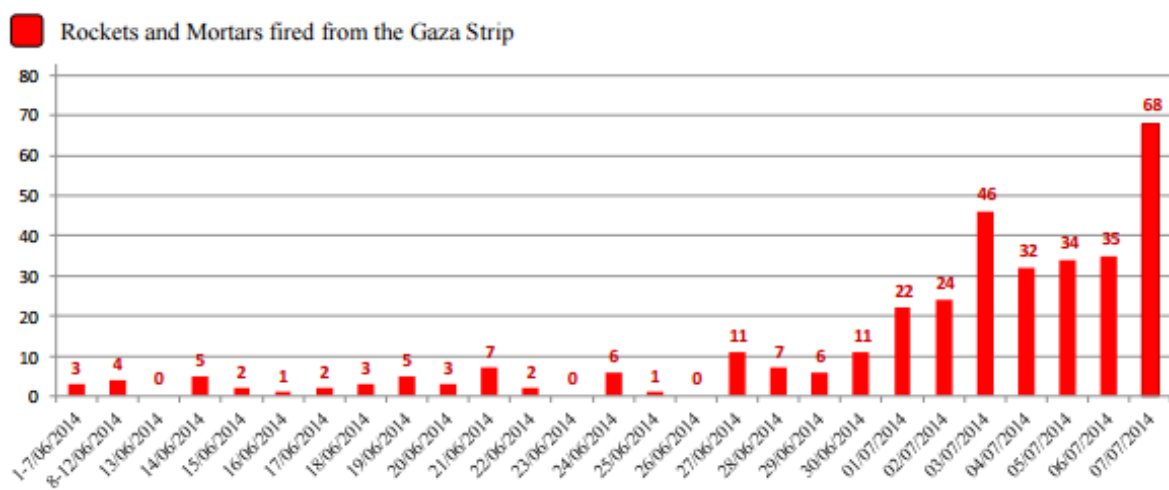
3.1 Political Deterioration and Escalation towards the Outbreak of Hostilities

Hamas Escalation

77. Hamas's express ideological foundation is the destruction of Israel, in the pursuit of which it has engaged in terrorism since its founding. It has a long history of deploying indiscriminate means of violence, from suicide bombings to firing rockets at Israeli civilians, whom it is widely on record as considering legitimate targets.¹² Prior to the 2014 Israel-Gaza Conflict, Hamas and Israel had lived according to a *modus vivendi* established on the basis of a set of principles and understandings that had concluded the previous conflict they had fought in 2012. Hamas and other militant organisations such as Palestinian Islamic Jihad in Gaza did break these mutual understandings with rocket fire - firing over 40 rockets and mortars in 2013, to which Israel responded in a limited and proportionate manner in some instances.¹³ At the same time, Israel was engaged in a US-led diplomatic process, which ultimately broke down after the Palestinian Authority (PA) rejected the US-led framework and decided to enter a unity government with Hamas, a terrorist organisation that has never shifted in its staunch opposition to recognising Israel or entering negotiations with it. On account of the political forces already described - Hamas's loss of regional allies, its tension with the PA and a severe financial crisis - and the precarious nature this had left the organisation in inside Gaza, the Hamas leadership in Gaza along with their external counterparts resolved ultimately to seek to effect a major change in the status quo through violence.

78. On June 12, 2014, Hamas militants in the West Bank kidnapped and subsequently killed three Israeli teenagers. Israel's response, Operation Brother's Keeper, saw intense search and arrest activities against Hamas in the West Bank, while strikes on Gaza in response to intensified rocket fire and aimed at infiltration tunnels in anticipation of further kidnapping attempts, were expanded. After Jewish extremists killed a Palestinian teenager on July 2nd, tensions continued to rise despite widespread condemnation and appeals for calm from Prime Minister Netanyahu, who vowed he would "not allow radicals, no matter from which side, to set our region ablaze".¹⁴ During the same period Hamas and other militants in Gaza fired at least 65 rockets and mortars at Israel,¹⁵ firing ever deeper into Israeli territory, eventually putting a majority of Israel's citizens in the line of fire. On July 5 the city of Beersheba, Israel's fourth largest, was hit by rockets fired from Gaza for the first time since November 2012. On July 7, a rocket barrage from Gaza of over 60 projectiles hit Israel and on July 11 rockets fired from Gaza reached as far as Haifa in northern Israel, close to 90 miles away.¹⁶ A day later, on July 12, rockets were fired from Gaza on the Tel Aviv area, the largest metropolitan area in Israel.¹⁷ Simultaneously, Israel continued to uncover infiltration tunnels aimed at facilitating cross-border assaults by Hamas, the construction of which had steadily increased in the period between the 2012 and 2014 conflicts between Israel and Hamas.

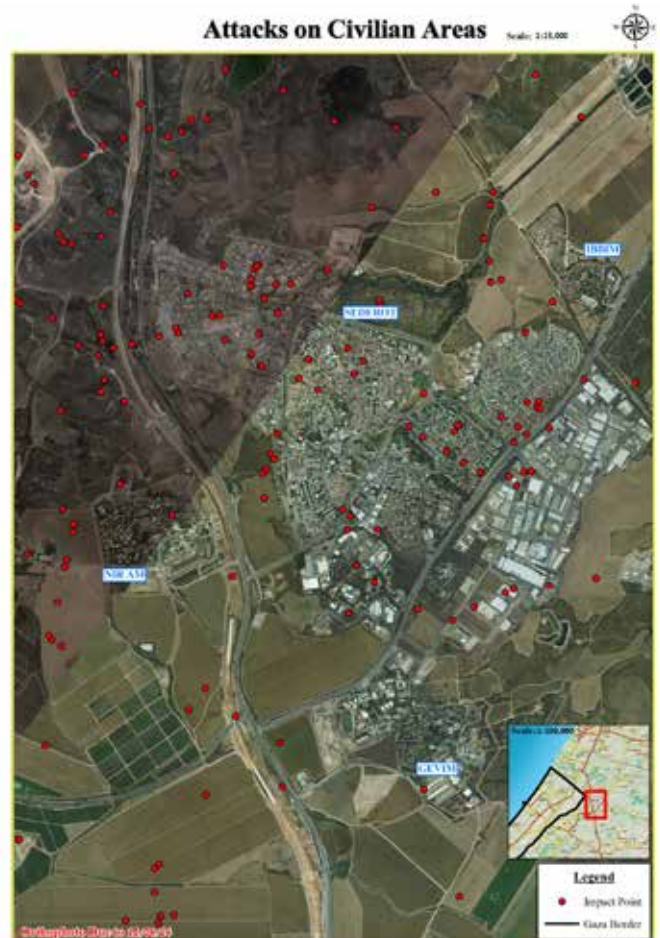
79. Throughout this period Israel sought to avoid conflict. In a letter appealing to the UN Security Council, Israel noted that millions of its citizens were under threat from rocket fire from Gaza and that while it had shown considerable restraint it could not accept this intolerable situation.¹⁸ Israel also continued to send messages to Hamas through third-party interlocutors,



Rocket and Mortar fire from Gaza June-July 2014 (Source: IDF)



Rocket and Mortar impact points clustered around Israeli population centres near the border with Gaza (Source: IDF)



Rocket impact points clustered in Israeli civilian areas (Source: IDF)

principally Egypt, that explicitly sought de-escalation. Hamas failed to respond positively to these efforts. Meanwhile, Israeli civilians were severely affected by the rocket onslaught. The number of rockets meant there were alarms in most cities and towns, as well as secondary effects in the form of a heavy psychological and economic toll. Prime Minister Netanyahu continued to urge caution, saying “Experience has proved that in moments like these it is best to act calmly and responsibly and not with bluster and rashness.”¹⁹ Eventually, however, Israel had no choice but to react against Hamas’s and other Gaza based terrorist groups’ assaults. Following Hamas’s repeated refusal to accept Israel’s offer to return to the 2012 truce arrangement and a rocket barrage of over 60 projectiles from Gaza, on July 7, 2014, Israel thus embarked on Operation Protective Edge. After a Hamas rocket caused the first Israeli fatality on July 15, Prime Minister Netanyahu noted that “It would have been preferable to solve this diplomatically, and that is what we tried to do, but Hamas has left us no chance but to expand the operation against it”.²⁰ As such, the 2014 Gaza Conflict was preceded by a dramatic increase in rocket fire from Gaza against Israeli civilian targets - a deliberate decision by Hamas to illegally

seek confrontation, which, as noted, can be ascribed to geo-political and domestic pressure the organisation faced, a breakdown in its diplomatic relationships both with the Palestinian Authority as well as with its former backers in Egypt and Iran, and a financial crisis brought on by these circumstances.

Israeli Response Aimed at De-Escalation

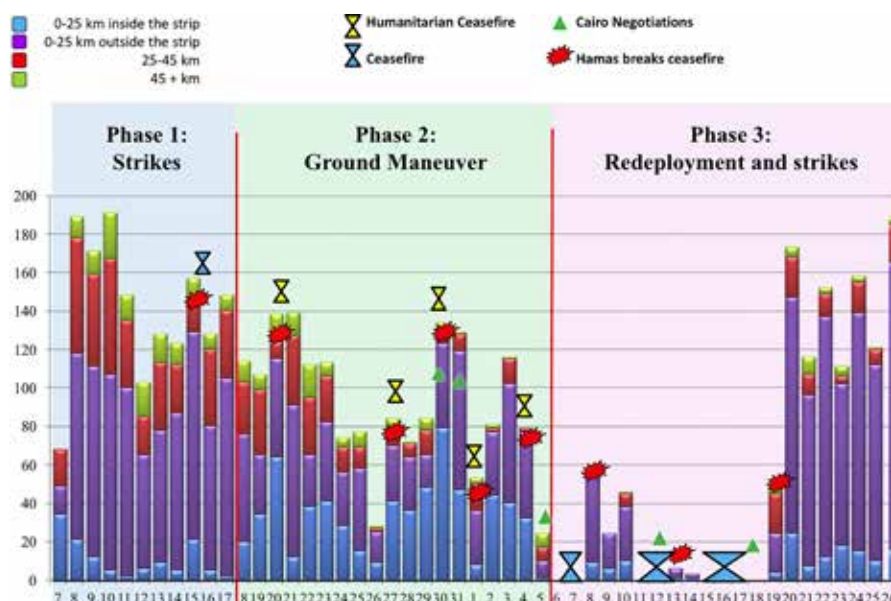
80. The operation that Israel conceived in response to Hamas’s unlawful aggression was limited in aim to achieving the cessation of Hamas’s assaults as promptly as possible and deterring future aggression. It was, moreover, a measured, precise and effective campaign, with clearly defined goals and reasonable objectives. Israel’s political and military leaders deliberately and methodically took steps to avoid escalation throughout the build-up to the conflict. They kept clear channels of communication through third parties, notably Egypt, with a consistent message of de-escalation, along straightforward demands that a cessation of rocket fire would be met with a cessation of Israeli action. Israel made substantial efforts at this, while under fire.

81. Further, Israel deliberately and effectively created the internal political and external diplomatic space as the crisis intensified to allow its adversary sufficient room for manoeuvre to change course. It was aided in this by its military technological innovation capabilities which it had developed and deployed at significant cost, in the form of its Iron Dome rocket defence system. This defensive technology mitigated Hamas's attacks sufficiently to allow Israeli decision makers significantly more strategic space in seeking to de-escalate the crisis before the attacks and resultant public pressure for a response became untenable.
82. The HLMG received an extensive briefing on the diplomacy aimed at averting a full scale conflict, and we are under no doubt that Israel not only successfully communicated to Hamas its desire for de-escalation, but did so insistently, in appeals through intermediaries about the prevention of destruction and suffering that such a conflict would bring. Further, once Israel was forced to confront Hamas, it acted in a deliberate manner in each phase of the crisis, managing its internal political pressures to allow for a strategic approach and ensuring its tactical actions were geared towards allowing sufficient space for Hamas and others in the track-two diplomacy dynamics to facilitate the de-escalation Israel still desired.
83. As world leaders - including the United States, European Union, Britain, Australia, Canada and others - widely recognised at the time, the outbreak of hostilities must be squarely attributed to Hamas, which fired thousands of rockets from among its own civilian population at Israeli civilians and further created a network of infiltration tunnels, through which it carried

out assaults on Israeli territory.²¹ Israel was forced to defend itself, and the exhaustive effort at de-escalation it engaged in meant that military action in the pursuit of this self-defence was eventually unavoidable.

3.2 Phase 1: Rocket Fire and Aerial Strikes (July 7-July 17)

84. The first phase of the 2014 Israel-Gaza Conflict consisted of a further intensification of rocket and mortar fire from Gaza towards Israeli population centres - averaging nearly 150 launches daily carried out by Hamas and other terror organisations.²² Due to the range of some of the rockets used, roughly 70 percent of Israel's population was now a potential target with all major Israeli cities coming under attack during this phase.²³ Using their Special Forces, Hamas also carried out a number of operations staging assaults on Israeli territory by sea and air and through the cross-border infiltration tunnels. For example, on July 8 the IDF intercepted four armed members of Hamas's naval commando unit who had infiltrated Israel by sea and landed on the Israeli coast near the residential community of Kibbutz Zikim, while on July 14 two Hamas UAVs penetrated Israeli territory.²⁴ Israel in turn significantly increased the number of IAF sorties - around 1,900 in the first week of the conflict alone - carrying out targeted attacks against senior Hamas operatives, rocket launch sites, command posts, weapons manufacturing and storage locations and infiltration tunnels. It further used its navy to carry out some of the strikes, called up 50,000 reservists in the course of the first phase of the war and made intense use of its Iron Dome rocket defence system.



Rocket fire from Gaza to Israel / Ceasefires during the 2014 Gaza Conflict (Source: IDF)



HLMG members on a field visit to an Iron Dome battery in central Israel

85. Though Israel had begun to assemble its army in staging areas outside Gaza, the HLMG's discussions with the top echelons of the Israeli political and military leadership made plain that it had sought to avoid a ground incursion, given the inevitable complications this would bring. A poll at the time showed a majority of Israel's citizens' preference for avoiding a ground incursion and both Prime Minister Netanyahu and Defence Minister Ya'alon argued for restraint in Israeli Cabinet meetings.²⁵ Israel continued to seek de-escalation on the basis of previous understandings, accepting Egyptian ceasefire terms proposed on July 15 and rejected by Hamas the next day. The consistently high rate of rocket and mortar fire from Gaza placed intolerable strain on Israeli life, threatening civilian population centres, killing civilians and sending them to shelters while the country's economy saw business activity severely disrupted, causing a drop in industrial output and consumer spending.²⁶
86. This situation was compounded significantly by the increase in cross-border assaults through the infiltration tunnels Hamas had prepared, conducting raids aimed at Israeli villages and IDF outposts.²⁷ On July 8, Hamas commandos infiltrated Israel by sea at Zikim. On July 14, Hamas launched two UAVs into Israel, one of which the IDF intercepted above the city of Ashdod. On July 17, the IDF thwarted an attack by 13 members of a Hamas commando unit, heavily armed with RPGs and assault rifles, which had infiltrated Israel through a tunnel dug from Gaza, that began in the southern Gaza Strip and exited near Kibbutz Sufa. Another UAV was launched into Israel by Hamas the same day. On July 19, Hamas terrorists infiltrated Israel, emerging from a tunnel wearing IDF uniforms and firing an RPG at an IDF jeep, killing two IDF officers.
87. Israeli leaders thus came to the conclusion that Hamas was not interested in de-escalation and that they were unable to sufficiently mitigate the risk from the infiltration tunnels through air strikes. Both the technology and intelligence available to locate the tunnels were insufficient in comparison

to the emerging picture of the scale of threat they presented to southern Israel. In addition, Hamas continued with heavy rocket fire, despite IDF action, leading the Israeli leadership to the conclusion that a ground offensive would be required in order to locate and destroy the tunnel networks.

3.3 Concept of Operations - Phase 1

Israel

Civil Defence on Israel's Home Front

88. Given the history of the threat to its civilian population emanating from Hamas and other terrorist organisations, Israel had invested significant resources in its civil defence systems such as public safety guidance, early warning systems, and legislatively mandated reinforcement of homes and public structures. In addition, Israel made extensive use of the Iron Dome rocket defence system, Israel's principal active defensive measure against the rockets aimed at its civilian population centres. Estimating a projectile's point of impact, the system can ascertain the likely damage and, where necessary, effect an interception. Despite a high success rate, Iron Dome does not provide complete protection against all rockets, however, and even where projectiles are intercepted, the debris can still cause serious harm. Nonetheless, the system is highly effective, and was a major enabler of Israeli decision-makers' deliberate attempt not to escalate the conflict. Its defensive capabilities together with other measures such as alarms and shelters provided strategic room to deliberate options and actions, both prior to the outbreak of the conflict and in deliberating whether a ground operation would be required. Israel's civil defence measures significantly helped to reduce harm to Israel's population during the conflict, and are indicative of a strong ethos the HLMG experienced throughout the political and military echelons of the State of Israel, of a deep commitment to the preservation of life and the protection of Israeli civilians.

Preventing Collateral Damage

89. Israel sought to counter Hamas's rocket fire and tunnel assaults primarily through air strikes, with limited support from naval strikes. It targeted military objectives, such as command and control structures, commanders, launch sites, weapons depots and manufacturing sites and tunnel routes and shafts. Given the challenging complexity of the battlefield in the conflict, Israel instituted a highly sophisticated multi-layered system of precautions in conducting its operation, constituted of field intelligence, appropriate legal consideration, military tactics and practices, overseen by highly effective and responsive command and control capabilities.
90. Israel's precautionary effort thus rests on a wide variety of inputs and checks and balances. The HLMG was able to question and discuss the related practices and protocols of the IDF with a range of military personnel, from junior to the most senior ranks. The system of precautions described to avoid collateral damage is exemplary, built on an extensive multi-input picture of tactical expertise, legal checks and balances, intelligence, training, command and control and military ethos.

"Given the challenging complexity of the battlefield in the conflict, Israel instituted a highly sophisticated multi-layered system of precautions."

Intelligence

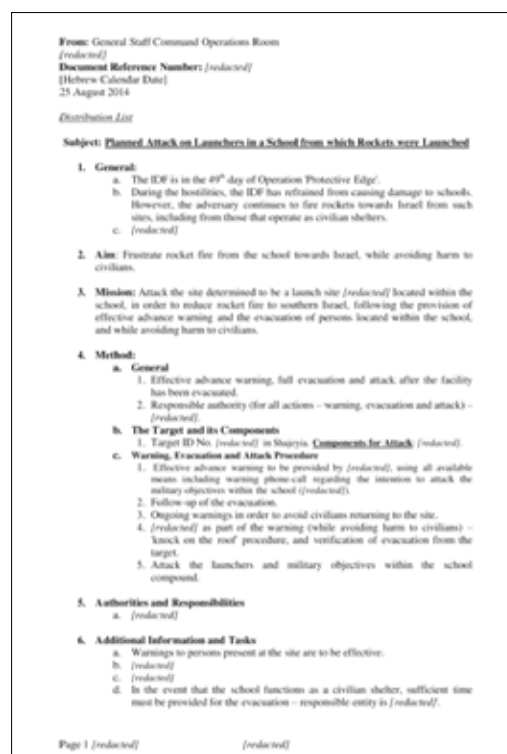
91. Israel's ability to defend itself relies heavily on significant intelligence capabilities, an effort which has a positive effect on the IDF's precision targeting abilities. A typical example of the protocols for an attack the HLMG observed proceeded initially on the basis of extensive pre-planning, often based on years of intelligence work, including sensitive sites mapping. Intelligence is however by its very nature a difficult realm of operations and not infallible, in particular given the immense complexity of the threat picture Israel confronts in fighting Hamas in Gaza.
92. Since Hamas and other terrorist organisations often present dynamic targets which are embedded in civilian infrastructure, effective intelligence is vital in allowing the IDF to mitigate Hamas's tactics and ensure its targets are lawful military objectives. Blending human intelligence, signals intelligence and other surveillance and reconnaissance assets such as extensive aerial platforms and cyber capabilities, Israel has a world-class intelligence mechanism, which is led by the Internal Security Agency and the Defence Intelligence branch of the IDF as relates to the threat picture in Gaza. The proximity of the theatre, repeated engagements and prior permanent presence means Israel has overcome formidable operational challenges to achieve a picture the accuracy of which would be nigh on impossible for other armies to match in similar circumstances of warfare. The IDF is thus able in many cases to operate on the basis of a deep understanding of its targets - often it will have information based on years of insights, ascertaining the physical layouts of command and control posts, daily routines of commanders and wider behavioural, organisational and cultural insights that make up its intelligence picture of its adversary.
93. As a result, the IDF is able to mount an effort likely unprecedented in accuracy in its attempt to separate Hamas's military assets from the civilian infrastructure they are embedded in. The depth of intelligence analysis means that the IDF is able to operate not only on the basis of a thorough understanding of its adversary's locations and the utilisation thereof, but further affords a wider understanding that maps the entire territory of Gaza to give all levels of IDF command an insight into the threat picture, sensitive sites, and other relevant indicators related to the terrain they're operating in so as to ensure effective operations with minimal collateral damage.
94. Despite this evident capability, an understanding of military affairs inevitably includes an appreciation of the serious challenges any intelligence apparatus faces, no matter how well developed. Intelligence is a highly challenging realm of operations and not infallible. It is often incomplete and sometimes plain wrong. This is particularly the case in a battlefield environment as complex as that presented by the type of urban warfare Israel faced in Gaza. Dynamic, live combat situations can significantly increase the difficulty of collecting and verifying information, compromise resources and shorten the time available to evaluate information.
95. In this context it is also important to note the recent commentary by the United Nations Human Rights Council (UNHRC) Commission of Inquiry, which suggests that it considers it necessary to disclose significant elements of this intelligence to effectively assert Israel's compliance with LOAC requirements, in particular in relation to targeting in urban areas.²⁸ We do not consider this to be a credible assertion

from an operational or legal perspective. Statecraft and warfare requires intelligence to be concealed from adversaries, and while compliance with LOAC may require the disclosure of classified information to the military or criminal justice systems of a LOAC compliant country such as Israel under the relevant safeguards, it does not require the publication of this information to international bodies.

Compliance with the Law of Armed Conflict

96. Israel's formidable intelligence capability also plays an important role in ensuring its compliance with LOAC. In addition to the general intelligence capabilities used to build a long-term threat picture, the interplay between real-time intelligence and legal considerations is an important factor in the IDF's effort to ensure compliance with LOAC. More immediate intelligence on a given target includes a thorough analysis of its surroundings and the classification of the surrounding sites according to their sensitivity. The Internal Security Agency, IDF Military Intelligence and other relevant agencies are responsible for the collation of the material, sharing it with relevant IDF units and documenting the actions concerning an objective being targeted.

97. Legal advisers from the International Law Department of the Military Advocate General (MAG) Corps, together with auxiliary legal officers who are activated in times of emergency, are embedded as real-time legal advisers down to Division level in the IDF, as well as operating a 24 hour legal operations room. These legal advisers provide legal input with regard to individual pre-planned targets (as opposed to, for example, time-sensitive targets acquired by commanders located in the field) and are also involved in the establishment of IDF orders and directives, which sometimes include restrictions beyond the requirements of LOAC - for example, action involving potential harm to sensitive sites with special protection under LOAC requires approval from the highest military ranks, in some cases the Chief of Staff, Defence Secretary or even Prime Minister. No authorisation would be forthcoming in case of the existence of reasonable operational alternatives that would guarantee reduced collateral damage. Proportionality conditions also have to be met, meaning a strike is prohibited if the expected collateral damage would be excessive in relation to the military advantage anticipated. In most cases, the Rules of Engagement (ROE) before and during a strike mandate approval from the Internal Security Agency, the relevant IDF Command (Southern Command in the case of Operation Protective Edge), the Military Intelligence Directorate and the IAF.

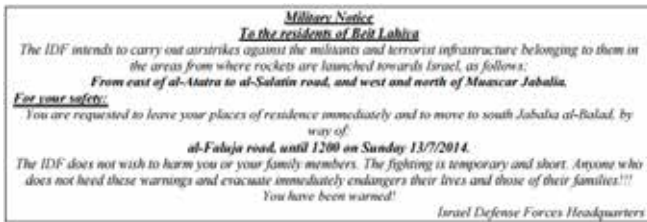


An attack directive used by the IDF during the 2014 Gaza Conflict (Source: IDF)

98. In terms of the specific attack, intensive verification is required even after the initial approval which can come only on the basis of cross-referencing intelligence according to strict protocols. Often many hours are spent watching targets, using various manned and unmanned surveillance systems, including task-specific UAVs, so as to ensure the conditions that meet the requirements of LOAC and applicable ROEs and directives are met.

Advance Warnings and other Precautions

99. Wherever feasible, the IDF initiated a thorough protocol of warnings prior to a strike, designed specifically to mitigate the effects of an adversary embedding its military structure deeply in civilian terrain. This consisted of extensive warnings delivered via multiple channels, pre-planned and executed via leaflet drops, radio announcements, telephone calls and text messages, as well as communications via third parties such as UN agencies. These extensive warning protocols were further augmented by additional precautions, including what the IDF terms a "knock on the roof", a procedure where a specifically designed projectile sufficiently small not to cause damage or injury is exploded on the top of a structure designated a target in order to warn those inhabitants who had not heeded other methods of warning to vacate it. The IDF will assess the impact of these precautions in real-time, and may repeat them more than once or abort an attack that is not within the parameters of LOAC, its ROEs or in some cases even more restrictive practices instigated due to policy concerns.



One of more than 20,000 leaflets the IDF dropped over Beit Lahia on July 13, 2014, warning civilians to evacuate in advance of impending strikes (Source: IDF)

100. It is our assessment that the procedures the IDF deploys in order to give prior warning of an attack are extensive and well conceived. It is evident to us that they are a major effort aimed at ensuring Israel is able to mitigate the effects of Hamas's tactic of hiding its infrastructure in civilian locations. Not only do Israel's warnings clearly save lives, but they further telegraph to enemy operatives who are legitimate military targets what Israel's intentions are and thus create a major tactical cost for the IDF. In this context, we note that the IDF has further developed a unique tactical innovation aimed at the preservation of innocent life, which to our knowledge is unprecedented in warfare, the "knock on the roof" procedure. Given the extensive nature of the IDF's warning protocol, the clear evidence that it has saved lives, and the tactical innovation brought to bear in doing so - which exceeds our own armies' current practices - we are concerned about recent attempts on the basis of incorrect legal interpretations to discredit Israel's practices in this regard. Secondary, effects-based considerations are not applicable to the requirements of LOAC in assessing such attempts at warnings. Nor does international law require warnings before every attack - there are legitimate and lawful combat scenarios where warnings are unfeasible or not required. Additionally, even where warnings are given according to a protocol as effective as the IDF's, they do not guarantee the absence of harm to civilians or property which has no bearing on the legal status of an action. Our view is that Israel's protocol as relates to warnings prior to a strike is highly advanced, clearly effective - at considerable tactical cost to the IDF - and far exceeds the requirements of LOAC.

Precision Strikes

101. Only where the conditions required by LOAC are met can an attack commence. Such an attack will be carried out with consideration to appropriate munitions and fusing, in some cases of proprietary Israeli design to ensure the required control over the impact with the goal of being effective for the mission but minimising collateral damage. In many cases munitions are used that provide the IDF the additional ability to abort an attack following a launch if the conditions are observed to no longer meet the required parameters. Where a strike is carried out, the precision guided munitions are on target in over 85 percent of cases, with the IAF using strike angles that will minimise the damage in case a missile does not hit its target.

102. Real-world results of the practices in the example above are easily discernible in Shejaiya, for example, where, in the course of the air campaign seeking to destroy Hamas tunnels embedded in the civilian landscape, significant numbers of buildings housing Hamas infrastructure were evacuated and hit with munitions that were designed to collapse them inwards, causing no casualties.

103. Taken together, the practices the HLMG was able to observe in terms of Israeli targeting in its air campaign were not only compliant with LOAC, but in some aspects significantly exceed the compliance requirements LOAC stipulates, such as forgoing attacks on targets that would have been prima facie legitimate pursuant to Articles 50-58 of the 1st Additional Protocol of the Geneva Conventions, including the main Hamas operational headquarters in Gaza's al-Shifa hospital. Israel put its extensive technological and tactical military innovations to use in the service of what are often unprecedented efforts to exceed the highest standards of LOAC in terms of precautions and ROEs on a complex urban battlefield against an adversary that purposefully flouts the principle of distinction. These practices exceeding the requirements of LOAC related to targeting come in addition to the simultaneous humanitarian actions that Israel took, described below, which also went well beyond its obligations by, for example, providing electricity and fuel to Gaza, in spite of their military use by Hamas, operating the crossing points for humanitarian aid convoys while under fire from inside Gaza and setting up a field hospital for Gaza residents.

Hamas

104. In contrast to Israel's lawful conduct, Hamas and other militant organisations in Gaza launched up to 4,000 rockets and mortars deliberately and indiscriminately directed at Israel's civilian population during the conflict.²⁹ The trajectories, impact points, volume of launches and official statements by Hamas all make clear that these constituted widespread, systematic and indiscriminate fire, targeted intentionally toward civilian population centres. On July 6, 2014, several hours after targeting Beersheba, Hamas uploaded to its website a digital image with a Hebrew caption reading "All cities are close to Gaza" - a threat aimed at the civilian population of Israel.³⁰ Both the United Nations and Amnesty International found Hamas responsible for grave violations of LOAC, with Amnesty noting a "flagrant disregard" for the lives of civilians on the part of Hamas and the United Nations Human Rights Council Commission of Inquiry noting the "inherently indiscriminate nature" of rockets and mortars fired at Israeli civilians.³¹ In this context however, we note the claims made by the Commission of Inquiry which misconstrue explicit Hamas threats against the Israeli civilian population as warnings for the purposes of LOAC.³² This extraordinary notion not only lacks any legal credibility, since the civilians of Israeli cities and towns such as Tel Aviv, Ramat Gan,

Bnei Brak, Petah Tikva, Herzliya, Rehovot, Yavne, Nes Tziona, Lod and Ramle among others that came under attack following Hamas's threats are not legitimate military objectives, but also stands in stark contrast to the Commission's extensive negative discourse on some of the practices within Israel's elaborate warning procedures prior to lawful attacks on military objectives, which in our own conclusion far exceed the necessities of LOAC, as elaborated above.³³

105. Over 70 percent of Israel's population was within reach of Hamas fire. This was compounded by Hamas's strategy of deliberately and methodically embedding its military apparatus into civilian areas of Gaza, meaning some of the densely populated urban areas of Gaza were turned into combat zones with a multitude of military objectives. Hamas thus deliberately deployed a strategy of seeking to shelter its military effort under the protections afforded to civilians, making it accountable for the civilian lives lost due to its military tactics. For example, while it could have chosen to launch rockets from unpopulated fields, it instead fired from within urban areas, seeking the protection afforded by the close proximity of civilian infrastructure.³⁴ While this modus operandi limits options for Israel's response, it also means the locale from which Hamas is firing becomes a military objective and thus places populations under Hamas control in direct danger.



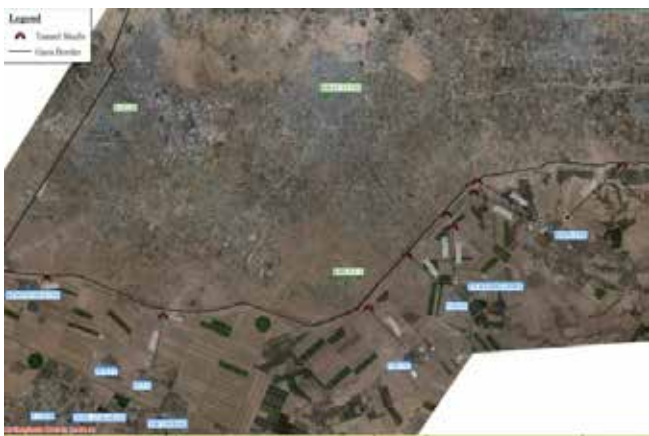
HLMG members in discussion with a senior Air Force Commander at the Ministry of Defense, Tel Aviv, Israel



Aerial footage showing a projectile launched from within the UNRWA's Jabalia Preparatory Boys School on July 14 (Source: IDF)



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 (Source: IDF)



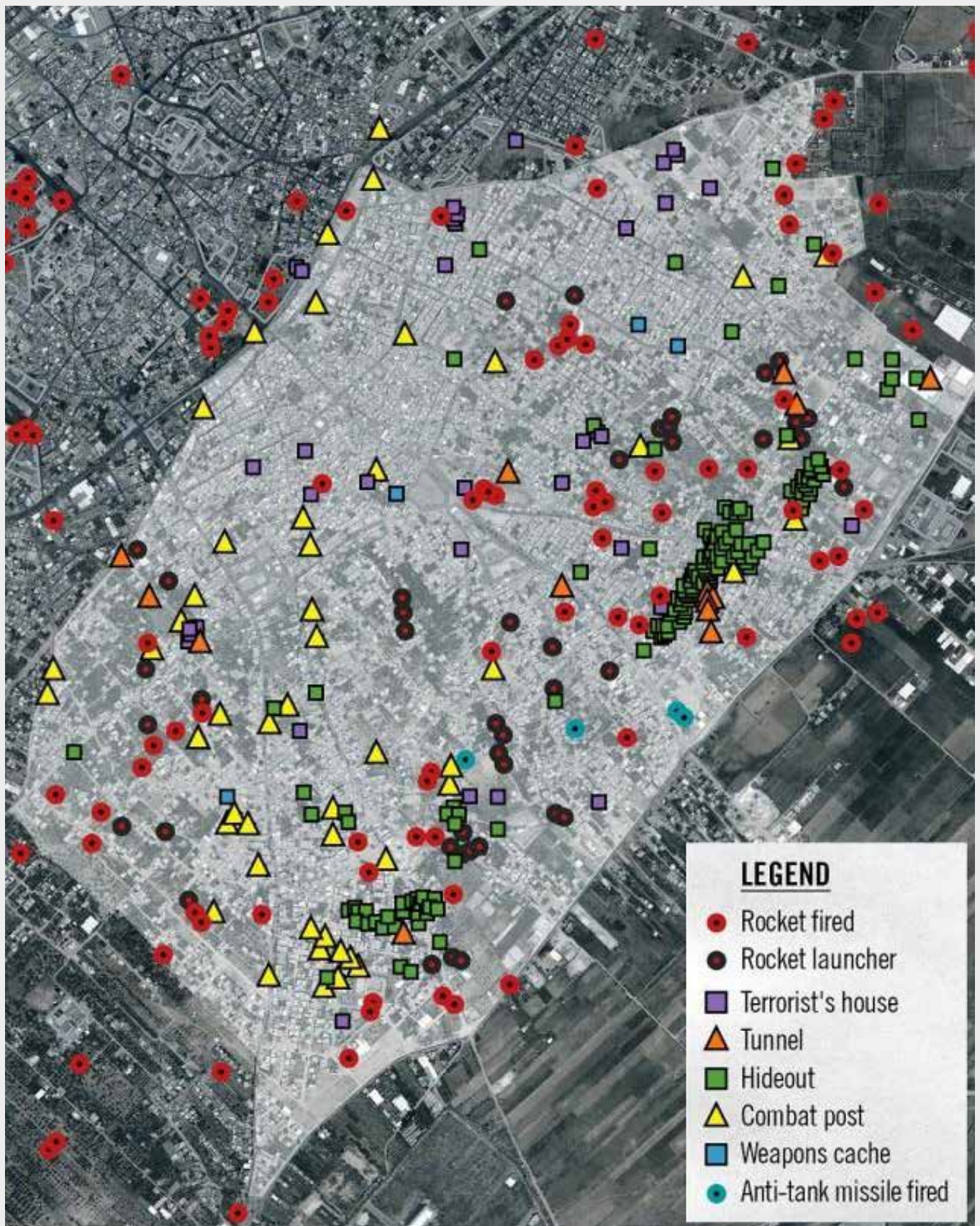
Aerial map of openings of cross-border attack tunnels found on Israeli territory bordering the southern and central Gaza Strip. Shafts are marked by a red arch (Source: IDF)

106. In addition to the rocket fire, Hamas boasted in official media about its ability to terrorise Israeli civilians through its cross-border infiltration tunnels.³⁵ These did indeed in many cases lead to Israeli villages, violating Israeli sovereignty and posing a serious threat to its civilians. Additionally, Hamas constructed and used a large network of combat tunnels in Gaza itself to facilitate its military activity. These were deeply embedded in civilian infrastructure, with entrances deliberately located within or near civilian sites such as residential houses or sensitive sites including mosques and medical facilities.

“Hamas constructed and used a large network of combat tunnels in Gaza itself to facilitate its military activity.”

107. Moreover, Hamas made extensive use of sensitive sites to shelter its command and control functions, including placing its operational headquarters in the Al-Shifa hospital, Gaza’s main medical facility.³⁶ The UN Secretary General’s Board of Inquiry report also confirmed the placement of Hamas weapons in UN facilities, with Secretary General Ban Ki-moon expressing dismay that “Palestinian militant groups would put United Nations schools at risk by using them to hide their arms”. Further, the inquiry also accepted that armed Palestinians groups fired weapons from UN-run schools, where it declared security to be weak.³⁷ Hamas used ambulances to ferry fighters, mosques to store equipment, and civilian homes to conceal weaponry and tunnel entrances, often also disguising its fighters in civilian clothes. As such, Hamas’s conduct prior and during the hostilities was in deliberate disregard of the stipulations of LOAC. Violations included, but were not limited to, flagrant breaches of Article 51.7 of the Additional Protocol to the Geneva Conventions prohibiting the embedding of its military apparatus in civilian structures, as well as Article 58 requiring the evacuation of civilians from the vicinity of military objectives. Further, Hamas clearly violated Articles 18-19 of the 4th Geneva Convention and Articles 12-13 of the 1st Additional Protocol, prohibiting the use of medical facilities for military purposes, and Article 37 prohibiting the feigning of civilian, non-combatant status in order to harm an adversary. Indeed, violating of the LOAC was an obvious matter of tactical and strategic calculation in Hamas’s conduct of the war.

HAMAS'S MILITARY INFRASTRUCTURE EMBEDDED IN GAZA CIVILIAN NEIGHBOURHOODS



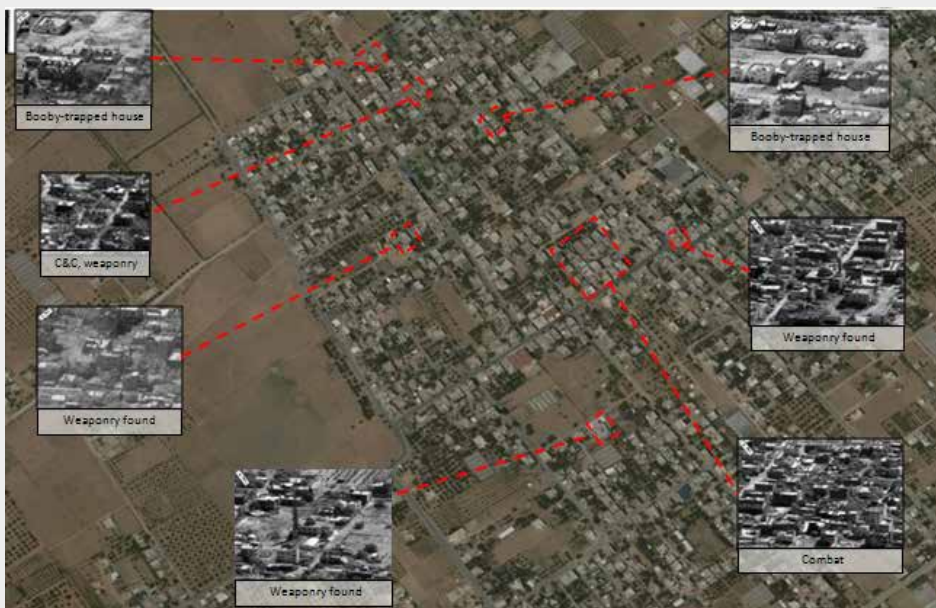
Hamas's main pre-prepared military stronghold was embedded in the Shejaiya neighbourhood in Gaza (Source: IDF)



Hamas turned the civilian neighbourhood of Beit Hanoun in northern Gaza into a major stronghold for its military operations (Source: IDF)



The civilian neighbourhood of Khuza in Gaza, which Hamas and other armed groups embedded in to plan and launch attacks (Source: IDF)



The civilian neighbourhood of Khuza in Gaza, which Hamas and other armed groups embedded in to plan and launch attacks (Source: IDF)

3.4 Phase 2: Ground Operation (July 17-August 5)

108. With Hamas rejecting attempts by Israel to de-escalate the conflict and continuing heavy rocket fire, Israel was confronted with the additional threat revealed once the full extent of Hamas's network of infiltration tunnels into Israel had become apparent. It determined that the threat from the tunnels, as demonstrated in various attacks on its civilian communities and the soldiers guarding them, was significant and further that no alternative military or technological solution existed to discover and neutralise the tunnels without physically finding entry points and taking charge of them in order to destroy them. Given these factors, Israel resolved on July 17 to carry out a limited ground operation.
109. The operational objectives of the ground incursion were thus appropriately narrowly and clearly defined, focused on locating and destroying the tunnels. Accordingly, based on intelligence indications of the location of various cross-border tunnel openings, IDF ground forces' operations were contained to a limited territorial area on the outskirts of Gaza's urban neighbourhoods and in the Hamas strongholds of Shejaiya and Beit Hanoun. IDF forces did not penetrate into Gaza further than three kilometres, nor impose a buffer zone around the areas in which they operated.
110. Israel also encountered unexpected specific engineering challenges in dismantling the tunnels it uncovered, which presented a more serious problem than anticipated due to the specific steps required to effectively destroy such an installation and prevent it from being rebuilt easily. Several tunnel entrances were located in civilian homes or sensitive sites. Rather than destroy them with air strikes, heavy drilling equipment had to be brought to the tunnel, which is particularly perilous to transport within a combat zone, and then hundreds of pounds of explosives are required to be inserted along the length of the tunnel to prevent it from being reactivated once it has been destroyed. 32 cross-border infiltration tunnels were discovered by the IDF in the course of the operation, 14 of which crossed into Israeli territory and led to exits near Israeli villages, while a further 18 tunnels were in various stages of construction towards Israeli territory.³⁸ The tunnel routes mainly originated in urban neighbourhoods on the outskirts of the Gaza Strip, with tunnels up to 40 metres deep and up to two and a half kilometres long and of sophisticated construction - fortified by concrete, with communications and electricity provision as well as ventilation and in some cases even railway lines. The tunnels further had multiple shafts to different entrances and several featured larger locations equipped to house fighters and serve as weapons and provisions stores.
111. Hamas and other militants were curtailed in their rocket fire - down from an average 80 to 33 per day - on account of IDF action constraining their operability and depleting rocket supplies - but continued launching rockets and mortars at Israel's civilian population on a daily basis during this phase of the hostilities. In one instance, this included a rocket that struck a house close enough to Israel's main international airport that a number of airlines were prompted to cancel flights, in what was a major strategic setback for Israel. Hamas further staged a number of kidnap attempts, and killed several IDF soldiers inside Israel during separate cross-border infiltrations, including in at least one instance disguised in IDF uniforms. This was the case for example with an attack on Kibbutz Ein Hasholasha in which two Hamas fighters entered the country dressed in IDF uniforms through a tunnel leading into an agricultural field and killed two IDF soldiers.³⁹ It used its networks of tunnels in its urban strongholds inside Gaza to full effect in battle with the IDF, and expanded its use of mortar fire in particular also, killing several IDF soldiers inside Israel.
112. The IDF brought the ground operation to a close unilaterally on August 5, having achieved its military objective to sufficiently mitigate the tunnel threat, including the destruction of all cross-border infiltration tunnels. It lost 41 soldiers in the operation, however, and rocket and mortar fire continued, with no permanent ceasefire agreed.

3.5 Concept of Operations - Phase 2

Israel

113. The HLMG was briefed extensively on the ground operation, including reviewing classified materials on the terrain of Gaza and Hamas positions as well as being able to discuss the operation with the senior command level and forces that had been on the ground. Given that the inherent risks of urban combat to civilian life are compounded severely by Hamas's embedding its military operation among civilians, IDF ROEs and directives clearly reflected the significant lengths Israel went to to mitigate the danger to civilians while achieving its mission. Indeed, in some cases the IDF put its troops in considerable danger in order to protect Palestinian civilian life.



HLMG members are pictured on a field visit along the Gaza border

114. IDF measures not only included intensive training for urban warfare under appropriately restrictive rules of engagement, but also advance warnings already referenced, which were a significant detriment to the IDF's tactical advantage on the ground. Prior to the battle of Shejaiya, Hamas's main stronghold, Israel spent three days warning residents and announcing locations where its forces would engage, including the timing of such engagements, giving Hamas ample time to prepare for combat. The IDF postponed the operation an additional day to allow civilians to vacate the area. Once IDF forces began to engage Hamas in Shejaiya, they announced a unilateral ceasefire within less than 24 hours to allow the evacuation of additional civilians, despite Hamas continuing fire shortly after the suspension of hostilities was announced.

Rules of Engagement

115. In this context it is important to note that recent commentary published by the NGO Breaking the Silence, based on alleged anonymous IDF sources and selective quotations of Israeli officials, runs directly counter to what we experienced during our extensive fact-finding.⁴⁰ In questioning senior commanders as well as those leading the fight on the ground, from a variety of ranks, a picture clearly emerges of an attempt to clear Hamas's stronghold of the civilians it was sheltering behind. However, though Israel's Rules of Engagement remain classified as ROEs are in all armed forces, following our discussions our view is that they were appropriate,

and certainly not reflective of the accusations that all remaining inhabitants of an area cleared of civilians in urban Gaza could be considered legitimate targets, as has been asserted by the United Nations Human Rights Council Commission of Inquiry on the basis of anonymous sources contained in testimony from Breaking the Silence.⁴¹ Though the ROEs were appropriately adjusted when fighting in Hamas strongholds after warnings and evacuations, to take account of the context and mitigate the serious challenges urban combat presents, they were appropriate within LOAC and similar to rules under which our own armies would fight in comparable situations. We further encountered numerous examples of soldiers in very difficult combat situations exceeding the requirements of their ROEs - putting



HLMG Members reviewing the IDF's ground operation in Gaza with a senior IDF commander, Tel Aviv, Israel

their own lives at risk to do so, where it would have been perfectly legal to carry out combat operations in a manner less dangerous to IDF personnel - and thus saving Palestinian lives.

116. During the IDF ground operation, IAF air strikes against military targets also continued, under the same restrictive ROEs as outlined for Phase 1 of the conflict. However, in Phase 2, close air support to ground forces was also a necessity, involving Apache helicopters in addition to fixed-wing aircraft. Militaries conducting air strikes in support of ground troops in combat, irrespective of platforms utilised, apply revised ROEs for targeting as related to these strikes, which was the case for the IDF here, with appropriate checks and balances as approved by the MAG Corps. Orders to execute strikes were given by army commanders on the ground, at the level of battalion or brigade commander, on the basis of extensive training in LOAC and relevant ROEs, as well as with consideration to any directive that may apply. These strikes are also directed by army commanders in the command and control centre working in conjunction with an air force commander.
117. Fire support for IDF ground forces was further provided by means of artillery. The HLMG was briefed on strict doctrines attached to the deployment of artillery fire, including the directives applied to Operation Protective Edge. These meant that outside of a set of clearly defined conditions of specific military necessity, artillery fire support was only available to ground forces as they traversed the open fields, requiring a set of stringent safety margins and ceasing once the ground forces reached the outskirts of built-up areas, where artillery could not be used. As such, the vast majority of artillery fire during the ground operation was fired into open areas in Gaza with no civilian presence, in particular in support of ground forces engaged in the destruction of tunnels. The IDF further employs a number of technical and operational means to ensure the accuracy of its artillery fire, some of which go beyond what other comparable militaries' practices consist of in this regard.
118. As has been widely discussed, the IDF does have specific directives that enable artillery fire support in built up areas under limited specific conditions of military necessity. The precise parameters of these directives remain classified but explicitly do not negate IDF forces' obligations under LOAC. These directives came into effect on very few occasions, with stringent conditions attached and certain technical precautions such as adjusting the parameters of firing power to a level below what would be considered tactically effective under normal conditions.



HLMG members discussing Israel's ground operation during the 2014 Gaza Conflict at IDF Southern Command Headquarters during a fact-finding visit to an IDF base in southern Israel

119. Following the accomplishment of its limited objectives, the IDF unilaterally terminated its ground operation on August 5, withdrawing all ground forces from Gaza. The HLMG is under no doubt that the conception, precautions and conduct of the IDF as relate to its ground campaign during Operation Protective Edge met the standards our own militaries set for themselves, with the IDF operating under relevant necessary precautions in very difficult conditions. Given the challenge of Israel having to fight on an urban battlefield against an adversary deliberately embedded in civilian structures and which further fights with flagrant disregard for the laws of war, it is likely that mistakes were made in the conduct of operations by the IDF, as would be the case for any modern army in similar circumstances. The specific complexities of Gaza, including the civilian physical infrastructure density and depth of Hamas's embedding within it make mistakes almost inevitable. This is in addition to the fact that for any army the risk of collateral damage is far greater when conducting ground operations where forces are in constant lethal danger. Where relevant, lessons must be learned and where violations are suspected, these must be, and are being, investigated under Israel's system of military justice and if applicable result in charges. However, it is apparent that such incidents would be the exception to the rule, since it is our view that the IDF operation was expertly executed, well within the parameters of both legal necessity, customary practice and indeed military effectiveness. The IDF went to great lengths to conceive of a limited campaign with reasonable objectives and executed this under very difficult conditions with clear respect for the Laws of Armed Conflict and a life-preserving ethos that is propagated throughout its ranks.

Hamas

120. As previously discussed, Hamas and other militant organisations in Gaza conducted their military operations within densely populated areas and embedded their assets in civilian structures in the Gaza Strip. On account of this strategy many civilian structures became military objectives, including sensitive sites such as UN facilities, schools, medical facilities and mosques. Further, Hamas proactively ensured civilians would be present in the vicinity of locations from which it operated.⁴² In addition, Hamas operatives frequently resorted to civilian disguise to gain tactical advantage when carrying out attacks during the ground phase of the operation.
121. Training manuals recovered by the IDF further demonstrate a deliberate Hamas strategy to draw hostilities into densely populated urban terrain so as to use the presence of civilians as a tactical advantage.⁴³ Hamas then conducted a large-scale exercise in rigging these areas with booby traps and improvised explosive devices (IED). It cooperated with other militant organisations in Gaza, including Palestinian Islamic Jihad, in extensive preparations to turn the civilian neighbourhoods of Gaza's urban terrain, in particular Hamas's stronghold of Shejaiya, into a well prepared battleground, using an extensive network of tunnels and defensive positions, as well as preparing and carrying out numerous ambushes, attacks and kidnap attempts against IDF forces near tunnel shafts in civilian areas.

Media Manipulation and Intimidation

122. Hamas coupled this strategy on the ground to a wide-ranging information effort aimed at eroding Israel's legitimacy. It deployed a sophisticated social media strategy, segmented by audience, and issued directives in pursuit of its goals, such as instructing its supporters to always make reference to civilian casualties, or compare Israel's operation in Gaza to the Holocaust.⁴⁴
123. Moreover, Hamas as a matter of policy constrained press freedom in Gaza and even threatened reporters into acquiescing to their demands about coverage. A Hamas official acknowledged that the group strong-armed journalists in Gaza into a reporting style that bolstered its narrative, keeping many under surveillance, forcing them to "change their message" and expelling from the territory those who sought to film the launching of rockets at Israel, whom it accused of "collaborating with the occupation."⁴⁵ Most outlets failed to mention these constraints when covering Gaza, in many cases contrary to their own

published guidelines.⁴⁶ The Foreign Press Association in Israel condemned "the blatant, incessant, forceful and unorthodox methods employed by the Hamas authorities and their representatives against visiting international journalists in Gaza."⁴⁷ Reporters told of being interrogated and intimidated by Hamas officials, who also prevented photographs being taken of any wounded or dead terrorists at the al-Shifa hospital, even though their presence there was common knowledge.⁴⁸ Rather, only images of wounded or dead civilians were permitted.

124. Hamas's media manipulation was not just by censorship, however, but included the proactive fabrication of its narrative in pursuit of its key strategic goal of utilising the media for its assault on Israel. The Washington Post newspaper documented several cases of scenes being "prepared" in advance of Hamas led visits for photojournalists, as well as the coaching of a young child for television news.⁴⁹ This management of the all important imagery of the conflict appears to have been successful with Hamas fighters being virtually invisible. Several New York Times slide shows on the Gaza conflict, for example, while showing Gaza civilians in distress and IDF tanks and personnel, failed to show a single armed Hamas operative or rocket launching squad.⁵⁰ Moreover, Hamas effectively used members of the media as human shields in similar fashion to its own civilian population, deliberately endangering their lives. Reporters witnessed a Hamas unit firing an RPG adjacent to a crowded hotel occupied by foreign journalists and some NGOs. In Hamas's strategic win-win calculation, either the presence of high-profile civilians would protect its operatives or a retaliatory strike would be a major propaganda victory.⁵¹ A similar report by India-based NDTV on Hamas assembling and firing a rocket next to a hotel used by journalists was filed hours after the reporter left Gaza, because according to the reporter, "Hamas has not taken very kindly to any reporting of its rockets being fired".⁵²
125. Hamas's effective manipulation of the messages emanating from Gaza during the conflict is not just a matter of upholding the standards of accurate and balanced reporting, but rather, coupled to its strategic concept, forms a core part of a deliberate strategy to shape the narrative around the conflict in its favour. The impact of this strategy in the form of the resultant media imagery amplified by misinformed commentary about LOAC is a key reason why Hamas is able to act with the unlawful modus operandi of a terrorist organisation, but enjoy a strategic communications advantage over Israel, which seeks to act within LOAC.



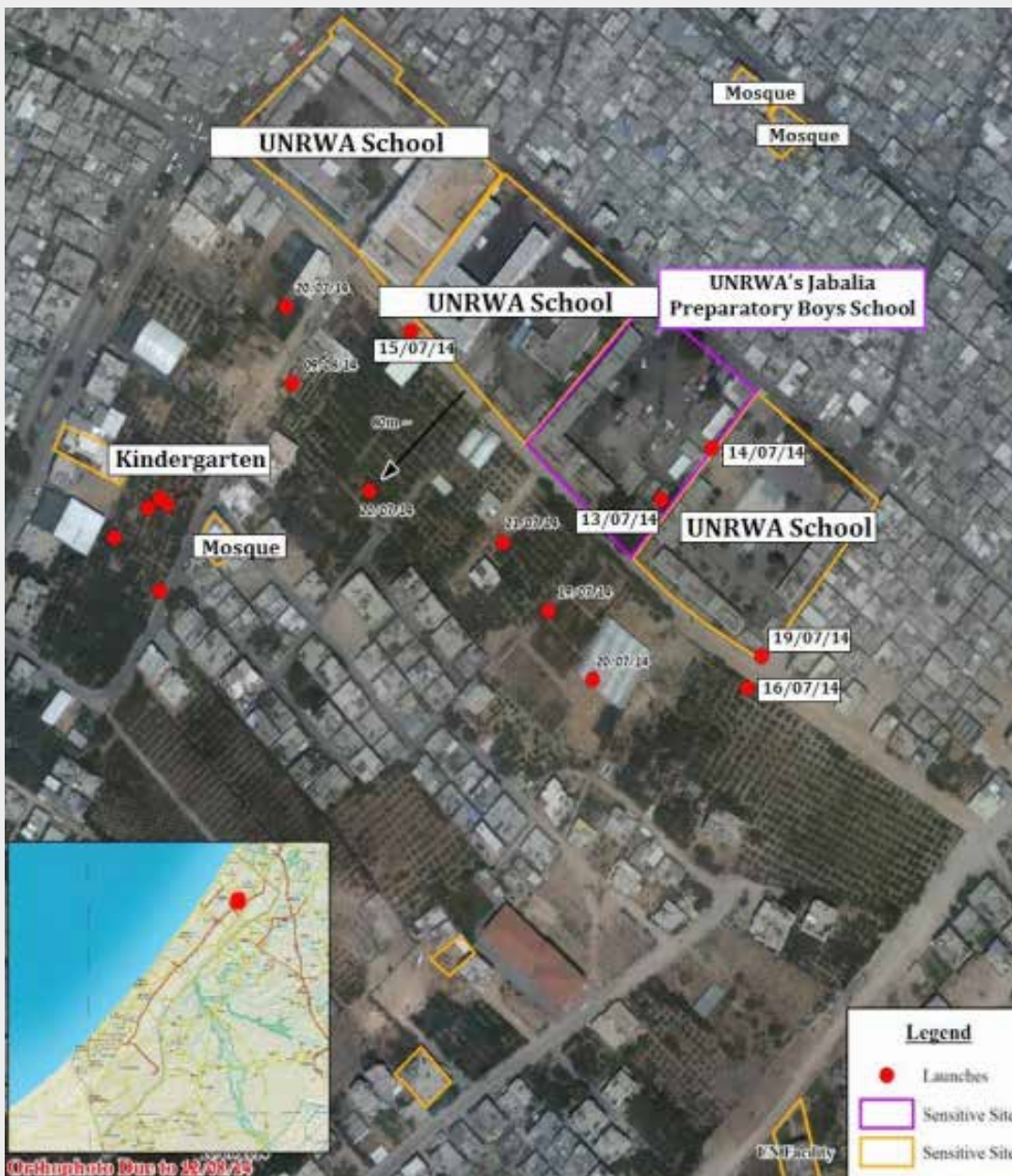
*Hamis Ministry of Interior warning, August 5, 2014
(Source: Palestinian Interior Ministry of Gaza)*

126. This dynamic is substantially aided by a broader asymmetric advantage Hamas enjoys in the media space, which often fails to reflect Hamas's modus operandi not just in reporting, but also in ascribing equal weight to Hamas pronouncements to those of Israel on events during conflict, despite one being a terrorist movement and the other a democratic state. This has a serious effect on the strategic environment for Israel and has allowed some of the greatest gains for Hamas's misinformation strategy against Israel.
127. One of the most prominent storylines of the previous, 2012 Gaza Conflict for example was the death of the baby son of a BBC Arabic journalist in Gaza, attributed by the father and human rights organisations to an Israeli air strike at the time. An iconic image of the father cradling the body of his son was a key part of the narrative employed to condemn Israel in the media in that conflict. Subsequently however, the Office of the United Nations High Commissioner for Human Rights determined that the death of the child and two of his relatives was caused by a Palestinian rocket that fell short of Israel.⁵³ Similar incidents arose in the 2014 Gaza Conflict. For example, Israel was widely condemned for what one outlet on the
128. Such challenges in the media space go well beyond traditional notions of the fog of war and strategic communications. They have wider strategic implications that apply to other modern democratic armies involved in battling hybrid terrorist movements whose military capabilities are bolstered by effective efforts to shape false narratives, and who are likely to be confronted with similar messaging challenges in future conflicts.
- Sensitive Sites*
129. There is conclusive evidence that Hamas and affiliated organisations made extensive use of sensitive sites to shelter their military operations as a deliberate strategy in direct contravention of LOAC. UN sites, schools, hospitals and mosques were all used to fire rockets and machine guns from, store weapons and ammunition in, operate command and control functions and hide tunnel entrances. A large number of incidents also took place where Hamas and other organisations used the proximity of these sites as cover for their military activities. This tactic is a deliberate attempt on the part of Hamas to gain advantage by exploiting Israel's adherence to LOAC, made possible by the total disregard for international law or civilian life Hamas displays. Combat manuals obtained by the IDF make plain that Hamas explicitly stipulated that Israel ought to be drawn into urban areas where civilians would be present, which would aid Hamas operations, instructing Hamas fighters to use civilians as "messengers, particularly youth and the elderly", as "the presence of civilians creates many pockets of resistance against advancing [IDF] troops, and this causes difficulties." As discussed, the material further made plain that Hamas considers civilian deaths a benefit in terms of aiding its war against Israel in the realm of public opinion.⁵⁵

130. Hamas made extensive use of UN sites, as confirmed by the UN Secretary General’s Board of Inquiry, and the HLMG was briefed on several instances that raised serious questions about the relationship between Hamas and certain UN bodies. The United Nations Relief and Works Agency (UNWRA) publicised its discovery of weapons caches in several UN schools, with UN Secretary General Ban Ki-moon expressing outrage at the danger to innocent children caused by Hamas turning these sites into potential military targets.⁵⁶ The discovery of Hamas tunnels dug near schools indicates the premeditated nature of the tactic of sheltering military operations within them.
131. Hamas also exploited medical facilities during the conflict in another grave violation of LOAC. It turned the al-Shifa hospital, Gaza City’s main

hospital, into its operational headquarters and made heavy use of al-Wafa hospital in Shejaiya, transforming it into a military asset of significant impact - from firing positions and weapons storage to surveillance and tunnel infrastructure. Hamas further used ambulances to ferry fighters in a bid to avoid IDF fire, while its commanders often hid in hospitals, including the al-Nasser hospital in Khan Yunis and al-Najjar hospital in Rafah.⁵⁷

132. Additionally, Hamas used mosques as sniper positions, weapons stores and command and control facilities. Documented examples abound, such as the weapons and tunnel shafts that were discovered in the the al-Tawheed mosque in Khuza and a command and control post in the Sheikh Hasnain mosque in Shejaiya, both of which also featured tunnel openings.⁵⁸ Further



Aerial photograph of UN schools and civilian structures in Jabalia, from which mortars were fired at Israel while thousands of civilians sheltered there (Source: IDF)

tunnels ran beneath the Hasan al-Bana mosque in al-Zaitoun, and two entrances to tunnels were situated in the Khalil al-Wazir mosque in the Sheikh Ijleen neighbourhood.⁵⁹ Here, too, the Hamas strategy of locating its military apparatus in sensitive sites for tactical gain presents not only a severe violation of LOAC, but further endangers these sensitive sites by making them military objects in the conflict.

3.6 Phase 3: Rocket Fire and Aerial Strikes (August 5-August 26)

133. Following the IDF's withdrawal from Gaza, in lieu of a stable ceasefire, a further period of fighting ensued while negotiations towards the cessation of hostilities took place. The third phase of the conflict was characterised by a reversion to the dynamics noted in Phase 1, with Hamas continuing rocket fire against Israeli civilians and Israel striking launch sites. Hamas and other militant factions in Gaza continued intense rocket and mortar fire - launching between 50 and 150 projectiles a day. The IDF countered with continued air strikes on launch sites and Hamas command and control assets. Following repeated violations by Hamas of a number of ceasefires that were being negotiated through Cairo, the Israeli delegation left the negotiations on August 19 and Israel expanded its list of targets to the most senior Hamas military echelons, targeting the leader of Hamas's military wing, Mohammed Deif, and killing three top Hamas commanders on August 21. Hamas ultimately agreed to a ceasefire on August 26 that they abided by.

3.7 Ceasefires, Diplomacy, Termination of Hostilities

Ceasefires and Hamas Violations

134. Prior to and during the 2014 Gaza Conflict, Israel actively pursued continuous efforts through third-party brokers to facilitate first a de-escalation and subsequently a prompt termination of hostilities. In addition to introducing unilateral ceasefires for humanitarian purposes, which in some cases Hamas exploited to mount attacks, Israel agreed to and complied with multiple ceasefires initiated by the UN, Egypt and the United States. Hamas and other militants in Gaza either rejected outright or, in a majority of cases, accepted and then broke them within a short time of terms being agreed. Such was the case on July 15, 20 and 28, and on August 1, 8, 13 and 19, where mutually agreed-upon ceasefires broke down after Israel was attacked by Hamas in violation of these.



Aerial photograph of the compound in Shejaiya 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)



Weapons uncovered in the UN Gaza Beach Elementary Co-Educational B School on July 16 (Source: IDF)



IDF surveillance footage picturing Hamas firing on Israeli soldiers from within al-Wafa Hospital in Gaza (Source: IDF)

135. The repeated violations by Hamas are indicative of the disparate dynamics related to ceasefires between the warring parties. On the operational level, Hamas used each cessation of hostilities to replenish its arsenal and prolong the war in order to continue its attempt to extract concessions from Israel by force. Crucially, however the conceptual sequencing of Hamas's strategy was to fight, negotiate a satisfactory arrangement while hostilities are ongoing, and then terminate the fighting once it had achieved its aims or come to an at least satisfactory agreement from its perspective. In contrast, for Israel, the sequencing was reversed. Israel sought to combat Hamas's violence, terminate the hostilities effectively, and then negotiate a more permanent arrangement on the basis of the initial cessation of hostilities. From Israel's perspective, the termination mechanism was seen in purely diplomatic terms, rather than as a tool to strengthen its military capabilities or effect a further degradation of Hamas's infrastructure. As such, the disparity in concept illuminates a serious concern about Hamas violations regarding the concept of a ceasefire. Indeed, Hamas further expanded its range of demands during ceasefire negotiations as the conflict went on, seeking far-reaching concessions that were significantly beyond the parameters around which its modus vivendi with Israel had previously been established. In some cases, Hamas also made demands of actors not involved in the hostilities such as demanding the opening of the Rafah crossing with Egypt and making financial demands of the Palestinian Authority.

"A large majority of the casualties and damage to infrastructure could have been averted if Hamas had acceded to the terms it accepted on August 26 a few weeks earlier."

136. Ultimately, Hamas accepted terms in a final ceasefire agreement on August 26 that were practically identical to what Israel had agreed to on the basis of the Egyptian ceasefire proposal on July 15, prior to its ground operation. It appears likely that part of the reason for this costly miscalculation was the lack of internal cohesion between various factions in the organisation's leadership both inside and outside of Gaza. The HLMG's briefing on the negotiations

made plain that there were competing centres of power in Hamas, with views at great variance on significant matters. In particular, the ambitious and unrealistic terms demanded following Hamas's initial rejection of the return to the status quo ante appear to have been fuelled by the Hamas leadership in Qatar. It appears thus that the result was a tragic prolongation of warfare to no effect, ending on near identical terms but at significant loss of life - principally Palestinian - on account of internal Hamas politics. A large majority of the casualties and damage to infrastructure could have been averted if Hamas had acceded to the terms it accepted on August 26 a few weeks earlier.

Competing Regional Interests and the Challenges of International Diplomacy

137. In addition to the problems related to internal Hamas organisational dynamics, there were also significant challenges on the diplomatic level between Israel, Egypt, Turkey, Qatar and the United States that played out against the background of shifting regional power dynamics. The principal problem was the emergence of two rival centres through which the parties sought to negotiate. The first revolved around Egypt, unsympathetic to Hamas and the Muslim Brotherhood, and a traditional ally of the United States with a formal peace treaty with Israel. The second revolved around Turkey and Qatar, both also allied to the US, but close to the Muslim Brotherhood and which support Hamas. These blocks are at odds on a number of crucial regional fault lines in matters of strategic and alliance policy.

138. The United States chose to support the involvement of both camps in these talks, adding significantly to the complications that arose once the wider competing agendas of the relevant parties were a factor in the effort to bring hostilities to an end. Permitting rival potential brokers to emerge diluted the clarity of the message between the parties and may have prolonged the fighting, on account of discord and misperceptions created within Hamas about the necessary and acceptable outcomes negotiations ought to yield. Qatar's difficult relationship with Egypt appears to have been a compounding factor. The HLMG was briefed extensively on these negotiations, and a picture emerged of a process that was uncondusive to the swift termination of hostilities. Media reports at the time pointed to similar conclusions - that Turkey and Qatar's involvement played a role in prolonging the war, in particular by creating false hopes, and indeed exerting pressure towards more maximalist Hamas positions than those that were ultimately accepted by the organisation on the basis of the Egyptian proposals.⁶⁰

4

THE 2014 GAZA CONFLICT – HUMANITARIAN EFFORTS

4. THE 2014 GAZA CONFLICT – HUMANITARIAN EFFORTS

139. The HLMG was briefed in detail on Israel's extensive humanitarian efforts, carried out while active hostilities were ongoing. We consider as valid Israel's claim that it is an extremely rare historical occurrence for an adversary in hostilities to simultaneously mount an extensive campaign of humanitarian support for the enemy population, brought on by Israel's clear distinction between Hamas and its operatives and the civilian population of Gaza. The humanitarian effort was impeded significantly not only by Hamas's modus operandi of embedding its forces, weapons stores and infiltration tunnel entrances among the civilian population, but further by specific actions Hamas took to counter Israel's humanitarian assistance, some of which the latter had to overcome by innovative means in order to deliver aid to its intended civilian recipients.

4.1 IDF Operational Integration and Provision of Humanitarian Efforts

140. Humanitarian assistance falls under the responsibility of COGAT (the Coordination of Government Activities in the Territories Unit), within which sits the Coordination and Liaison Administration for the Gaza Strip (CLA), a special unit of military and civilian personnel with relevant expertise in areas such as health, agriculture, industry and infrastructure.

141. The CLA's sole mission is to identify, monitor and facilitate the humanitarian needs of the civilian population of Gaza. To achieve this, it maintains links with representatives of the PA, international organisations; NGOs and other relevant parties so as to be able to facilitate relevant medical, infrastructure and other essential requirements. It further plays an important role in mapping sensitive sites such as schools, hospitals, essential infrastructure and similar venues, as well as the location of shelters used during active hostilities, in order to integrate this information into operational IDF command and control.

142. During the conflict, the CLA facilitated the movement of a total of 5,637 trucks carrying 122,757 tons of supplies into Gaza from Israel. To facilitate medical care, the CLA enabled the entry of 71 doctors and nearly 200 ambulances into the Gaza Strip as well as the setting up of an IDF field hospital at the Erez crossing to provide medical assistance to wounded civilians from Gaza. During

the ground operation phase of the conflict, IDF forces facilitated the evacuation of wounded persons to this field hospital and in some other cases to Israeli hospitals, in addition to those evacuated to medical facilities in the Gaza Strip. Further, 258 wounded persons left the Gaza Strip for medical treatment in Israel, the West Bank, Jordan or Turkey, in addition to over 400 who left Gaza for reasons unrelated to the conflict, seeking medical treatment unavailable in the Strip. In addition to the supplies facilitated by the CLA to Gaza from Israel, a further total of 1,432 tons of medical supplies and 541 tons of food entered the Gaza Strip via the Rafah crossing at the Egyptian border (though Egyptian authorities had for the most part closed the Rafah crossing during the 2014 Gaza Conflict).⁶¹

143. In order to effectively facilitate access and movements for humanitarian purposes during operations, the IDF set up a sophisticated coordinating structure incorporating military, NGO and civilian representatives during the conflict. Previously, in 2010 the CLA had created the position of Civilian Affairs Officer (CAO), a specially trained post integrated into operational IDF units at command, division, brigade and battalion levels. Integrated into their assigned combat units entirely, including for the purposes of training, CAOs advise commanders in regard to operational aspects as relate to humanitarian matters. They further coordinate movements of local emergency services, rescue teams and relevant international organisations. 89 CAOs were active during Operation Protective Edge, all fluent in Arabic and represented from battalion level inside the Gaza Strip up to Southern Command, which held responsibility for the overall command of the ground operation. During the active hostilities phase of the conflict, the CLA was thus able to facilitate over 400 requests for coordination of movement in the area of hostilities. This was helped in part by the establishment of a Joint Coordination Room at the CLA headquarters with the UN and the Red Cross in order to act on real-time requirements. This led to a direct chain of coordination from requests for humanitarian assistance made to international organisations or by IDF soldiers on the ground through the Joint Coordination Room linked to the CLA Central Operations Room, which was in direct contact with IDF forces inside Gaza, either directly through CAOs or via brigade or division level operations rooms.

144. Separately, the IDF further set up an Infrastructure Coordination Centre, operating 24 hours a day during the conflict, in order to facilitate the essential infrastructure needs of the population of Gaza.



Screenshot of video from security cameras recording mortar fire on the Kerem Shalom Crossing used to move civilian and humanitarian supplies into Gaza from Israel. (Source: IDF)

These principally fall under the categories of fuel, electricity, water and sewage and communications. While hostilities in close urban quarters inevitably affect the ability to deliver infrastructure services, in some cases severely, Israel appears to have made a substantial effort to facilitate the preservation, repair or import of the necessary components to ensure an acceptable level of supply. In total, 782 truckloads of various fuels and gas entered Gaza from Israel during the conflict. The water supply remained broadly stable in terms of cubic metres supplied during the hostilities, with the exception of several days of reduced supply following damage to one of the two water lines supplying Gaza from Israel. Israel made 22 repairs to water infrastructure and three repairs to the sewage system during the conflict. There was no significant damage to civilian communications networks, and significant quantities of communications equipment were allowed to enter Gaza, destined for Palestinian communications companies, though 13 repairs to communications infrastructure were necessary.⁶²

145. Previous agreements between Israel and the PA mandate the supply of the majority of Gaza's electricity needs from Israel. Despite clearly aiding Hamas, Israel initially sought not to disrupt this supply during hostilities given its importance to civilian well being. The Infrastructure Co-ordination Centre co-ordinated with IDF forces in the field, the Palestinian Energy Authority and the Israel Electric Corporation, carrying out 78 repairs within the Gaza Strip during the conflict.⁶³ The supply, however, was disrupted significantly by the fighting. Further, Israeli action damaged

Gaza's sole power station to the point of becoming inoperable during the conflict. To mitigate the impact of this, Israel donated 10 industrial-sized electricity generators so as to enable the continued operation of hospitals and essential infrastructure.

4.2 Hamas Obstruction of Humanitarian Efforts

146. In addition to the HLMG's view that a flagrant disregard for LOAC is evident in Hamas's strategy, discussed elsewhere, we were further alarmed by incidents that point to an effort by Hamas to actively obstruct Israel's humanitarian efforts during the conflict.
147. Among these obstructions were Hamas's and other armed Palestinian factions' fire at the Kerem Shalom and Erez crossings, deliberately impeding the transfer of humanitarian supplies. Over 200 mortars were fired at the Erez crossing by armed groups in Gaza during the conflict, causing fatalities, injuries and delays in the provision of humanitarian supplies.⁶⁴ In one case, three Israeli civilians in vehicles awaiting the evacuation for medical treatment of injured persons from Gaza at the Erez crossing were injured. Israel further had to carry out some of its repairs by stealth - for example, civilian workers under contract with the Israel Electric Corporation had to work at night to repair the lines supplying electricity to Gaza after being deliberately targeted repeatedly by fire from armed groups in Gaza.

148. Other briefings that alluded to Israel having to actively hide its humanitarian assistance were also troubling. Israel donated significant quantities of rice, flour, sugar, cooking oil and bottled water to alleviate civilian suffering during hostilities in Gaza, but had to conceal the source of these goods, arranging for them to be identified as being donations from a third party, so that Hamas would allow the supplies to enter. Similar issues arose around generators supplied to ensure a steady electricity supply for Gaza's critical infrastructure during the hostilities. Further, the HLMG was briefed on Hamas's effort to actively

prevent civilians from seeking medical care in the field hospital set up by Israel, which saw only 51 patients as a result of these actions.⁶⁵ The HLMG was told also of a substantial donation of medical supplies by Israel that was refused by the PA and international organisations due to concerns over a punitive response by Hamas. These serious breaches of Hamas's obligations under LOAC to the population of Gaza come in addition to the unacceptable exploitation of the special protection afforded to medical facilities and vehicles Hamas engaged in discussed elsewhere, as well as Hamas's repeated violation of humanitarian ceasefires.

5

**THE 2014
GAZA
CONFLICT –
POST-WAR**

5.1 Casualty Figures

149. While it is clear that a regrettable number of persons died during the fighting - estimates put the number at over 2,000 - there are serious questions about the classifications of these deaths.⁶⁶ Given the context of the conflict and attendant narratives, information that has emerged in the media ought to be treated with caution. For example, The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) information on Palestinian casualties relies on figures from the Palestinian Ministry of Health in Gaza, which is controlled by Hamas.⁶⁷ However, even these figures show a disproportionately large percentage of casualties that were men of fighting age - about 70 percent. Further, the figures require challenging on the basis of inaccurate, in some cases deliberately so, inclusions and classification. Challenges include the inclusion of duplicate names, incorrect ages, combat-related deaths caused by Hamas or its affiliate organisations, such as in the case of misfired rockets, and deaths not related to the hostilities but classified as such. Hamas also executed persons it accused of collaborating with Israel, as documented and recognised as a war crime both by Amnesty International and the UNHRC.⁶⁸ Additionally, militants known to have been killed in the war are not listed. Efforts at categorisation are hampered by Hamas's deliberate strategy of blurring the distinction between its fighters and civilian casualties and inflating Palestinian civilian casualty counts. Hamas's Ministry of Interior in the Gaza Strip has gone as far as publishing guidelines urging its supporters to ensure they add the moniker 'innocent civilian' to descriptions of casualties.⁶⁹

150. Israel is in the process of conducting a thorough analysis of the casualty figures. IDF intelligence closely tracks information on Palestinian fatalities, not only for operational requirements to understand Hamas, but further on account of Hamas's strategic concept seeking to fuel a narrative about IDF operations causing significant civilian fatalities. This effort is conducted according to a meticulous methodology, using public sources of varying credibility, including social media, checked against military information such as documented operational events and militants involved in them, intelligence material and other parameters to ascertain the identity of casualties. There are myriad challenges in ascertaining these figures, both in terms of the complexity of the battlefield, as well as wilful and inadvertent distortion of various inputs relevant to the data. The process remains ongoing, and the IDF has produced an

interim analysis on the basis of verified identities of persons making up its list, according to which the proportion of civilians to combatants is significantly lower than have been reported by Palestinian sources, the UN and the media. As of April 2015, its findings suggest 44 percent of casualties were militants, 36 percent civilians and 20 percent are not yet conclusively classified, almost all of whom are males of fighting age.

151. In this context it is important to note the accuracy of Israel's assessment of the casualty count following the Gaza conflict of 2008-9. Israel's thorough investigation into the deaths in that conflict ultimately led Judge Goldstone to publicly retract key assertions of the UN Human Rights Council fact-finding mission findings known as the Goldstone report. The report made extremely serious allegations against Israel, principally that it targeted civilians intentionally, as Hamas does. These entirely untrue claims, Judge Goldstone later admitted, were made on incomplete evidence, in particular inflated Palestinian and NGO figures for civilian casualties. Israel always maintained that the majority of casualties in the conflict were combatants, and mounted a meticulous investigation. In 2011, Judge Goldstone retracted his thoroughly discredited claims against Israel publicly, noting that Hamas had ultimately confirmed the validity of Israel's figures.⁷⁰ This experience strongly suggests that a more accurate picture of casualty figures will be aided by the ongoing thorough analysis Israel is conducting.

"Given the importance of reconstruction to stability, the HLMG took a keen interest in understanding this aspect of the conflict and its attendant challenges."

5.2 Post-Conflict Reconstruction

152. The 2014 Gaza Conflict was fought largely in a dense urban environment. Consequently, the fighting caused extensive destruction, in particular in the Hamas stronghold of Shejaiya, where civilian locations were widely used to shelter the majority of Hamas's warfighting infrastructure. As a result, Gaza is in urgent need of reconstruction, with the effectiveness of this effort potentially affecting the future regional political dynamic. Since Hamas's takeover, Israel has

maintained an explicit policy of distinction between the Hamas government and the civilian population of Gaza, seeking to minimise harm to the latter, while defending its own citizens from the former. As such, it has sought to engage in a multilateral post-conflict effort to ease the plight of the population of Gaza without enabling Hamas's violence. Given the importance of reconstruction to stability, the HLMG took a keen interest in understanding this aspect of the conflict and its attendant challenges.

The Gaza Reconstruction Mechanism (GRM)

153. In September 2014, in the immediate aftermath of the conflict, the UN established the Gaza Reconstruction Mechanism (GRM), designed to facilitate rebuilding in Gaza in the context of the ongoing serious political and security challenges present in the region. The GRM was founded on an agreement between the UN, Israel and the Palestinian Authority (PA). Hamas is not part of the mechanism due to its status as a terrorist organisation but informally acceded to its creation.
154. The GRM consists of four streams, divided between the Palestinian Authority and the United Nations: the former has responsibility for the repair of damaged properties and large-scale public and private works tracks, while the latter leads UN-led projects and a new Residential Stream dealing with housing that had been destroyed entirely. An important component of the mechanism is the Materials Monitoring Unit (MMU), which consists of a multi-disciplinary team located in Gaza tasked with monitoring the supply chain of 'dual use' materials - materials which are legitimate as a requirement for civil reconstruction but could be diverted for the purpose of rebuilding infrastructure aimed at conducting military and terrorist operations.
155. Financial support for the GRM comes from donor nations, convened by the governments of Egypt and Norway at a conference in Cairo for this explicit purpose in October 2014. Headline figures in the media focused on around \$5.4 billion of pledges, though the accounting to reach that figure is questionable, both in terms of its allocation to Gaza and it being newly pledged money, rather than reassigned funds.⁷¹
156. Israel partakes in the GRM through the Coordination of Government Activities in the Territories Unit (COGAT), which works with the PA and the UN in a joint steering committee according to agreed principles, rules and control procedures. Under the committee there are integration teams, which oversee

projects and donations, carry out damage assessments, organise movements and crossings and monitor progress. Israel has taken substantial measures to enable the construction process, despite valid security concerns in light of previous experience - Hamas has diverted tens of millions of dollars worth of aid material to build the cross-border infiltration tunnels it used to attack Israel during the 2014 Gaza Conflict. Since the conflict, Israel has facilitated the passage of over 1.2 million tons of constructions materials. To achieve this, it has upgraded border crossings between Israel and Gaza to increase their capacity, which now stands at 800 truckloads a day. Israel has allocated an additional \$10 million to expand the crossings further and facilitate 1000 truckloads a day.⁷² It has facilitated the movement of personnel relevant to the effort, both into Gaza and between Gaza and the West Bank and worked to enable the housing, public and infrastructure projects that the PA and public and private international donors oversee.

Obstacles to the GRM's Success

157. While the restrictions necessitated by the legitimate security needs of the State of Israel are undoubtedly at times a factor in affecting reconstruction, Israel has worked to enable the necessary mechanisms to function smoothly, including the delivery of dual-use materials that have to be vetted in advance. The process nevertheless faces serious obstacles in implementation, which are primarily financial and political in nature.
158. Financially, a huge gap exists between donor pledges and actual funds delivered. Of the \$3.5 billion actually allocated to Gaza following the headline figure of \$5.4 billion that emerged from the October 2014 Cairo conference on reconstruction, donors had given only 27.5 percent of the funds or \$967 million as of May 2015. Worse, only 35 percent of the aid pledged - or \$1.2 billion - was actually new money, with the majority coming from reallocated donations and emergency funding already pledged during the active hostilities. Of this new aid, just 13.5 percent - or \$165 million - has actually been delivered. Qatar pledged \$1 billion for Gaza and has delivered 10 percent; Saudi Arabia has also given only 10 percent of its promised \$500 million. Turkey and Kuwait both pledged \$200 million: the former has produced only \$520,000, and the latter none. Other top-pledge donor entities include the United Arab Emirates at \$200 million, which the World Bank said no data was available for; the United States' \$277 million pledge, which is 84 percent delivered, and the European Union's \$348 million, of which 40 percent has so far been delivered.

159. It is not difficult to see that, given the scale of the task, such a vast funding shortfall has had a significant impact on the reconstruction effort. Of the reasons for the failure to deliver aid pledged, donor fatigue is coupled to wariness of the possibility of renewed conflict and of Hamas, which has shown itself willing to pursue its objectives at great cost to the civilian infrastructure of Gaza repeatedly. Donors had explicitly sought to channel funding through the Palestinian Authority's mechanisms, not least by way of strengthening the PA. Egypt in particular is unlikely to accept any political solution that strengthens Hamas.
160. As such, even the moneys available are facing obstacles to their disbursement on account of serious internal Palestinian political challenges that are affecting reconstruction severely. Hamas appears intent on preventing the PA from gaining a foothold in Gaza through the reconstruction process, obstructing PA activity in the territory, with a particular flashpoint being control over the Gaza side of the crossings with Israel and Egypt. The political crisis between the two Palestinian factions is so severe that the unity government they formed in 2014 has nearly collapsed over the issue once already.
161. The diversion of reconstruction aid for military and terrorist purposes by Hamas remains a key concern impeding the pace of rebuilding Gaza, with grave implications for stability in the region. There is evidence that Hamas is engaged in a significant project aimed at rearming and regenerating its offensive capabilities.
162. While the relationship between Hamas and Iran has been rehabilitated to an extent, it has not been fully restored. Qatar had stepped in to partly fill the void, with its financial aid helping ultimately to rejuvenate Hamas military compounds and tunnels. Prior to the 2014 Gaza Conflict, Hamas took advantage of a sustained period of calm to enhance its military capabilities. It developed an improved infrastructure to produce rockets and an extensive network of tunnels, both of which it deployed during the war. Likewise, since last August's ceasefire, Hamas has exploited the relative period of calm to undertake reconstruction efforts, focusing on rebuilding the infiltration tunnels destroyed by Israel during the conflict and increasing its domestic rocket production.
163. Since the end of hostilities, Hamas has reportedly boosted investment in its tunnelling effort significantly. On June 29, 2015 Hamas announced it unveiled a new 3.5 kilometre tunnel, which was constructed in preparation for the next round of violence with Israel.⁷³ While it is unclear if the footage indeed depicts a new tunnel or was filmed prior to the conflict, Hamas military commanders are widely on record in Hamas media, announcing that the organisation has resumed digging offensive tunnels towards Israel since the cessation of hostilities. Israel also shared material with the HLMG that noted a renewed effort at significantly increased capacity of the production of revetments, necessary in the construction of the tunnels. Israeli Defence Intelligence noted that a number of factories known to them had begun producing these, reverting to the inferior wooden type in part, and reactivating sites bombed during Operation Protective Edge. They further noted that this activity included a sharp rise in the production of broad concrete revetments, which, according to Israeli intelligence analysts, are likely to be used to harden underground 'living spaces'. This is commensurate with an insight they ascribe to Hamas in recognising a tactical necessity to facilitate improved long-stay capabilities in their underground facilities following lessons learned during Operation Protective Edge.
164. According to IDF estimates, the cost of each attack tunnel is approximately \$3 million, some of which is offset by the diversion of dual-use materials intended for reconstruction. This is supplemented by a significantly expanded smuggling effort aimed at procuring materials for the building of tunnels and manufacture of weapons in Gaza. Since January 2015 Israel has intercepted over 100 attempts to smuggle banned goods into Gaza,



A picture of electrodes necessary for rocket production found hidden between slabs of marble destined for Gaza (Source: Israel Ministry of Defense)

intended for terror organisations.⁷⁴ Such activity is impossible to reconcile with the appeal for donor funds, and is a grave threat to the economic well being of civilians in Gaza.

165. Hamas has also intensified its rocket and mortar production efforts since the end of the war, using in their manufacture the steel and other domestic commercial materials which it diverts from humanitarian shipments. Hamas military wing leader Marwan Issa has stated publicly that the organisation continues to manufacture rockets and is trying to obtain more weapons and ammunition.⁷⁵ Hamas has engaged in a series of rocket launch and mortar fire tests since the war ended. Primarily for short-range weapons and directed into the Mediterranean, these rocket launching trials are becoming increasingly frequent and are a grave cause for concern.
166. Hamas is also preparing for an anticipated renewal of hostilities, by erecting fortifications and enhancing existing ones near the border with Israel. Armed Hamas units have been increasing their visibility on the border with Israel, and its units have been observed conducting infantry and urban warfare exercises. Further, Hamas has initiated a significant new recruitment program to replenish its ranks in the wake of last summer's fighting. A recent propaganda video features what appears to be new tunnel infrastructure, as well as training exercises, including simulated assaults on Israeli positions. Utilisation of an ambulance co-opted for these propaganda purposes is clearly visible in one of the exercises.⁷⁶

6

MILITARY AND JUDICIAL STRUCTURES AND PROCESSES OF THE STATE OF ISRAEL

6.1 The IDF and the Rule of Law

167. An assessment of the appropriate standards of conduct in any military must necessarily hinge on strict adherence to the laws and practices governing the appropriate conduct of armed hostilities. As such, the HLMG took particular interest in Israel's military and civil structures concerned with the effective application and judicial oversight of the Law of Armed Conflict (LOAC). The importance of an accurate understanding of this aspect of Israel's conduct is heightened by the allegations raised against Israel in international forums and the internationalisation and transformation into a full-spectrum legal and diplomatic effort of the Palestinian approach to the conflict with Israel. Such an effort, if successful on the basis of inaccurate assertions, could have grave implications for our own countries' and NATO operations in future campaigns.
168. The HLMG was afforded unprecedented access to Israel's military judicial system, exploring the issues in depth in direct discussions with the Military Advocate General (MAG) Major General Dany Efrony and other members of the MAG Corps,

discussing relevant aspects with other members of the military from the Deputy Chief of Staff to the Brigade Commander level. Considerations regarding LOAC formed a major, integral part of our fact-finding, featuring as a constant aspect for consideration in our discussions. We are under no doubt that Israel has robust processes designed to ensure strict adherence to LOAC in place, which are on a par with international democratic standards and would satisfy the requirements of our own countries. In a number of specific scenarios we considered, Israeli practice significantly exceeds international democratic standards for LOAC.

169. Overall, our experience was one of observing and examining a military that displays utmost respect for the Law of Armed Conflict, going to great effort to preserve these rules, often at significant cost to its own tactical advantage and in some cases to its soldiers' lives. The Law of Armed Conflict (and mission-specific Rules of Engagement), attendant investigatory mechanisms and the ethos and education upon which effective adherence to these rules rests are ingrained throughout the IDF, overseen by an appropriate, independent mechanism with appropriate checks and balances and oversight by the civilian justice system.

HLMG members in conversation with the Military Advocate General of the IDF



The Military Justice System and the Military Advocate General (MAG)

170. Israel's military justice system consists of three major components: The Military Advocate General's Corps (MAG Corps), the Military Police Criminal Investigation Division (MPCID), and the Military Courts.
171. At the head of the MAG Corps sits the Military Advocate General (MAG). Appointed by a civilian authority, the Minister of Defence, the MAG serves on the IDF General Staff but is subject to no authority other than the law, guided as appropriate by Israel's Attorney General. All subordinate military lawyers serving as officers under the MAG enjoy the same professional independence and are subordinate only to MAG Corps commanders who report to the MAG directly. The insulation of these military legal officers from commanders outside of the MAG chain of command is a fundamental tenet of the system, designed to assure no improper influence is exerted on the legal process within the IDF.
172. Though the MAG retains separate enforcement and advisory responsibilities himself, in line with the structure in the Attorney General of the State of Israel's office, two units of specialist lawyers exist within the MAG Corps. These are designed to separate the MAG Corps' law enforcement function from its legal advisory role.
173. The MAG Corps officers responsible for enforcement - principally the Chief Military Prosecutor and subordinate military prosecutors - exist in a discrete unit and are therefore prevented from offering legal advice to military functionaries whom they could potentially be prosecuting at a later stage. Therein, the MAG oversees a department within its law enforcement unit - the Office of the Military Advocate for Operational Affairs - which is responsible for all investigations and prosecutions of alleged misconduct by IDF soldiers occurring in the context of operational activity. The Office of the Military Advocate for Operational Affairs oversees all cases of alleged non-compliance with IDF rules and regulations and, furthermore, has a specific mandate to prosecute alleged violations of LOAC, for which its prosecutors receive additional training.
174. The main IDF entity responsible for investigating allegations of criminal conduct is the Military Police Criminal Investigation Division (MPCID). As with the MAG, the MPCID is subordinate only to commanders within the separate chain of command in the military justice system and has complete professional independence. MPCID investigators receive extensive training, with those assigned to investigate violations of LOAC required to undergo additional instruction in international law, the reconstruction of battlefield situations, and the acquisition of evidence from witnesses and potential victims residing in territory outside the State of Israel. Investigators handling complaints involving Palestinians are further automatically assigned Arab staff with requisite professional Arabic language skills.
175. The third plank in Israel's military justice system are the Military Courts. Headed by the President of the Military Court of Appeals, of Major General rank, these are independent of both the MAG as well as main IDF chain of command. An independent commission appoints professional military judges, and regular IDF officers with no connection to cases under their consideration serve on the Military Courts. The Military Court system includes regional courts of first instance in addition to a Military Court of Appeals. Each bench of the Military Courts is mandated to include at minimum one professional military judge, with a majority being necessary on any appellate panel. Military judges are not subject to any authority other than the law, as mandated by relevant legal statutes of the State of Israel. Military Courts further apply the same rules of evidence as used in civilian criminal proceedings in most cases. Proceedings are usually also open to the public, unless prevented by concerns related to national security. Additionally, they are covered by the media and in many cases the judgements handed down by the Military Courts are published.

Civilian Oversight of the Military Justice System

176. In line with the values of a democracy committed to the rule of law, the State of Israel's military justice system is subject to civilian oversight through three principal avenues: Review by the Attorney General, review by the Supreme Court and review by an Independent Public Commission of Inquiry.
177. The Attorney General of Israel is the principal point of civilian supervision over the military justice system. As the head of the public prosecution system and chief legal adviser to the government of Israel, the professional directives of the Attorney General are binding on all state authorities, including the IDF. Any decision by the MAG which the Attorney General considers to be of special public interest can be reviewed by her or him. Additionally, individual complainants, NGOs and other relevant entities can challenge any MAG decision on criminal investigations or indictments before the Attorney General.

178. The ultimate source of civilian oversight of Israel's military justice system is the Supreme Court of Israel, an institution that is widely respected and recognised internationally for its jurisprudence, as well as for its independence in enforcing international law. Its landmark rulings related to the balancing of security and the protection of individuals have been cited favourably by foreign courts and parliaments and are held in high regard by jurists and legal experts. Sitting as the High Court of Justice (HCJ), Israel's highest civilian court is a forum of recourse to challenge decisions taken by the MAG and Attorney General, including on criminal investigations, indictments, charges and matters related to appeals in the Military Courts. Further, under Israel's Military Justice Law, the Supreme Court may hear direct appeals related to a judgement of the Military Court of Appeals where matters of significant legal importance, intricacy or innovation are at stake. In addition, the scope of the Court's review extends more broadly, with the jurisprudence and practice of the HCJ enabling any interested party or individual, including NGOs and non-citizens who are affected by the actions of a government authority, to petition the HCJ as a court of first instance on any claim that a government or IDF action is unlawful or substantially unreasonable.
179. Finally, in line with democratic practice elsewhere the government of the State of Israel will on occasion establish an independent public commission of inquiry where a substantial public interest is deemed to exist, warranting a detailed examination of a matter of legal or public policy. Most prominent in recent history has been the Turkel commission, established following allegations of misconduct against the IDF during an operation to interdict vessels attempting to violate a naval blockade in May 2010. Charged with assessing the legality of IDF actions during the incident and evaluating Israel's procedures for examining and investigating alleged violations of the Law of Armed Conflict, the commission was headed by a retired Supreme Court Justice and included distinguished international observers with requisite experience who concurred with its broad conclusion that, in terms of the principles of independence, impartiality, effectiveness, thoroughness, promptness and transparency, the State of Israel conducts investigations that are comparable, favourably on some parameters, to the systems of Australia, Canada, Germany, the Netherlands, the United Kingdom and the United States.
- Assuring LOAC Integration in IDF Conduct*
180. Respect for and adherence to LOAC as a fundamental value was evident throughout our meetings with political and military leaders, as well as throughout all ranks of the IDF with whom the HLMG held discussions. It is abundantly obvious that the State of Israel takes these principles extremely seriously, founded on matters of principle and ethos but additionally understood to be a key strategic necessity. Mistakes are made here as elsewhere and warfighting is an inherently complex endeavour with grave risks. But no mistake, however serious, can detract from the deep anchor that the Law of Armed Conflict forms for IDF conduct. This was evident not just in principles and procedures described herein but rather all the more so in the extensive discussions with military personnel the HLMG held.
181. This fundamental integration of respect for and adherence to LOAC in IDF conduct is assured by two separate streams of activity, the content and in some cases delivery of which is overseen by the MAG.
182. The first is the general effort to instill the details of LOAC, attendant Rules of Engagement (ROEs) and resultant operational realities throughout the IDF. Instruction in LOAC is a linchpin of IDF training, from basic training to the most senior level and ranges from lectures by military lawyers on the rules of international law to case-study analyses and practical simulations. Advanced training in LOAC is an essential part of operational courses for IDF commanders at all levels, while IDF personnel with particular responsibilities, such as target planning or officers responsible for humanitarian affairs for example, receive further specialist instruction on LOAC. Training in LOAC closely tracks the progression through the ranks of officers and their increasing command responsibilities so as to ensure the scope of their instruction is commensurate with their operational needs. Where relevant, this is further supplemented by courses taught by external experts.
183. The IDF additionally directly integrates adherence to LOAC into its combat training. Officers are issued relevant training manuals for different theatres and circumstances, and troops train regularly at the IDF's Urban Warfare Training Centre, a unique installation preparing soldiers for the specific challenges the modern urban battlefield presents. LOAC plays a crucial role in this training, as evidenced by the programme we were briefed on in relation to the



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

ground operation of Operation Protective Edge, for which the IDF operated training simulators with exercises designed specifically to train for urban combat involving the presence of civilians and operations in the vicinity of sensitive sites.

184. The second stream of ensuring IDF adherence to LOAC is the tight integration of the MAG Corps into all aspects of IDF activity and specific operations. This is done principally through the MAG's International Law Department, which provides binding advice to all levels of command in the IDF. It consists of specialists in LOAC with expertise in a range of attendant issues such as targeting, weaponry and detention. The Head of the MAG's International Law Department is further in charge of a mechanism designated as the Operational Law Apparatus which applies during active hostilities. As part of this, the MAG operation is supplemented by a significant number of additional LOAC experts on active or reserve duty who advise different levels of command, including the General Staff Command, and are assigned as advisers to pre-determined units. This includes deployment at the Regional Command and Divisional levels, where they advise on the legality of decisions concerning ROEs, targeting, weaponry, detainee treatment and humanitarian efforts. Where Commanders do not have legal advisers specifically as part of their command, they are able to request legal advice from representatives

of the Operational Law Apparatus at any time, through the MAG Corps situation room which operates 24/7, responding to requests for advice from any rank or unit in the IDF as necessary.

185. Commanders additionally of course rely on their legal training and education at all times, coupled to any applicable IDF orders, regulations or directives. Such binding directives implementing applicable rules of the Law of Armed Conflict are issued regularly, formulated in coordination with military lawyers and addressing specific scenarios, such as for example the delivery of warnings before an attack. In that specific case, the specific conditions listed in the directive would establish when warnings must be given, when warnings are considered sufficiently effective under the LOAC, and how commanders must consider related legal obligations. For Operation Protective Edge, the IDF's primary operational order made explicit reference to LOAC compliance, strictly limiting attacks to military objectives, including dual-use sites, mandating strict respect for the rules of distinction and proportionality, as well as compliance with other rules, including the protection and treatment of civilians and the delivery of warnings. The IDF further printed pocketbooks with legal guidelines around targeting, detention and humanitarian welfare for distribution to commanders before the ground operation phase of Operation Protective Edge.

- Top Secret -

Target ID: [REDACTED]

<p style="text-align: center; color: red; font-weight: bold;">Intelligence</p> <p>Type of Target: Arms cache in the house of a senior military commander.</p> <p>Function: The target is an arms cache in the house of a Palestinian Islamic Jihad's Khan Younis Battalion commander. The house is both an arms cache, and an operational planning site for Palestinian Islamic Jihad operatives for the coordination of impending attacks.</p> <p>Location: Abasan Al-Kabir, coordinates: [REDACTED]</p> <p>Affiliation: Palestinian Islamic Jihad</p> <p>Presence at target: The military commander, his family, and Palestinian Islamic Jihad operatives</p> <p>Description: The target is part of a residential compound, 23*23m in size. The target is a single-storey concrete structure measuring 13*13m in size ('Element 1'). On the roof of the structure is located: [REDACTED], a concrete structure measuring 4*4m in size, 2 water tanks, 2 solar panels, and the frame for erecting a small shack.</p> <p>Weaponry located at the target: Kalashnikovs, steel pipes [REDACTED] (materials for the manufacture of projectiles), and Grad missiles.</p> <p>Sensitive sites: There are no sensitive sites within a 100m radius of the target.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p style="font-size: small;">Intelligence by [REDACTED] Aerial footage taken on [REDACTED] Intelligence confirmed on [REDACTED]</p>	<p style="text-align: center; color: red; font-weight: bold;">Operational Directives</p> <p>[REDACTED]</p> <p>Objective: Strike by fighter jet - destruction of the weapons store at the target (Element '1'), whilst avoiding harm to civilians.</p> <p>[REDACTED]</p> <p>Conditions: Real-time visual surveillance, Night-time strike, individualized effective advance warning (including "roof knocking").</p> <p><input type="checkbox"/> Approved <input checked="" type="checkbox"/> Conditional <input type="checkbox"/> Not Approved</p>	<p style="text-align: center; color: red; font-weight: bold;">Legal Review</p> <p>Status: Conditional</p> <p>Military Objective: Arms cache and operational meeting place in a residential building</p> <p>Conditions: the provision of an effective advance warning.</p> <p>Recommendations: Real-time visual surveillance</p> <p>Reviewed by [REDACTED] on [REDACTED]</p>																								
<p style="text-align: center; color: red; font-weight: bold;">Operational Planning</p> <table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <thead> <tr> <th></th> <th>Option 1</th> <th>Option 2</th> <th>Option 3</th> </tr> </thead> <tbody> <tr> <td>Strike to be carried out by:</td> <td>Fighter jet</td> <td></td> <td></td> </tr> <tr> <td>Elements targeted:</td> <td>Element 1</td> <td></td> <td></td> </tr> <tr> <td>Munitions:</td> <td>[REDACTED]</td> <td></td> <td></td> </tr> <tr> <td>Number of bombs:</td> <td>One.</td> <td></td> <td></td> </tr> <tr> <td>Projected Outcome:</td> <td>Objective fully achieved.</td> <td></td> <td></td> </tr> </tbody> </table>			Option 1	Option 2	Option 3	Strike to be carried out by:	Fighter jet			Elements targeted:	Element 1			Munitions:	[REDACTED]			Number of bombs:	One.			Projected Outcome:	Objective fully achieved.			<p style="text-align: center; color: red; font-weight: bold;">Conditions</p> <p><input checked="" type="checkbox"/> Real-time visual surv.</p> <p><input checked="" type="checkbox"/> Nighttime</p> <p><input checked="" type="checkbox"/> Indiv. warning to civilians in target</p> <p><input type="checkbox"/> Indiv. warning to civit. in surrounding structures</p> <p><input checked="" type="checkbox"/> Legal condons</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
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Strike to be carried out by:	Fighter jet																									
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Munitions:	[REDACTED]																									
Number of bombs:	One.																									
Projected Outcome:	Objective fully achieved.																									

- Top Secret -

Target ID: [REDACTED]



A - One/Two
 B - Three/Four - 100 FT/300
 C - 500 FT - 1000 FT - 1500 FT - 2000 FT - 2500 FT - 3000 FT - 3500 FT - 4000 FT - 4500 FT - 5000 FT - 5500 FT - 6000 FT - 6500 FT - 7000 FT - 7500 FT - 8000 FT - 8500 FT - 9000 FT - 9500 FT - 10000 FT



Grid Ref: 67.96.43

Distances from Target

A - 520	D - 770
B - 310	E - 720
C - 880	F - 430
G - 410	H - 100
I - 580	J - 400
K - 580	L - 540
M - 720	N - 810
O - 750	P - 820
Q - 750	R - 310
S - 750	T - 300
U - 740	V - 310
W - 710	X - 250
Y - 710	Z - 250
AA - 710	AB - 250

An example of an IDF Target Card which contains relevant intelligence, including imagery, an assessment of the military value of the target, options regarding operational plans as well as a binding legal opinion regarding the intended attack's compliance with LOAC (Source: IDF)

IDF Operational Integration of Processes Ensuring LOAC Compliance

186. A comprehensive protocol exists in the IDF to assert LOAC compliance during active hostilities, no matter how complex the battlefield. This was clearly evidenced during our fact-finding. In particular the HLMG was able to consider in detail IDF targeting practices and those as related to operating around sensitive sites, two of the most controversial aspects of Operation Protective Edge.
187. Where the IDF prepares pre-planned targets for attack against military objectives, it follows a multi-stage process for approval in order to ensure LOAC compliance. The procedure consists of the collection of intelligence about the potential target in order to ascertain that it constitutes a valid military objective and that the conditions for proportionality are met, as well as to assess any civilians, infrastructure or sensitive sites that may be affected by the attack. Commanders then determine objectives in regard to the target on the basis of this information. Here conditions can include the extent of destruction warranted, the necessity of enemy presence and similar considerations. Separately, operational planners may also advise on options for a specific attack, geared towards the further minimisation of collateral damage for example. Officers then examine all parameters and make a professional assessment of the target. This includes a binding assessment by a legal adviser about the legality of the attack and any necessary stipulations. Commanders may add additional conditions beyond legal considerations; and the input provided into the decision by the various different organisations, such as intelligence or operational planning, is updated and re-evaluated on a timely basis in advance of any attack. A senior commander will ultimately review the information before an attack and approve it, if necessary subject to certain conditions; suspend action pending further input regarding parameters that are insufficiently clear; or decide not to attack the target at that time.
188. The process of ensuring LOAC compliance of IDF attacks is in most cases aided by what the IDF refers to as a Target Card, a standardised document which centralises all the above information into one place so that the commander may make an informed decision. The Target Card contains relevant intelligence, including imagery, an assessment of the military value of the target, options regarding operational plans as well as a binding legal opinion regarding the intended attack's compliance with LOAC.
189. Some of the members of the HLMG expressed explicit concerns that these procedures are excessive, and that they are not necessary, particularly when the IDF is educated in the application of the LOAC throughout their training. They expressed concern in particular that these elaborate procedures may establish an unwarranted precedent that yields significant advantage to an adversary that intentionally violates LOAC to achieve tactical, operational, and strategic advantage.
190. Where the acute realities and necessities of combat prevent real-time legal input and do not allow for such a deliberative targeting process, for example during intense air and ground combat operations or other specific situations where targets are highly time sensitive, commanders are instructed to be diligently reliant on their training, specific relevant directives and other relevant factors to ensure their compliance with all aspects of LOAC. In relation to so-called sensitive sites - that is, objects that are considered to have special protection from attack under LOAC or warrant special consideration on account of policy decisions, such as for example, hospitals, schools, religious sites, large food factories, power stations and UN facilities - detailed regulations exist in the IDF to ensure their appropriate safeguarding. Notice of the location of sensitive sites is distributed to all levels of command, and updated on a real-time basis by a specific officer tasked with ensuring the real-time data is up to date. This data is widely accessible, including to relevant commanders in the field. There are limited circumstances in which sensitive sites may be damaged, either on account of an attack in their proximity, or directly in circumstances where they are legitimate military targets on account of their use for military purposes thus invalidating their protected status. These instances are governed by detailed IDF regulations that mandate precautionary measures and require attacks to be granted specific approval by a high ranking officer. Depending on the type of target and attack, this approval can go all the way to the Chief of Staff and, in certain extremely sensitive cases, to the Minister of Defence and even the Prime Minister.

6.2 Investigations Related to Operation Protective Edge

191. In line with the extensive mechanisms integrating adherence to the Law of Armed Conflict (LOAC) into IDF operations as standard, Israel instigated a major process of investigation following Operation Protective Edge - some aspects of which were activated already during active hostilities. The safeguards as related to independence, ultimate civilian judicial oversight and comprehensiveness built into the process are on par with the standards set by our own and other democratic countries in terms of investigatory mechanisms that are deemed to be in adherence with international law. Investigations of alleged wrongdoing by the IDF involve a multi-stage process directed by the Military Advocate General (MAG) and incorporate requisite civilian oversight by the Attorney General of Israel and appropriate recourse for appeal, including where necessary judicial review by the Supreme Court of Israel. A wide range of complainants - from IDF personnel to the UN, NGOs, media organisations and private individuals - are able to partake in the process and in some cases have been actively encouraged to do so by the IDF Military Advocate for Operational Affairs. In addition, the MAG Corps actively works to identify incidents warranting examination or investigation from public sources, such as media reports and NGO reports.
192. Complaints and relevant information suggesting unlawful conduct of IDF forces undergo an initial examination, in order to determine the credibility and concrete nature of the allegation. Sufficiently credible and concrete allegations are referred to the MAG, who decides whether a criminal investigation is warranted without further examination or whether a factual examination is required by the Fact Finding Assessment Mechanism (see below) to ascertain relevant detail prior to such a decision.

The Fact Finding Assessment (FFA) Mechanism

193. As part of Israel's ongoing effort to improve best judicial practice following major incidents and allegations of misconduct, an independent commission headed by former Israeli Supreme Court Justice Jacob Turkel and observed by international legal experts (the Turkel Commission) was set up in 2010. The commission was tasked, among other things,

with a root and branch assessment of Israel's mechanisms for examining and investigating complaints and claims regarding alleged violations of the Law of Armed Conflict. Though the commission concluded that Israel's system compared favourably to other democratic nations', it made a number of recommendations to further improve attendant IDF mechanisms. A key recommendation, designed to ensure Israel facilitated as prompt and effective examinations of allegations as possible, was that the IDF's reliance on field investigations to ascertain the factual circumstances and validity of complaints should be supplemented by a permanent Fact Finding Assessment Mechanism (FFA) in the context of deciding whether to order a criminal investigation.

194. Implemented by the IDF Chief of General Staff in July 2014, during active hostilities, the FFA Mechanism is tasked with examining exceptional incidents - including attacks resulting in significant, unanticipated civilian casualties - in order to assist the MAG's decision whether to open a criminal investigation. Irrespective of decisions regarding individual cases, the FFA Mechanism further helps inform the IDF's "lessons-learned" process so that steps may be considered to minimise the risk of such incidents in the future.
195. The FFA Mechanism is chaired by a Major General and includes several high-ranking officers on active and reserve duty. None of these are to be drawn from personnel involved in the operation being examined. Their sole purpose is that of collecting information and delivering it to the MAG. In addition to incorporating additional teams of officers with operational expertise in relevant military areas, legal qualifications, and professional investigative experience, each team is provided with ongoing legal advice from officers in the MAG Corps. The FFA Mechanism further includes a broad range of powers to seek and obtain information from within and outside the IDF. All IDF personnel are required by law to cooperate with the FFA Mechanism. The MAG may also request supplementary examinations and materials from the FFA Mechanism. Once a decision has been reached by the MAG, military prosecutors may file an indictment in the Military Courts if the evidence brought to light through the FFA Mechanism is sufficient.

Investigations Related to Operation Protective Edge

196. The IDF MAG Corps is engaged in an extensive process of investigation of incidents related to the conduct of Operation Protective Edge, including a commendable - potentially unprecedented - effort to make publicly available as quickly as possible information about its investigations, subject to safeguards relating to the integrity of criminal proceedings, confidentiality laws and the protection of classified information. These considerations aside, it has so far published four extensive updates on its proceedings.
197. At the time of writing, the fourth update on the MAG investigation into Operation Protective Edge noted that approximately 190 allegations and incidents had been referred by the MAG for examination by the FFA Mechanism, 105 of which had been examined to completion pending a decision by the MAG. Seven of these were then referred for criminal investigations, several of which are still ongoing. Additionally, 15 criminal investigations were opened immediately by the MAG without the need for prior examination by the FFA Mechanism on the basis of allegations that were concrete and substantial enough to warrant a reasonable suspicion of criminal misconduct.
198. Criminal investigations are carried out by a special investigation team situated in the Military Police's Criminal Investigation Division (MPCID), which collects evidence from IDF soldiers and commanders, as well as from Palestinians and other relevant observers who were witnesses to some of the incidents in question. Of these investigations so far, two have been closed without criminal proceedings, three IDF soldiers have been indicted and a number of cases are ongoing or under review. An additional 19 examinations of incidents have been closed by the MAG without criminal proceedings following review of FFA Mechanism materials. In general such decisions are based on an assessment that the circumstances of the incident did not give rise to reasonable grounds for suspicion of criminal behavior. However, in some instances even where cases were closed, the MAG recommended a review of operational procedures to take steps in an effort to ensure a repeat of the scenario in question would be avoided. There were a small number of cases where the MAG established that no involvement of IDF forces was identified with regard to the incidents, as well as a number that were referred back to the FFA Mechanism for further examination. Many additional incidents remain in various stages of examination by the FFA Mechanism, the conclusions of which will be submitted to the MAG in due course. Where decisions have been made, complainants are entitled to challenge these in the first instance before the MAG. The MAG's decision following such a review can then be challenged further before Israel's Attorney General, in a procedure formalised through a directive issued by the Attorney General.⁷⁷ Further, cases can be reopened, where new relevant material emerges. In the last instance, where relevant the entire process and resultant decisions in an investigation are subject to judicial review by the Supreme Court of Israel.
199. It is evident to the HLMG that the IDF investigative mechanisms and procedures are sufficiently independent, subject to recourse in the civilian legal system and organised according to valid principles which we recognise from our own and other democratic systems of judicial oversight of military operations. Furthermore, it is also clear that the IDF takes this duty exceptionally seriously and dedicates significant resources to ensure a process of investigation of the highest professional standard. There are myriad examples of the MAG Corps and attendant entities taking steps specifically designed to ensure the effectiveness of these investigations, such as for example the special team established within the MPCID, staffed by investigators with a high degree of experience and specific training with respect to LOAC and operational affairs as relevant to Operation Protective Edge, and assigned exclusively to investigations arising from that conflict. Such a process naturally takes time. New complaints and information requiring consideration are submitted to the MAG on an ongoing basis, requiring consideration. Ongoing investigations are complex, given the challenging nature of investigating the subject matter at hand and further difficulties arise in many cases in acquiring testimony from relevant third parties. As such, Israel's decision to be as public as possible within appropriate constraints about its investigation is welcome. It is evident that the IDF and the Government of Israel are not only operating under a system that meets, and in some cases exceeds, best practice internationally, but are further engaged in a perpetual effort to enhance the effectiveness of the mechanisms relevant to such investigations.

200. Israel's effective investigative mechanisms stand in stark contrast to a total absence of any effort or investigative system on the part of Hamas and the Palestinian Authority. Hamas's forces have committed grave violations of LOAC in every conflict they have fought with Israel, and have done so with impunity. The serious abuses of LOAC by Hamas during the 2014 Gaza Conflict follow a familiar pattern, echoing previous abuses committed by Hamas and Palestinian armed groups in the 2008-2009

and 2012 Gaza conflicts, as does the failure to prevent or investigate these abuses. As Amnesty International noted in a recent report, "neither the Palestinian government in Ramallah nor the Hamas authorities in Gaza have opened any investigations into the serious abuses under international humanitarian law and international human rights law committed by Hamas forces and Palestinian armed groups" during the 2014 Gaza Conflict.⁷⁸



CONCLUSIONS AND IMPLICATIONS

Conclusions

201. The High Level Military Group is comprised of top-level practitioners from democratic nations whose expertise covers the entire gamut of the conduct of warfare, its strategic, tactical, operational and legal frameworks, as well as the broader attendant debates about conflict in the 21st Century. Between June and August 2015, over the course of two fact-finding trips and four additional research trips, HLMG members and staff were granted an unprecedented level of access by Israel to assess every aspect of its conduct in the 2014 Gaza Conflict. HLMG members between them have commanded forces at all relevant senior levels and are thus intimately familiar with the operational and legal imperatives of every military and humanitarian duty and all battlefield scenarios relevant to the 2014 Gaza Conflict.
202. The HLMG was able to form a comprehensive professional assessment of the conduct of the parties to the 2014 Gaza Conflict on the basis of the information we sought and received from representatives of the State of Israel and the Israel Defense Forces and from a wide range of supplementary sources. The legitimate necessities of statecraft require states to classify material related to military matters for the purposes of protecting their national security. However, the HLMG was not restricted in drawing the conclusions of its professional assessment by the necessary absence of such material and, where the level of classification and context made it appropriate, was additionally privy to some classified material. The State of Israel granted us a level of access that was undoubtedly in excess of what our own countries would afford in similar circumstances. We were able to discuss any relevant topic of interest to us, freely and frankly, with all levels of the Israeli political and military echelons, from the Prime Minister and Defence Minister through senior and junior military ranks, relevant retired officials, academic and other professionals, as well as with civilians affected by the fighting.
203. The conclusions we have arrived at are our own, formed on the basis of only our professional experience and the exhaustive fact-finding we were able to engage in. The resultant report at hand constitutes our professional assessment as to whether Israel acted as a reasonable country would, within the norms and laws governing warfare, and on the basis of appropriate military conduct in the legal, operational and ultimately moral realm.
204. We are under no doubt that Israel did not want this conflict and sought actively to avoid it, pursuing avenues of de-escalation in every phase of the conflict. Israel's extensive civil defence measures played a significant part in allowing its political and military leaders the strategic space to be deliberate in expanding military operations in each phase only once avenues to avoid escalation were exhausted. Ultimately, Israel had no choice but to defend its citizens from the rocket assault launched by Hamas and other Palestinian terrorist groups and the threat posed by the cross-border assault tunnels. The responsibility for the outbreak of the 2014 Gaza Conflict must be squarely ascribed to Hamas, which sought violent confrontation in an effort to seek to improve its strategic situation.
205. We can be categorically clear that Israel's conduct in the 2014 Gaza Conflict met and in some respects exceeded the highest standards we set for our own nations' militaries. It is our view that Israel fought an exemplary campaign, adequately conceived with appropriately limited objectives, and displaying both a very high level of operational capability as well as a total commitment to the Law of Armed Conflict. It did this under challenging circumstances on a formidably complex urban battlefield. This is not to say that the IDF did not make mistakes, which are inevitable in the context of urban warfare against an enemy such as Hamas, that purposefully hides behind a civilian population. Nor does it mean that there are no individual instances of potentially unlawful conduct by individual personnel, as can be expected in all armies. Where such mistakes or violations were suspected and are confirmed however, these occurred in direct contravention of the deep-seated ethos of respect for the Law of Armed Conflict throughout the IDF that we observed, as well as of the extensive practical integration into training, planning and operations of measures to ensure lawful conduct.
206. Where the high standards of conduct that the IDF sets for its personnel have not been met, incidents are investigated, including criminal investigations, through an independent mechanism under the oversight of the democratic institutions of the State of Israel. This mechanism clearly meets the requirements of legal recourse,

judicial independence and democratic oversight that our own nations set for ourselves. All such potential incidents brought to the attention of authorities have been or continue to be under examination, investigation, and where applicable criminal proceedings through the judicial mechanisms of the IDF and the State of Israel.

207. It is further our view that in the overall conduct of its campaign, the IDF not only met its obligations under the Law of Armed Conflict, but often exceeded them, both on the battlefield and in the humanitarian relief efforts that accompanied its operation. In many cases where the fighting was concerned, this came at significant tactical cost to the IDF. It fought under restrictive Rules of Engagement and it is obvious that instances existed throughout the conflict where the IDF did not attack lawful military objectives on account of a deliberate policy of restraint. The IDF also used a number of highly innovative tactics over and above the necessities of the precautions required by the Law of Armed Conflict. It further used its formidable intelligence capability in an effort to contain its action as closely as possible to Hamas's assets and protect the civilian population amid which these were purposely and unlawfully embedded. Intelligence is not infallible however, nor is it possible to preclude completely preclude civilian casualties through precautions enacted in compliance with the Law of Armed Conflict.
208. Under the Law of Armed Conflict incidental or collateral damage when attacking a legitimate military target is accepted in line with the concept of *proportionality*, adherence to which cannot in any way be determined by considering the relative casualty figures between belligerents in a conflict, which is misleadingly and yet frequently asserted to be the case in this conflict. Despite the regrettable loss of innocent life and the damage to infrastructure in Gaza our findings are clear in that the overall outcome of the campaign in Gaza is entirely consistent with the conduct of a professional armed forces operating within the parameters of the Law of Armed Conflict when faced with a scenario such as Israel did in confronting Hamas.
209. Hamas not only flagrantly disregarded the Law of Armed Conflict as a matter of course as part of its terrorist-army hybrid strategic concept, but rather it abused the very protections afforded by the law for military advantage, putting the civilian population of Gaza at great risk. Situating its operational headquarters in Gaza's main hospital, the entire military machinery of Hamas was embedded in civilian locations, private homes and a plethora of sensitive sites such as medical facilities, mosques and schools. These included facilities run by the United Nations in multiple instances, from which it must be concluded that the relevant UN agencies are either compromised in their relationship with Hamas or have temporarily lost control of the security of their facilities. Many of Hamas's actions clearly amount to serious violations of the Law of Armed Conflict, including war crimes identified by the United Nations such as the summary execution of those it accused of collaborating with Israel. Hamas further engaged in actions that were designed to interfere with the humanitarian assistance to its own population.
210. Hamas's strategy of embedding its warfighting apparatus among the dense civilian infrastructure of Gaza was not only unlawful but presented Israel with a complex and highly challenging battlefield. All military commanders know that urban warfare is one of the most difficult and dangerous forms of combat. This is all the more so the case where an adversary operates on the model of a hybrid terrorist army, such as Hamas does. Not only does it use physical civilian infrastructure for military advantage, but it flagrantly disregards key principles of the Law of Armed Conflict such as distinction, with Hamas fighters often indistinguishable from civilians and sheltering behind innocent non-combatants. The result is a 360-degree battlefield, where danger is constant and the presence of civilians significantly complicates military effectiveness for an army seeking to afford them the protections due under the Law of Armed Conflict.
211. Hamas not only indiscriminately targeted Israeli civilians throughout the conflict with extensive rocket fire, but willfully sought to draw the IDF into a prepared stronghold amid Gaza's civilian population. It is important to note that Hamas actively sought the death of its own civilians as an advantageous reinforcement of its strategic concept aimed at the erosion of Israel's legitimacy. In this context, Hamas also conducted a highly effective information campaign which included coercion of Gaza based journalists, as well as the staging of visual scenes and other measures aimed at projecting a narrative that challenged the legitimacy of Israel's actions, including the inflation of the proportion of non-combatants in casualty figures.

212. Hamas additionally broke every single ceasefire during the conflict, whether official or humanitarian, until the final ceasefire agreement that concluded the conflict. It is evident that the factional disputes within Hamas and amid regional power blocs in the Middle East were a contributing factor to the fact that Hamas rejected a ceasefire near the start of the conflict, only to accept virtually the same terms at its end. This means the vast majority of casualties could have been avoided had Hamas heeded Israel's repeated appeals through third party intermediaries prior and during the conflict to de-escalate.
213. Finally, Hamas is making evident attempts at rearming, abusing the provisions of the reconstruction process for military purposes and rebuilding its military infrastructure in the wake of the conflict, including by its own claim its cross-border assault tunnels. Rockets have been fired from its territory since the conclusion of the 2014 Gaza Conflict, and Israel has responded by targeting Hamas's weapons production capabilities on at least one occasion. Thus the risk of renewed conflict remains.
214. No country would accept the threat against its civilian population that these rockets present to Israeli population centres. Members of the High Level Military Group, many of whom had never visited the country prior to our fact-finding visits were united in their view that Israel's efforts were entirely justified, appropriately conceived and lawfully carried out, and necessary in the defence of that country's national security.

Implications

215. The report at hand sits in the context of a larger project seeking to assess and meet the challenges of warfare waged by the militaries of democratic states against state and non-state adversaries. The High Level Military Group is of the view that the 2014 Gaza Conflict gives rise to implications for the security of our own nations that are important to consider.
216. An assessment of the lawful conduct of an army by necessity must benefit from an understanding of the operational practices, battlefield context and specific actions related to any incident. Following our professional assessment of IDF conduct, several members of the HLMG expressed strong concerns that the actions and practices of the IDF to prevent collateral damage were so extensive, over and above the requirements of the Law of Armed Conflict, that they would curtail the effectiveness of our own militaries, were they to become constraining norms of warfare enacted in customary law.
217. Without seeking to deny the necessity or discourage in any way the practice of appropriate formal and informal checks and balances on warfare in the international system, we further note that in reviewing commentary from the United Nations Human Rights Council, a number of NGOs such as Amnesty International, and sections of the media commentary on the 2014 Gaza Conflict, there are stark, unwarranted condemnations of the IDF's conduct that do not accord with our own examination. We believe that where ideological motivation can be discounted, the principal reason for this disparity is the absence of the appropriate military and legal expertise and judgement in much of this commentary. Our concern with this matter stems primarily from an appreciation that the misapplication of outcome-based assessments made on the basis of incomplete information and incorrect interpretation of the laws and norms governing warfare pose a concern to all democratic nations.
218. We note in this context our concern at the legally unjustified claims made on Israel by the United Nations Human Rights Council Commission of Inquiry Report on the 2014 Gaza Conflict regarding the necessity to disclose secret intelligence in order to justify military actions. The legitimate necessities of statecraft require states to classify material related to military matters for the purposes of protecting their national security, a principle that must be defended and upheld for our own nations' security also. Further, it is alarming to see these institutions and organisations in certain instances accord equal weight to the actions and assertions of a terrorist organisation and a democratic state. The cumulative failure of these institutions and organisations to come to a more accurate assessment of events during the 2014 Gaza Conflict, their attempt to impose unwarranted legal norms, and their failure to make important moral distinctions between the adversaries are problems not just for Israel. The normative potential of these institutions and organisations in the international community makes these concerns valid for all democratic nations whose armies are today faced with threats from adversaries with no regard for the Law of Armed Conflict.
219. The challenges presented by the absence of a clear framework for warfare where a responsible state striving to abide by the norms and rules that make up the Law of Armed Conflict finds itself involved

in a conflict with an adversary that deliberately and openly flouts the very norms and rules that bind the other party are universal. These are even more complex where the adversary are hybrid movements that share attributes of state and non-state actors and employ traditional military methods as well as terrorism. Defending democratic values and our individual nations in the current era already has and will likely continue to necessitate military action against such adversaries. When these challenges are added to the serious problem that the terrorist-army hybrid model presents on the battlefield - more so in settings where civilians are present, particularly urban warfare - Israel's experience carries important strategic, tactical and operational lessons for other democratic nations' armies battling some of the most brutal and dangerous adversaries since the Second World War.

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