FAQ: The Operation in Gaza - Factual and Legal Aspects

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Background

Q: What prompted Israel to launch Operation Cast Lead?

A: Since 2000, Hamas and other Palestinian terrorist organizations have been perpetrating terrorist attacks against Israel, including suicide bombings in the heart of Israeli cities, shooting attacks on vehicles, murders of families in their homes, and unrelenting rocket and mortar fire on Israeli towns and villages - resulting in the deaths of more than 1,100 Israelis, the wounding of thousands more, and the terrorization of millions. These terrorist attacks by Hamas on Israeli civilians are meant to disrupt negotiations between Israel and the Palestinian Authority and to prevent a peaceful resolution of the conflict in the Middle East. Hamas has sought to promote the political agenda in its Charter: to exterminate the State of Israel and establish a Muslim state over all the territory of historic "Palestine."

In June 2007, Hamas executed a violent and bloody coup d'etat in the Gaza Strip, persecuting members of the legitimate Palestinian Authority, neutralizing the Palestinian Authority's military and political power and setting up a radical Muslim entity in its place. Aided and abetted by Iran and Syria, Hamas conducted an ongoing terrorist campaign against Israel, using the Gaza Strip as the launching pad for its terrorist attacks. The frequency and intensity of rocket and mortar attacks on Israel increased dramatically - in 2008, nearly 3,000 rockets and mortars were fired at Israeli homes, schools, kindergartens, shops, clinics, factories and other civilian infrastructure. Israeli civilians were compelled to race to bomb shelters several times a day and lived in constant fear of where the next rockets would hit.

Q: How did Israel initially respond to these incessant attacks on its civilian population?

A: Israel budgeted NIS 327 million NIS (83 million U.S. dollars) to fortify existing shelters within a 4.5 kilometer range of the Gaza border. The Home Front Command also distributed informational booklets to all homes within rocket range, containing emergency contact numbers, instructions on building a "safe space" and how to act during rocket and mortar attacks in various situations. Detailed instructions were available online in Hebrew, Arabic, English, Russian, Amharic, French and Thai, and the Home Front Command also published daily instructions on the necessary precautions.

Using sophisticated equipment, the Home Front Command sounded air raid sirens whenever a rocket launch was detected but, at most, they could only provide a few seconds warning before a rocket struck, and there was no way to warn the public when a mortar was launched.
Q: What was the effect of Hamas' daily rocket attacks on Israel's civilian population?

A: During the eight years of fire, the impact of the daily barrage of rockets was debilitating. The tactics are termed "terrorism" for a reason. Studies have documented an entire generation of children traumatized by the terror of rocket strikes and the helplessness of adults to ensure their safety. Hamas increased the terror by timing its attacks to strike when children were on their way to and from school. Hamas' attacks inflicted death, injury and extensive property damage, forcing businesses to close and terrorizing tens of thousands of residents into abandoning their homes. No statistics can ever capture the full impact of these terrorist acts.

Hamas eventually extended the range of the rocket fire, and by late 2008 it reached as far as Israel's largest southern cities, including Ashkelon, Ashdod and Be'er Sheva, threatening another one million Israeli civilians - almost 15 percent of Israel's population. Had the onslaught of rocket attacks continued unabated, it was only a matter of time before a direct hit on a school, hospital or other public facility would have caused extensive loss of life.

Q: What other measures did Israel take before resorting to military action?

A: During the eight years preceding its decision to launch the Gaza operation, Israel sent dozens of letters to the Secretary General of the United Nations and the President of the Security Council, describing the Qassam rocket shelling of Israeli cities and the suicide attacks on Israeli civilians. These letters also referenced Israel's inherent right to defend itself and its citizens from such armed attacks, stating that Israel would not indefinitely tolerate a situation where Israeli citizens became de facto hostages of a terrorist organization. The letters were accompanied by numerous other diplomatic overtures - a clear indication of Israel's genuine will to exhaust all
diplomatic channels prior to the necessity of launching a military operation in Gaza to end the attacks.

Israel also joined several members of the international community in instituting economic sanctions against Hamas, while at the same time endeavoring to supply the Palestinian population with humanitarian relief.

Q: What was the result of Israel's efforts to end the rocket and terrorist attacks on its civilians through diplomatic channels?

A: Neither Israel's diplomatic overtures, nor its pleas to the international community, nor sanctions imposed by numerous countries, were able to stop the rocket attacks.

Even after Israel withdrew from the Gaza Strip in 2005, Hamas rejected coexistence, proclaiming its commitment to violence. On June 25, 2006, Palestinians terrorists from Gaza attacked an Israeli army post after crossing into Israel through an underground tunnel, killing two IDF soldiers, wounding four others and capturing the Israeli soldier Gilad Shalit. For over three years, Shalit has been held incommunicado by Hamas, and all representatives, including the ICRC, have been denied any access to Shalit.

Hamas obtained military supplies through a vast network of tunnels and clandestine arms shipments from Iran and Syria. While Israel sought a diplomatic solution, the terrorist organizations in the Gaza Strip, particularly Hamas, worked intensively to increase their military capabilities, abusing the Tahadiya (the lull) to smuggle in vast quantities of weapons, and to intensify their training, acquire advanced weaponry, develop weapons of their own, and increase the range and lethality of their rockets.

On December 19, 2008, Hamas unilaterally announced the end of the Tahadiya, launching dozens of Qassam and longer-range Grad rockets against Israeli population centers. When the U.N. Secretary-General strongly condemned Hamas' actions, Hamas launched thirty more rockets into Israel the same day. Hamas persisted in launching its rockets and mortar rounds at Israel on a daily basis, and once the IDF began the Gaza operation, Hamas stepped up its bombardment of Israeli towns even further.

Hamas attacks were often so indiscriminate that they even inflicted casualties on the Palestinian population and damaged U.N. humanitarian installations inside Gaza. None of those casualties can be attributed to Israeli action. Instead, they serve to demonstrate the wholly indiscriminate nature of Hamas' attacks and total disregard of human life including the Palestinian population under their control.

Q: What was the legal basis for assessing Operation Cast Lead?

A: The applicable legal framework for assessing the recent operations in Gaza is the "Law of Armed Conflict," also known as "International Humanitarian Law." The conflict between Israel and Hamas in Gaza meets the definition of an "armed conflict" in the decision of the International Criminal Tribunal for the former Yugoslavia ("ICTY"). Hamas is a highly
organized and well-armed group that uses armed force against Israel and, indeed, considers such armed struggle to be its primary mission. The actions of Hamas must also be measured against accepted principles and applicable rules of international law.

Some of the rules governing the use of force in armed conflicts are specified in treaties, such as the Geneva Conventions of 1949 and the Regulations annexed to the Fourth Hague Convention of 1907. Others have gained acceptance by the practice of the international community and become part of customary international law. The Israeli High Court has ruled that these customary international law rules bind Israel under both international law and Israeli law. In particular, Israel's High Court of Justice has confirmed that in the ongoing armed conflict with Palestinian terrorist organizations, including Hamas, Israel must adhere to the rules and principles in (a) the Fourth Geneva Convention, (b) the Regulations annexed to the Fourth Hague Convention (which reflect customary international law), and (c) the customary international law principles reflected in certain provisions of Additional Protocol I to the Geneva Conventions of 1949.

Q: Did Israel have the right to resort to force to defend itself?

A: In these circumstances, there is no question that Israel was legally justified in resorting to the use of force against Hamas. All states have the inherent right and the obligation to defend themselves against armed attacks. This right is recognized by customary international law, and is further confirmed in Article 51 of the United Nations Charter. Israel's resort to force occurred in the context of an ongoing armed conflict between a highly organized, well-armed, and determined group of terrorists and the State of Israel.

A state's right of self-defense extends beyond attacks by other states. Even before the U.N. Charter, customary international law recognized the right of self-defense against non-state actors, such as armed groups launching attacks of significant scale and scope. There is no question that Israel faced an "armed attack" within the meaning of customary international law or Article 51 of the U.N. Charter, and has the right to use force against Hamas in self-defense.

Q: What kind of military capabilities did Hamas have in its attacks on Israel?

A: Since violently seizing power in the Gaza Strip, Hamas' leadership in Gaza has accelerated the build-up of its military wing, the Izz al-Din al-Qassam Brigades, and its internal security forces. By December 2008, there were more than 20,000 armed operatives, directly subordinate to the Hamas military wing. Israel also faced a military force of several thousand operatives from other terrorist organizations, such as the Palestinian Islamic Jihad, the Popular Resistance Committees, Fatah/Al-Aqsa Martyrs Brigades groups and the Army of Islam.

The forces regularly conduct large-scale training operations in the Gaza Strip and also train in Iran and Syria. They have received advanced weaponry, upgraded rockets and advanced anti-tank weapons to use against the IDF, and have constructed a vast system of underground tunnels throughout the Gaza Strip, for smuggling in weapons, concealment and launching terrorist attacks, while developing powerful Improvised Explosive Devices ("IEDs") and placing them on or near locations where IDF activities were anticipated.
Anti-aircraft weapons in the hands of Hamas.
Left: Picture posted by the Izz al-Din al-Qassam Brigades’ information department on YouTube (6 December 2007);
Right: Image of an anti-aircraft machine gun in the hands of a Hamas operative (Source: Al-Aqsa TV, 24 December 2007)

Many Hamas operatives belonged to both the internal security forces and the Izz al-Din al-Qassam Brigades. These various forces were heavily armed. The extent of the arms build-up by Hamas is indisputable. Hamas itself has displayed its weaponry on television and the Internet, and this military build-up crucially increased the urgency of Israeli action to stop the attacks.

The Gaza Operation

Q: In what stages did the operation progress?

A: After exhausting all other alternatives, the IDF launched a military operation on December 27, 2008, which was limited to two objectives: to stop the bombardment of Israeli civilians by destroying Hamas' mortar and rocket launching apparatus and infrastructure, and to reduce the ability of Hamas and other terrorist organizations in Gaza to perpetrate future attacks.

The Gaza operation commenced with aerial strikes on Hamas' terrorist infrastructure, and its rocket and mortar launching units. The Israel Air Force targeted military objectives, using sophisticated precision weapons to minimize the harm to civilians, given Hamas' practice of basing their operations in densely populated areas.

On January 3, 2009, the IDF commenced a ground maneuver because, despite the Israeli aerial attacks, Hamas refused to stop firing on Israeli localities. The aim was to minimize Palestinian casualties among civilians being used by Hamas as human shields.

The operation ended on January 17, 2009 and IDF troop withdrawal from the Gaza Strip was completed on January 21, 2009 in accordance with Security Council Resolution 1860. Since then, and even during the Gaza operation itself, Israel has sought to provide and facilitate humanitarian assistance to Palestinians of the Gaza Strip. The Gaza operation achieved its military objectives: the level of rocket and mortar attacks on Israeli towns decreased significantly.
Q: What was the legal framework for the use of force?

A: Even where resort to force is justified, as it was for Israel in responding to heightened attacks by Hamas, customary law limits the manner in which a state can exercise force. The principle of distinction and the principle of proportionality are both designed to protect civilians, while taking into account the military necessities and the exigencies of the situation.

Civilian casualties in an armed conflict does not in and of itself establish any violation of international law. The critical but often omitted link in determining the legality of an attack is whether the attacking forces sought to observe the rules of the Law of Armed Conflict, particularly the principles of distinction and proportionality. The IDF made extensive efforts to comply with these principles while Hamas made no attempt to comply with them.
Q: What are the principles of the Law of Armed Conflict that Israel adhered to - and Hamas did not?

A: The first core principle of the Law of Armed Conflict is that the parties to the conflict distinguish, at all times, between the civilian population and combatants.

It is unlawful to deliberately make civilians the object of attack. The principle of distinction does not forbid the targeting of combatants, nor the targeting of civilians who take a direct part in the hostilities. This principle addresses only deliberate targeting of civilians, not incidental harm to civilians in the course of striking at legitimate military objectives. The presence of civilians at a site (whether voluntarily or involuntarily) does not by itself forbid an attack on an otherwise legitimate military target. The expected presence of civilians, though, does impact the analysis of the proportionality of an attack.

Q: What is a lawful military objective?

A: The determination of what a lawful "military objective" is turns on an assessment of "military advantage." It is defined as "objects which… make an effective contribution to military action and whose partial or total destruction, capture or neutralization…offers a definite military advantage." Sites that may once have been purely civilian can be turned into legitimate military objectives. The perspective is that of the commander in the field at the time of a targeting decision, with the information then available.

Military manuals also recognize that objects "normally dedicated to civilian purposes, but which are being used for military purposes" (such as houses, schools or churches) lose their protection under the applicable law, and may properly become lawful "military objectives." Attacks must not be "indiscriminate," that is, untargeted, launched without consideration as to where harm will likely fall.

A commander's intent is critical in the principle of distinction during armed conflict. Where it is believed in good faith, on the basis of the best available intelligence, that a civilian building has been misused as a sanctuary for military fighters, military intelligence, or the storage and manufacture of military assets, the commander has a legitimate basis for using force against the site.

Q: What about the accusation of war crimes?

A: Mistakes made in armed conflict do not, as such, constitute war crimes. As two leading scholars have recognized, "[t]he prerequisite for a grave breach is intent; the attack must be intentionally directed at the civilian population or individual civilians, and the intent must embrace physical consequences." Military operations that cause unintended and unwanted damage to civilians do not constitute violations of the Law of Armed Conflict, much less a war crime.
While Hamas deliberately sought to harm civilians by launching rockets and mortars on towns in southern Israel, and even boasted about directing their attacks at civilian populations, the IDF carefully checked and cross-checked targets to make sure they were being used for combat or terrorist activities, and not solely for civilian use.

**Q: Did Israel use disproportionate force in Gaza?**

**A:** In addition to the principle of distinction, customary international law bars military attacks that are anticipated to harm civilians excessively in relation to the expected military advantage. This is known as the *principle of proportionality.* The very notion of not inflicting "excessive" harm recognizes that some civilian casualties may be unavoidable when pursuing legitimate military objectives.

By definition, then, evaluation of proportionality (or excessive harm to civilians compared to military advantage) requires balancing two very different sets of values and objectives. States have duties to protect the lives of their civilians and soldiers, but they must balance this against their duty to minimize incidental loss of civilian lives and civilian property during military operations. That is precisely the reason that international law assesses proportionality from the standpoint of a "reasonable military commander," and the balancing may not be second-guessed in hindsight, based on new information that has come to light.

As with the principle of distinction, a showing of intent is required for there to have been any arguable "war crime" based on excessive civilian harm in comparison with military objectives. In other words, the existence of a war crime turns not on the reasonableness of the commander's weighing of military advantage against civilian harm, but on whether he or she knew that the attack would cause clearly disproportionate harm, but proceeded intentionally, notwithstanding this knowledge.

The IDF took extensive steps to weigh the risk of civilian harm against the existence of important military objectives, based on the information available at the time of targeting decisions. On numerous occasions, The IDF's situation analysis frequently led to a decision not to attack legitimate military targets, to avoid the possibility of civilian harm, even though such an attack might not be excessive in relation to the anticipated military advantage.

**Civilians in Armed Conflict**

**Q: What are the obligations of the parties to an armed conflict regarding their own civilians?**

**A:** The Fourth Geneva Convention prohibits the use of civilians to shield certain areas from attack and provides that the presence of civilians does not shield an otherwise permissible military target from attack. In other words, the use of "human shields" is prohibited. Violation of this obligation, which is a core principle of customary international law binding on both states and non-state actors, constitutes a "war crime."
Hamas violated this core principle of customary international law. Its operatives admitted, for example, that they frequently launched rockets from schools precisely because they knew that Israeli jets would not fire on the schools. The Secretary-General of the United Nations confirmed receiving reports of Hamas using children and others as shields to prevent attacks against launch sites and other military targets.

Q: What precautions did the IDF take to minimize harm to civilians?

A: According to the Additional Protocol I to the Geneva Conventions, in addition to the obligation to refrain from acts that would harm civilians disproportionately in relation to anticipated military advantage, both parties to a conflict are required to take "feasible" precautions to minimize incidental loss of civilian life, and to provide "effective advance warning… unless circumstances do not permit." The measure is one of "feasibility," not perfection. Numerous countries have emphasized the limitations of practicality, and that assessments consider the circumstances prevailing at the time of the decision, not after the fog of war has lifted and hindsight reveals other options and consequences. Advance warnings to the civilian population may be feasible mostly before hostilities begin in a particular area, or where the lack of surprise or speed of response does not significantly affect military advantage.

During the Gaza operation, the IDF took the precautions required by law or suggested by the practice of other countries. The IDF not only implemented a range of precautions related to targeting and munitions, but also used an extensive system of graduated warnings to civilians, including both general advance warnings through media broadcasts and widespread leafleting, regional warnings to alert civilians to leave specific areas before IDF operations commenced, and specific warnings to civilians in or near military targets, through telephone calls and warning shots with light weapons. These warnings were frequently effective, as aerial surveillance was often able to confirm the resulting evacuation of numerous civilians prior to an attack by the IDF.

Q: Did Hamas meet its obligation to minimize the harm it might cause to its own civilians?

A: The parties in control of the territory where the hostilities take place are also obligated under the Law of Armed Conflict to minimize harm to their own civilians. Under Additional Protocol I of the Geneva conventions, they must "avoid locating military objectives within or near densely populated areas," and they must "endeavor to remove the civilian population… under their control from the vicinity of military objectives." To do the opposite - to place weapons systems in or near apartment buildings, schools, mosques or medical facilities, or to encourage civilians to gather in areas that are likely military targets - violates the Law of Armed Conflict, because such tactics inevitably increase civilian casualties beyond what otherwise might occur. Thus, combatants who choose to fight from within civilian buildings bear responsibility for the consequences, because their very presence in such structures "will make an attack against them legitimate."

During the Gaza operation, Hamas based its military strategy on locating combat forces and weapons in civilian areas, in stark contrast to the IDF's significant efforts to minimize harm to
civilians. Hamas deliberately exposed civilians to harm. The evidence is overwhelming, shown in photographs, in independent press reports, and in Hamas’ own boasts to local media.

**Using the Civilian Population in the Gaza Strip as Human Shields**

Rockets (red dot with a white star) launched near schools (yellow) in the Sheikh Radwan neighbourhood of Gaza City. In proximity to the schools there are training camps, terrorist organisation workshops for the manufacture of weapons and arms caches (red) (Source: IDF Spokesperson)

**Q: So it was Hamas that committed war crimes?**

**A:** Both prior to and during the IDF operation in Gaza, Hamas flouted the Law of Armed Conflict, terrorizing Israeli citizens through an endless barrage of rocket and mortar attacks, and deliberately using Palestinian civilians, as well as protected U.N., educational, medical, administrative and religious facilities, as a cover for its operations. In adopting such methods of warfare, members of Hamas committed internationally recognized war crimes, and made it impossible for the IDF to avoid collateral damage to civilians and civilian objectives in pursuit of legitimate military objectives during the operation.

Both United Nations officials and the international community have condemned Hamas' deliberate, systematic and widespread use of rocket attacks, mortar attacks and suicide bombings intentionally directed at civilian targets in Israel. These attacks violated the basic principles of distinction. Any doubt about this is resolved by the fact that Hamas itself has boasted of its intention to hit population centers, which constitutes a war crime.
Hamas deliberately targets rockets and mortar rounds at Israeli population centers and cheers when one of its rockets or mortars succeeds in hitting a civilian target. It is therefore clear that the purpose of Hamas’ incessant rocket attacks on Israel's southern towns and cities, in addition to causing death, injury and destruction, is to spread terror among Israel's civilian population. Hamas is therefore guilty of repeated and deliberate violations of the Law of Armed Conflict, and because these violations were willful, its leaders and operatives are guilty of committing war crimes.

Q: How did Hamas abuse its own civilian sites as cover for its military operations?

A: The Law of Armed Conflict not only prohibits targeting an enemy's civilians; it also requires parties to an armed conflict to distinguish their combatant forces from their own civilians, and not to base operations in or near civilian structures, especially protected sites such as schools, medical facilities and places of worship.

Despite the clear proscriptions of international law, the intentional abuse of civilian areas for military advantage is central to Hamas' battlefield strategy. Hamas' strategy was two-fold: (1) to take advantage of the sensitivity of the IDF to civilian casualties on the Palestinian side, in an attempt to deter the IDF from attacking legitimate military targets; and (2) where the IDF did attack, to wield an excellent propaganda weapon against Israel, featuring civilian casualties as well as damage to homes and public institutions. In other words, Hamas chose to base its operations in civilian areas not in spite of, but because of, the likelihood of substantial harm to civilians.

Hamas operatives regularly fired rockets into Israel from within or near their own residential and public buildings, including schools, mosques and hospitals.

During the Gaza operation, Hamas continued to launch attacks from densely populated areas and protected sites. In fact, as IDF forces advanced into Gaza, Hamas began relying even more heavily than before on rocket and mortar launches from the midst of urban centers. Hamas' abuse of civilian neighborhoods resulted in significant destruction. In conducting rocket attacks from within civilian sites, Hamas committed grave breaches of the principle of distinction, as well as the obligation not to put its own civilians at risk.

Q: What other war crimes did Hamas commit against its own people?

A: In addition to staging rocket attacks from civilian areas, Hamas conducted much of its fighting during the Gaza operation from bases within private residences and public facilities, which Hamas assumed the IDF would be reluctant to attack. Hamas' main base of operations during the Gaza operation was located inside Shifa Hospital in Gaza City, which was not attacked by Israeli forces out of concern for the inevitable harm to civilians also present in the hospital. Hamas' decision to place the lives of hundreds of patients, doctors, and nurses in danger in this manner, however, is in clear breach of the principle of distinction and its particular application in the case of medical facilities.
Similarly, Hamas abused the protection accorded to places of worship, making a practice of storing weapons in mosques. During the Gaza operation, the IDF found repeated and conclusive evidence of such use.

There is also considerable evidence that Hamas misused a variety of other public institutions as operational bases. Hamas also intentionally located its military activities adjacent to sensitive sites, such as schools and U.N. facilities, or in the midst of residential neighborhoods.

During the Gaza operation, Hamas frequently commandeered the homes of civilians as temporary bases to attack Israeli forces. According to some reports, Hamas operatives took pride in endangering the lives of civilians and refused their pleas to go away, telling them "It will be a great honor if you will die with us."

Q: What other abuses did Hamas commit?

A: During the Gaza operation, Hamas systematically used medical facilities, vehicles and uniforms as cover for terrorist operations, in clear violation of the Law of Armed Conflict. This included the extensive use of ambulances bearing the protective emblems of the Red Cross and Red Crescent to transport operatives and weaponry; the use of ambulances to "evacuate" terrorists from the battlefield; and the use of hospitals and medical infrastructure as headquarters, situation-rooms, command centers, and hiding places.

According to Newsweek, Palestinian gunmen admitted using the al-Quds hospital for firing at Israel, and a report from Corriere della Sera confirms that the grounds, ambulances and uniforms of the al-Quds hospital had been hijacked by terrorist operatives. The same report also alluded to Hamas' occupation of Shifa hospital. Hamas operatives made particular use of ambulances, which frequently served as an escape route out of a heated battle with IDF forces. Such acts constitute serious violations of the Law of Armed Conflict.

Q: In what other ways did Hamas protect itself at the expense of its own civilians?

A: Another tactic of Hamas during the Gaza operation involved booby-trapping homes, roads, schools and even entire neighborhoods with mines and explosives, in order to inflict casualties on advancing IDF forces. This practice recklessly endangered the nearby civilians and buildings, which inevitably suffered during explosions.

The use of booby traps by Hamas often created a multiplier effect with respect to collateral damage from IDF strikes and advancing forces. Secondary blasts from Hamas explosives destroyed homes and injured civilians who would have been unharmed were it not for the use of such tactics.

In addition to hiding behind civilian facilities, Hamas uses civilians themselves, including women and children, as human shields. Armed operatives mingle routinely with civilians in order to cover their movements. On February 29, 2008, Fathi Hamad, a Hamas legislator, openly boasted about the practice on al-Aqsa TV. These practices purposely endangered civilians and
therefore breach the Law of Armed Conflict, contravening the fundamental principle of distinction between combatants and non-combatants.

**Q: How did Hamas exploit the children of its own civilians?**

**A:** Hamas routinely exploited children in military support roles for intelligence gathering, tunnel digging, weapons smuggling, collecting weapons from dead terrorists, and logistical support, all in clear violation of international law.

During the summer of 2008 Hamas organized "summer camps" for teenagers in the Gaza Strip in order to provide them with military training and militant indoctrination. The clear intent of these training camps was the recruitment of the child participants into the Hamas organization and its militant anti-Israeli ideology.

The practice of using children as fighters or for other military purposes violates the Law of Armed Conflict, including prohibitions against allowing children to take part in hostilities.

**Q: What humanitarian aid did Israel provide to the Palestinian civilians in Gaza, and how was it provided?**

**A:** Israel's humanitarian effort included several components:

- Ensuring **continuous supplies of humanitarian aid through the crossing points**, such as food, medical supplies and fuel.
- **Coordination of evacuations** and other humanitarian movements within the Gaza Strip and between Gaza and Israel.
- **Unilateral suspensions of military operations to enable re-supply of the population and humanitarian relief activities.**
- Ensuring the functioning of essential infrastructure in the Gaza Strip.

On the eve of the operation in Gaza, the Ministry of Foreign Affairs held a specific meeting with representatives of the ICRC and other organizations to establish clear channels of cooperation, and to ensure the continuing flow of humanitarian supplies and medical assistance to Gaza during the operation.

During the Gaza operation itself, the Gaza Coordination and Liaison Administration ("CLA") operated a 24 hour operations room tasked with communicating with the IDF and international organizations to deal with real time problems and requests.

A total of 1,511 trucks carrying 37,162 tons of supplies entered the Gaza Strip from Israel through the Kerem Shalom and Karni crossings from the commencement of the Gaza operation and for its duration. The IDF coordinated the entry of 706 trucks carrying donations from international organizations and various countries and consignments of medical supplies received from various sources during the Gaza operation.
A special medical coordination center was set up in the Gaza District CLA, which dealt with assistance to civilians in danger and with evacuation of the wounded and dead from areas of hostilities.

The IDF also set up and manned (24/7) an Infrastructure Coordination Center to monitor the situation in Gaza, identify needs and coordinate repairs to infrastructure in areas of hostilities, at risk to the lives of Israeli technicians.

Beginning January 7, 2009, the IDF unilaterally suspended military operations for at least three hours each day ("humanitarian pauses"), to enable re-supply of the population and other humanitarian relief activities. It is important to understand that, in contrast to Hamas' actions which jeopardized the civilian populations of Gaza and obstructed the distribution of humanitarian supplies, Israel put into place significant systems and resources to try to ensure that the humanitarian needs of the civilian population were met.

Q: Israel went out of its way to try to get humanitarian relief to the Palestinian civilians. What did Hamas do?

A: Far from taking measures to protect Palestinian civilians during the fighting in Gaza, Hamas forces prevented humanitarian relief, coordinated by the IDF with various international aid organizations, from reaching its intended recipients. While the IDF observed humanitarian pauses in fighting, Hamas fired rockets during these periods, attacked crossing points into Gaza through which much-needed supplies arrived, and hijacked those supplies once they crossed the border.

All of these actions violate the Law of Armed Conflict, which requires parties to allow the entry of humanitarian supplies and to guarantee their safety.

During the period between January 8, 2009 and January 17, 2009, Hamas fired a total of 44 rockets and mortars at Israel during humanitarian pauses. Hamas and other terrorist organizations have also continued a practice of launching attacks against crossing points, which provide the only entry points for humanitarian aid to the Gaza Strip.

Hamas' attacks on crossing points continued during the Gaza engagement, but perhaps the most serious interference with humanitarian relief efforts by Hamas consisted of hijacking humanitarian supplies once they arrived in Gaza. On January 12, 2009 it was reported by the Jerusalem Post that "Hamas raided some 100 aid trucks that Israel had allowed into Gaza, stole their contents and sold them to the highest bidders."

There were numerous reports of Hamas confiscating aid shipments meant for Palestinian civilians. Among these was a report by UNRWA on February 3,2009, that Hamas armed assailants seized, by force, 3,500 blankets and 406 food parcels from its distribution center at the Shati refugee camp. This action was strongly condemned by U.N. officials, who demanded an immediate return of the aid. On February 5, 2009, UNRWA suspended all imports of aid into the Gaza Strip after 10 truckloads of flour (equivalent to 100 tons) and rice (equivalent to 200 tons)
imported from Egypt for UNRWA were taken from the Palestinian side of the Kerem Shalom Crossing into Gaza.

Hamas' willful and repeated interference with the supply of essential goods and services to Gaza qualifies as a grave breach of the Law of Armed Conflict and a war crime under international law.

**IDF actions and procedures**

**Q: What procedures did the IDF implement to comply with international law?**

**A:** Unlike Hamas and other terrorist organizations that Israel faces, Israel is firmly committed to respecting its obligations under international law, including under the Law of Armed Conflict. The IDF routinely undergoes extensive mandatory training regimens designed to familiarize its soldiers with the laws of war, and actively involved military lawyers advise commanders during both planning and operations, to ensure that they are aware of their obligations.

Observance of the Law of Armed Conflict was also reflected in the IDF's specific orders and rules of engagement for the Gaza operation; in the many precautions the IDF took to try to minimize civilian harm; and in Israel's support for humanitarian efforts during the fighting. Finally, Israel's commitment to the rule of law with respect to the Gaza operation is safeguarded by the extensive mechanisms it has in place, both within the IDF and outside it, to investigate alleged violations of the rules and ensure accountability for any such violations, should they occur.

The operational orders in relation to the Gaza operation clearly specified the principles of distinction and proportionality, which all IDF forces were instructed to observe as an integral part of their battle orders. Israel is fully committed, to investigating all instances of alleged misconduct, to taking action to prosecute violations in appropriate cases and to making policy adjustments designed to prevent the repeat occurrence of unfortunate incidents.

**Q: What training and legal supervision does the IDF provide for complying with international law?**

**A:** The IDF takes substantial measures to instill awareness of and respect for international law in commanders and soldiers. The IDF Military Advocate General's Corps provides instruction in the Law of Armed Conflict to fighting forces, predominantly through the IDF School of Military Law. The School's activities include:

- Development of interactive computer software for instruction on rules of conduct in armed conflicts.
- Development of interactive software for teaching the Law of Armed Conflict.
- Wide distribution within the IDF of written materials.
- Regular lectures and workshops on the Law of Armed Conflict and related rules of conduct.
• Incorporating this information in the training of combat soldiers and integration of Law of Armed Conflict norms into IDF Combat Doctrine.
• Academic courses in international law.
• Publication of an educational booklet on the Law of War.
• Production of a unique Comparative Manual on the Law of Armed Conflict by the School of Military Law.

The IDF also provides extensive training to inculcate moral norms in combat, based on "The Spirit of the IDF," which sets forth the Code of Ethics for IDF soldiers. The document emphasizes the paramount values of "Human Life" and "Purity of Arms."

The IDF provides educational programs for soldiers on human rights issues at all stages of military service and it has established a team to identify areas for improvement in these matters and to make changes where necessary.

Leading up to, and during, the recent operations in Gaza, the IDF Military Advocate General's Corps provided legal advice on the Law of Armed Conflict to commanders at the General Staff, Regional Command and Divisional levels.

IDF military lawyers were involved in advising commanders on the international law aspects of the Gaza operation.

Q: How does the IDF training system compare with other systems?

A: The training and supervision provided by the IDF with respect to the Law of Armed Conflict is similar to - and in some ways more extensive than - the training and supervision undertaken in the militaries of other democratic countries.

NATO's International Security Assistance Force ("ISAF") in Afghanistan recently issued tactical directives regarding compliance with the Law of Armed Conflict which mirror many of the steps taken by Israel.

Moreover, lawyers in other countries play a similar role to the role held by legal advisers for the IDF, examining the legality of planned targets, providing legal advice to commanders both in the field and during the planning stages of operations, and drafting operational orders and procedures.

Q: What were the IDF's rules of engagement during the Gaza conflict?

A: The IDF's emphasis on compliance with the Law of Armed Conflict was directly incorporated into the rules of engagement for the Gaza operation. The operational order emphasized four guiding principles: military necessity, distinction, proportionality and humanity.
The legal section of the operational order further enumerates several absolute prohibitions. With respect to targeting decisions, the document set out the governing legal principles with regard to particular targets, which included the following:

- Only military targets may be attacked.
- Any attack against civilian objectives is prohibited.
- A "civilian objective" is any objective which is not a military target.
- Subject to the principle of proportionality, when a civilian objective is used by the enemy for a military activity it loses its protection and immunity and becomes a legitimate military target.
- Subject to the principle of proportionality, the presence of civilians within a military objective or in its vicinity does not negate the military character of the objective.
- Subject to the principle of proportionality, a dual use objective may be attacked if reliable, conclusive and up-to-date information confirms that it serves the military activities of the enemy.

The document further confirmed the importance of minimizing incidental harm to civilians and civilian facilities. IDF forces were to use only weapons approved as legal by IDF authorities. The order contained numerous other provisions designed to implement the Law of Armed Conflict. Among other things, the document provided that:

- Destruction of property would be allowed only for imperative operational necessity.
- The presence of enemy combatants among the civilian populations would not deny the civilian character of the population.
- Precautionary measures must be employed to minimize the risk for civilians in the course of the hostilities.

The IDF’s rules of engagement strictly prohibit the use of civilians as human shields. Moreover, the Israel Supreme Court has ruled that use of civilians in any capacity for the purpose of military operations is unlawful. The IDF took a variety of measures to teach and instill awareness of these rules of engagement in commanders and soldiers.

Q: **What was the IDF policy on pursuing legitimate military targets during the Gaza conflict?**

A: Consistent with its rules of engagement, IDF Forces sought to maintain an equilibrium between military necessity and humanitarian considerations. Military necessity was balanced against the fundamental obligations of the Law of Armed Conflict, through the principles of distinction, proportionality, and the obligation to take appropriate precautions to minimize civilian harm.
Q: What Hamas military targets did the IDF strike?

A: Consistent with the principle of distinction, IDF forces attacked military targets directly connected to Hamas and other terrorist organizations' military activities against Israel. IDF forces targeted Hamas rocket launchers, weapons stockpiles, command and control facilities, weapons factories, explosives laboratories, training facilities and communications infrastructure, often concealed or embedded in civilian facilities such as residential buildings, schools, or mosques. In accordance with the Law of Armed Conflict, civilian facilities that served military purposes did not enjoy protection from attack. Below is an illustrative account of military targets struck by the IDF during the operation:

• Hamas' bases, posts and headquarters:
  • Izz al-Din al-Qassam Brigades and Executive Force headquarters in the northern Gaza Strip (struck on December 27th)
  • Headquarters and weapons store of the Izz al-Din al-Qassam Brigades at Tel Zaatar, in the Jabaliya area (struck on December 27th)
  • Hamas' Al-Islam post in the northern Gaza Strip (struck on December 27th)
  • Hamas’ main headquarters compound in Gaza City (struck on December 27th)
  • Hamas post and training camp in the central Gaza Strip (struck on 27 December 27th)
  • Hamas training camp in the southern Gaza Strip (struck on December 27th).
  • Headquarters and weapons storage belonging to the Izz al-Din al-Qassam Brigades and the Special Force (struck on December 27th).
  • An Izz al-Din al-Qassam Brigades training outpost in the Al-Maquisi towers in the northern Gaza Strip (struck on December 28th).
  • Ismail Haniyah's office in the Hamas compound in Gaza City (struck on December 31st).

• Hamas' armament production and storage sites:
  • Research and development center in the Islamic University in Gaza (struck on December 28th): Hamas used the site to develop rockets with improved launching range.
  • Throughout the operation, the IAF attacked dozens of workshops and weapon stores, many of them located in the houses of Hamas operatives and public buildings (including mosques).

• Rocket and mortar launch sites:
  • Throughout the operation, the IAF attacked areas regularly used to launch rockets and mortars against Israel.

• Smuggling tunnels:
  • Throughout the operation, IDF attacked dozens of tunnels along the Philadelphi route used for smuggling arms, ammunition and terrorist operatives, for terrorist attacks against Israel, from Sinai to the Gaza Strip.
• Mosques used by Hamas for military purposes:

  • A Mosque in the Tel al-Hawa neighborhood of Gaza City (struck on December 31st). The mosque served as an arms storage facility and a launching site for terrorist activity. The strike caused a long series of secondary explosions from armaments and ammunition that were stored in the mosque (including rockets, some of which were long-range Grad rockets).

  • Al-Khulafa mosque in Jabaliya (struck on January 1st): The mosque was a focal point of the Izz al-Din al-Qassam Brigades' terrorist activities. The strike on the mosque was followed by a long series of secondary explosions, indicating that a large quantity of hidden weapons and ammunition had been stockpiled in it.

It should be noted that Israeli forces have come under criticism from various international organizations for attacking a number of Hamas targets, such as various "ministries" operated by Hamas, which were alleged to be civilian in nature. Many of the ostensibly civilian elements of the Hamas regime are in reality active components of its terrorist and military efforts. The IDF made the determination that the attacks were lawful under international law. All of these strikes were carefully planned and executed in a manner that minimized the risk to civilians.

Q: Did the IDF target the civilian police force in Gaza?

A: Hamas' military forces in Gaza were composed of the Izz al-Din al-Qassam Brigades and other forces making up the so-called "internal security" apparatus, which perform significant military functions during intense fighting with Israel. Due to their military functions, these internal security forces were not accorded the immunity from attack generally granted to civilians.

Whereas members of a civilian police force that is solely a civilian police force, who have no combat function, are not considered combatants under the Law of Armed Conflict, international law recognizes that this principle does not apply where police are part of the armed forces of a party. In those circumstances, they may constitute a legitimate military target. In other words, the status of the Palestinian "police" under the Law of Armed Conflict depends on whether they fulfilled combat functions in the course of the armed conflict. The evidence thus far is compelling that they did.

Many Gaza "policemen" were also members of the al-Qassam Brigades. Photographs provide compelling evidence that dual membership in the al-Qassam Brigades and the police force was common, and that police officers killed during the Gaza operation were hailed in obituaries as "martyrs of al-Qassam."

In fact, there is evidence that an overwhelming majority of the police forces were also members of the Hamas military wing or activists of Hamas or other terrorist organizations. More than nine out of every ten alleged "civilian police" were found to be armed terrorist activists and combatants directly engaged in hostilities against Israel. The internal security services have been and continue to be a cadre of terrorist operatives armed with a variety of heavy weapons.
including anti-tank missile launchers, with standing orders to fight Israeli forces. Under the Law of Armed Conflict, Israel is permitted to target such forces and their bases of operation.

Q: What precautions did the IDF take during the Gaza conflict?

A: Despite the enormous difficulties posed by Hamas' tactics, the IDF's efforts included not only a range of precautions related to targeting and munitions, but also an **extensive system of warnings**, including general advance warnings to the civilian population in the area of military operations, regional warnings and specific warnings to civilians in or near military targets. Indeed, Israel has been commended for its extensive precautions during the Gaza operation.

Q: What precautions did the IDF take regarding targeting and munitions?

A: Each operation and target was considered on an individual basis, to ensure that it met the requirements of distinction, proportionality and precautions in attack.

Certain attacks could not be planned in advance, but became imperative in real time during combat. However, the commanders authorized to approve such targeting decisions act under IDF orders that specify the rules of distinction and proportionality and emphasize the importance of appropriate precautions. When possible, the IDF used (in real time) updated and precise intelligence available regarding target identification and the risk of incidental civilian harm.

The IDF gave considerable care to the choice of munitions. Wherever possible, and even though it is not strictly required under international law, the IDF conducted pinpoint surgical aerial strikes, using precision guided munitions.

The IDF aborted or postponed attacks on Hamas personnel and targets when it appeared that civilians were at risk, at the expense of attaining military advantage. In several cases, military targets were destroyed from the ground using mechanical equipment, rather than bombed from the air, in order to minimize collateral damage, even though it exposed IDF personnel to additional risk. To the extent feasible, the IDF timed attacks on targets to cause minimum collateral damage.

The IDF took precautions regarding sensitive sites. The IDF’s operational plans and rules of engagement order special precautions with regard to military activity in proximity to United Nations and Red Cross facilities, hospitals, religious sites and educational institutions - a total of almost 1,900 sensitive sites in the Gaza Strip.

Hamas and the other terrorist organizations operating in the Gaza Strip placed the civilian population and the facilities used by the U.N. and other international organizations and humanitarian agencies in substantial danger, with the knowledge that the IDF limits its operations in the vicinity of such facilities. This mode of operation created complex operational, moral and legal challenges for the IDF.
Q: What precautions did the IDF take regarding the civilians in Gaza?

A: The IDF also made special efforts to notify civilians of impending IDF operations and to instruct them in how to avoid harm. General and regional warnings were issued and efforts were made to include in these warnings sufficient information for the residents, including a timeframe for the evacuation and designated specific routes leading to safe areas. Far from having no place to flee, residents could - and the vast majority did - move to safe locations. Finally, specific warnings were issued to residents of particular buildings before attack. The warning techniques included:

- Radio broadcasts and phone calls
- Dropping of leaflets
- Specific warnings before attacks.

Investigation of Complaints

Q: What system does Israel have in place for investigating complaints?

A: Israel is committed to fully investigating alleged violations of Israel's legal obligations (including the Law of Armed Conflict), and to taking appropriate and effective action, including penalizing IDF commanders or soldiers found to have committed offences. Numerous outside observers, including most recently the National Criminal Court of Appeals of Spain, have confirmed the thoroughness of Israel's system for investigating such allegations. Israel has already activated this system with respect to the recent operations in Gaza.

Q: How does the military justice system function?

A: Israel has a military justice system that operates within the IDF but is professionally independent. Any allegations regarding offences committed by IDF personnel are dealt with through this multi-tiered system, including allegations regarding improper conduct on the battlefield.

The IDF system of review includes three main components: the Military Police Criminal Investigation Division ("MPCID"), the Military Advocate General's Corps ("MAG"), and the Military Courts. The MAG Corps and Military Courts are both independent from the IDF command hierarchy, are subject only to the law, and are also entirely independent from one another. IDF standing orders (Supreme Command Order 2.0613) clearly state that in executing its powers and authority, the MAG is subject only to the law, and is not subject to the IDF chain of command. On professional matters, the MAG is guided by the Attorney General.

Any person may file a complaint with the Military Police in reference to misconduct by IDF personnel at any civilian police station in the country. Gaza residents can file complaints directly in writing through a NGO acting on their behalf or via the liaison mechanism that works vis-à-vis the Palestinian civilian population.
Generally, the MPCID investigates allegations of criminal offences committed by soldiers. When necessary, consultations are held with a Military Prosecutor from the MAG Corps regarding the proper handling of the case. Where circumstances do not necessarily point to a criminal offence, the Military Advocate General will first review the findings of a field investigation governed by the Military Justice Law. Under the law and IDF standing orders, the findings of field investigations are relayed to the MAG for review. If, after examining the aforementioned material, the MAG believes the facts indicate a reasonable suspicion that an offence may have been committed which justifies the opening of a criminal investigation, he will launch a full criminal investigation of the incident.

The authority to prosecute soldiers for offences connected to their military service lies with the MAG Corps. In cases where sufficient evidence has been collected according to the requirements of Israeli Penal Law, indictments are filed in the Military Courts.

A significant development in the investigation of alleged wrongdoing by IDF soldiers was the establishment, in October 2007, of the Office of the Military Advocate for Operational Affairs. This office is charged with investigating cases of operational misconduct by IDF soldiers against Palestinian civilians, such as mistreatment of prisoners, pillaging or theft, use of unnecessary force, abuse of authority etc.

The rules of evidence in the military legal courts system of the IDF are similar to the rules of evidence in Israeli criminal courts. When there is sufficient evidence to establish a reasonable basis for conviction of a soldier, an indictment may be filed against the soldier. As a general policy, the Military Prosecution seeks substantial sentences in cases of offences against the Palestinian civilian population and, in appropriate cases, appeals lenient sentences to the Military Court of Appeals. Traditionally, however, the Military Courts deal sternly with soldiers convicted of offences against civilians.

**Q:** Are the decisions of the Military Advocate General subject to further review?

**A:** The decisions of the Military Advocate General may be subject to further review by the Attorney General of the State of Israel. With regard to the recent military operation in Gaza, it was decided that all findings of the five major field investigations and the Military Advocate General's decisions be transferred for review by the Attorney General.

**Q:** How impartial are the judicial reviews conducted by Israel's Supreme Court on decisions of the Military Advocate and the Attorney General?

**A:** Complainants or non-governmental organizations that are dissatisfied with a decision of the Military Advocate General or of the Attorney General - including decisions on whether to open a criminal investigation, or whether charges filed reflected the severity of the alleged crime - may file a petition directly with Israel's Supreme Court, which regularly reviews determinations of the Military Advocate General and the Attorney General on these issues.
According to the jurisprudence and practice of the Israeli Supreme Court, any interested party (including non-governmental organizations) or any person (including those who are neither Israeli citizens nor residents) who is affected or potentially affected by the actions of the government is entitled to directly petition the Israeli Supreme Court. Petitions are brought on a regular basis by Palestinian residents, as well as NGOs or persons representing their interests claiming that they have been harmed by actions taken by the Israeli security forces, including operational activities in the West Bank and Gaza Strip.

The Israeli Supreme Court has declared that the situation Israel faces as the target of terrorist attacks does not lessen the obligation of the state and its security forces to abide by applicable law and humanitarian standards. To the contrary, the Court has issued dozens of decisions addressing the issue of fighting terrorism within the law.

Israel's Supreme Court has earned international respect and recognition for its jurisprudence, as well as for its independence, for actions it has taken in this regard. The effectiveness of Israel's own systems for investigating complaints regarding combat activities which allegedly contradicted international law was recognized most recently by the Criminal Chamber of the National Court of Spain, which held that Israeli procedures and decisions with regard to the legality of preventive strikes under international law, and the military, civilian and judicial review in Israel comport with the principle of complementarity, as the State of Israel is a democratic country where the rule of law applies.

- Judgments of the Israel Supreme Court: Fighting Terrorism within the Law: Vol 1 | Vol 2 | Vol 3

**Q: How does Israel compare with other investigatory systems?**

**A:** Israel's system for investigating alleged violations of the Law of Armed Conflict compares well with the rule of law of other democratic states, relying, as they do, on a combination of military, criminal, and administrative investigations.

For example, the United Kingdom has used both criminal investigations and independent investigations within the military to examine allegations of violations of the Law of Armed Conflict. Similarly, the procedures and institutions of the United States for such investigations are quite similar to those in Israel. The Israeli system is independent and impartial, and is fully capable of investigating such matters on its own.

**Q: Are complaints about the IDF's conduct of operations being handled?**

**A:** Israel is acutely aware of concerns raised about the IDF's conduct of operations in Gaza, and it recognizes that all allegations regarding violations of international law in Gaza, for which there is reliable information, must be thoroughly investigated and, where appropriate, prosecuted.
Until these investigations are complete, it would be premature to reach any final conclusions regarding specific complaints. Different findings may emerge as the investigations continue, but even at this early stage, these preliminary investigations have identified important facts that have not yet received significant public attention, but are essential for any rigorous analysis of the Gaza operation.

Any fair analysis of the Gaza operation must also consider that international law does not condemn military actions simply because they resulted in unfortunate civilian casualties, but examines whether commanders and soldiers had legitimate military objectives in their use of force, and whether they made appropriate efforts to minimize civilian casualties, based on a "reasonable commander" test and the information then available. Only if forces intentionally targeted civilians, or fired indiscriminately, or struck military objectives despite knowing that they were likely to cause civilian harm that was excessive in relation to the military advantage anticipated at the time, can their actions be regarded as a violation of the law of war.

Q: What is the status of the investigations?

A: Thus far, the IDF has been examining about 100 complaints, originating from a variety of sources, including U.N. inquiries and NGO reports. Every alleged violation brought to the IDF's attention has been, or will be, examined.

If a complaint appears to be based on prima facie evidence or raises serious concerns of intentional misconduct by IDF soldiers, it is generally referred directly to the Military Police for investigation. If the complaint concerned operational activity, it is first referred to a field investigation. The findings of the field investigations are subject to review by the Military Advocate General, who in turn decides whether to order a Military Police investigation, which also involves the collection of outside testimony.

Following the Gaza operation, IDF Chief of General Staff Lt. Gen. Ashkenazi appointed five colonels who were not directly in the chain of command for the operations in question to investigate issues raised by, among others, international and non-governmental organizations and the international and Israeli media. The decision to initiate these field investigations emanated from the IDF's professional, moral and legal obligations to examine all claims made in relation to the conduct of the warfare.

The full findings of each of the field investigations were presented to the IDF Chief of Staff.. A summary of each investigation has been presented to the Military Advocate General, who has the authority to decide whether there is sufficient basis for opening a military police investigation. Due to the significance of the issues involved, the conclusions of the IDF field investigations and the opinion of the Military Advocate General will also be reviewed by the Attorney General. This process is still underway.

In addition to the aforementioned field investigations, the IDF Military Advocate General is awaiting the findings of field investigations into other specific incidents, acting chiefly upon
reports received from local and international NGOs. After reviewing the field investigation findings, the MAG will decide whether to order Military Police investigations into the incidents, but it may order criminal investigations without waiting for the results of a field investigation. Decisions of the MAG are made publicly available, and are subject to review by the Attorney General and possibly by the Supreme Court.

In addition to the field investigations, as of July 1, 2009 the IDF Military Police has also been in the process of conducting criminal investigations of incidents that gave rise to suspicions of misconduct by IDF personnel during the operations in Gaza.

During a conference held at the Rabin Military Preparation Center, several IDF soldiers who participated in the Operation leveled serious accusations of violations of the Law of Armed Conflict by the IDF, including intentional shooting of civilians. Due to the serious nature of these allegations, the MAG ordered a criminal investigation by the Military Police without awaiting a prior initiation of field investigations. The Military Police investigation revealed that some of the stories were based on hearsay and were not consistent with verifiable facts.

**Q: How are the complaints being handled?**

**A:** During the fighting in Gaza, the IDF faced a major challenge in avoiding damage to the over 750 United Nations facilities and almost 1,900 sensitive facilities in the densely populated Gaza Strip. The challenge was made many times more difficult by Hamas' strategic placement of terrorist units and missile launching squads in close proximity to those sites.

The IDF took numerous precautions to avoid hitting facilities and vehicles affiliated with the U.N., Red Cross, Red Crescent and other international organizations. Despite these precautions, military operations resulted in damage to several U.N. facilities and injuries to personnel. While the vast majority of facilities remained unharmed, Israel views the damage and injury that occurred in these cases as an extremely serious matter and is committed to investigating allegations regarding Israel's conduct. The investigations are already underway, beginning with a thorough IDF field investigation, the results of which are currently under review by the Military Advocate General.

The United Nations Secretary General also set up a Board of Inquiry to examine certain incidents involving U.N. facilities. While Israel viewed this inquiry as premature, pending the conclusion of its internal investigations, it nonetheless cooperated fully with the U.N. Board of Inquiry, providing it with extensive facts and pertinent information. Indeed, the Secretary General of the United Nations commended Israel for its extensive cooperation. While Israel has concerns about certain aspects of the Board of Inquiry's methodology and its resulting report, Israel is currently working together with the U.N. to address issues which were raised in the Inquiry.

The Law of Armed Conflict turns not on the simple fact that certain sites were damaged in the course of battlefield operations, but rather on whether military forces targeted military objectives, and whether in doing so they took into account considerations of proportionality, in weighing the possibility of incidental (but unintended) harm to civilian facilities or persons.
Q: What cases are under investigation regarding U.N. international facilities?

A: The following cases are under investigation:

1) UNRWA School in Jabaliya

In this incident on January 6, 2009, IDF mortar shells landed outside a school being used as a UNRWA shelter. No mortar rounds hit the school itself, but landed in the road outside the school and at a nearby compound, resulting in flying shrapnel that reportedly injured several people inside the school, and killed or injured others nearby.

The IDF's investigation of the incident found that an IDF force had come under a barrage of 120mm mortars launched from a site only 80 meters west of the UNRWA school, and the IDF force responded by firing 120mm mortars. This response succeeded in stopping the Hamas mortar attack, and five Hamas operatives were killed. The effectiveness of the mission in achieving its military objective is thus indisputable.

The IDF’s defensive action targeted an identified source of mortar fire which represented a concrete and immediate threat to the force, executing the responsive fire with as much precision as possible, given the available munitions. Indeed, the fact that all the Israeli shells landed outside the school grounds demonstrates the care Israel took not to hit the school itself, consistent with its obligations under the Law of Armed Conflict.

2) UNRWA Field Office Compound

In this incident on January 15, 2009, it was alleged that IDF artillery firing caused shell casings and burning white phosphorous-soaked wedges to fall within a UNRWA Field Office compound. The incident reportedly caused injuries to one UNRWA employee and two other unidentified persons, as well as damage to buildings, vehicles and supplies.

On the day of the incident, IDF ground forces, including tanks, were operating in Tel al-Hawa area against Hamas and other terrorist targets. IDF forces were exposed to constant fire by Hamas forces, including light weapons, anti-tank missiles, and sniper fire.

Hamas' anti-tank units, equipped with advanced anti-tank missiles, were located mainly near the northern side of the UNRWA compound, so that the compound was placed between Hamas' anti-tank units and IDF forces. The threat to Israeli forces was credible and imminent.

The IDF's primary rationale for deploying smoke screening munitions containing white phosphorous was to produce a smokescreen to protect Israeli forces from the Hamas anti-tank crews operating adjacent to the UNRWA headquarters. The smokescreen created during the fighting in Tel al-Hawa prevented most of Hamas' attempts to launch anti-tank missiles. In the absence of the smoke-screen, the IDF would have had to use reactive fire to engage anti-tank units, with the likelihood of greater civilian harm.
The IDF sought to maintain a safety distance of several hundred meters from sensitive sites, including the UNRWA compound, but some felt wedges and other components of the projectiles apparently landed in the compound after their release in the air. The IDF neither intended nor anticipated this outcome. Hamas had deliberately placed the compound between themselves and the IDF forces. The IDF implemented an effective smokescreen as a protective measure in response to this threat. The IDF anticipated that the risk to civilians and civilian objects was limited in relation to this operational advantage.

3) UNRWA Bureij Health Center

In this incident, an aerial bomb hit an apartment building opposite a UNRWA health center. There were no injuries to the occupants of the apartment building, who had vacated the building following an earlier warning. However, debris and shrapnel from the strike apparently hit the UNRWA facility across the street, causing damage to the building and certain injuries inside, as well as injuries to persons who were approaching the center's gate.

The IDF's investigation found that the strike involved the targeting of a legitimate military objective: a Hamas weapons and terrorist equipment storage site, which was located on the ground floor of a four story civilian residence in a densely populated area. The residence was connected to several neighboring buildings and was adjacent to the UNRWA medical center, as well as to mosques and a school.

The IDF carefully planned the operation, assessing the anticipated collateral damage in order to minimize the risk to adjacent civilian facilities, particularly adjacent sensitive sites such as the UNRWA health center. The IDF took steps to minimize possible incidental harm by warning the civilians in advance.

The strike succeeded in achieving the military objective: it neutralized the terrorist storage site, while the building itself remained standing, thus avoiding structural damage to adjacent buildings and, as a result of IDF warnings, there were no injuries to the occupants of the apartment building in which the weapons workshop was housed, or in the adjacent apartment buildings.

However despite the IDF's precautions, the neighboring UNRWA center was damaged. Israel regrets this, but this unfortunate fact does not render it in breach of the Law of Armed Conflict. Rather, Hamas' deliberate location of a weapons storage and workshop facility in a civilian building near the UNRWA medical center, mosques, and an educational institution violated its obligations under the Law of Armed Conflict, including its obligation not to jeopardize the civilian population under its control.

4) UNSCO Gaza Compound: 29 December 2008

This incident involved the IDF aerial bombing of a Hamas command and control center, approximately 30 meters from a fence bordering a UNSCO compound. The attack occurred in
the middle of the night when the nearby offices would presumably be empty. There were no
direct hits on the UNSCO compound. However, the strike on the adjacent building reportedly
caused shrapnel and concrete debris to fly into the compound, leading to physical damage to the
premises, but no deaths or injuries.

The IDF took multiple precautions to minimize any incidental damage from this targeting of a
verified military objective, particularly to the UNSCO compound. These precautions were
effective in ensuring that there were no deaths or injuries at the UNSCO compound. The IDF
complied with both the rule of distinction (targeting a valid military objective) and the rule of
proportionality, using means that eliminated the significant military objective without any injury
to civilians.

5) UNRWA Asma Elementary School

This incident involved a missile that struck within the compound of a UNRWA school, killing
three men who were outside the school building. The IDF’s investigation revealed that on the
night of January 5, 2009, a terrorist unit was present in Asma School preparing to carry out
military activity against IDF forces. The unit was present in a place where no civilians were
known or presumed to be at night, since the school had been closed for nine days when the
incident occurred, and the missile struck at night. However, earlier that day, UNRWA apparently
had opened the school as an emergency shelter, although it did not so notify the IDF until
January 6th, the day after the strike. A list of facilities serving as shelters - provided by the U.N.
one day earlier on January 4, 2009 - did not include UNRWA Asma School.

6) UNRWA School: Beit Lahia Elementary School

This incident involved the alleged hitting of a UNRWA school, being used as a shelter, by white
phosphorous-soaked felt wedges and certain debris. Several deaths and injuries were reported.

The IDF investigation found that the incident occurred during a period in which IDF ground
forces were operating in Beit Lahia against rocket-launching units and terrorist infrastructure.
IDF forces used standard smoke projectiles to create a protective smokescreen between
themselves and Hamas’ anti-tank units. This smokescreen prevented Hamas from launching anti-
tank missiles at IDF tanks, otherwise it would have been necessary to use reactive fire at anti-
tank units, with the likelihood of more extensive collateral damage.

The nearest target zone to the UNRWA school was several hundred meters from the school.
Despite the appropriate safety buffer, some felt wedges and other components of the projectiles
unfortunately may have landed in the school. The operational advantage of using the
smokescreen was significant. The IDF is greatly saddened that civilians were injured, but this
unfortunate fact does not render the original targeting decision a violation of the Law of Armed
Conflict.
7) UNRWA Vehicle Convoy

The IDF investigated an incident in which, according to a U.N. review, "small arms fire" was directed towards the lead car of a UNRWA convoy in the Ezbet Abed Rabu area, which was then occupied by the IDF.

There may have been a mutual misunderstanding concerning the coordination of U.N. movements with the IDF. The IDF is concerned that errors in communication may have led to this incident, even though no injuries occurred, so immediate steps were taken to rectify the situation, and assure the security of United Nations personnel, installations and humanitarian operations.

8) UNRWA Vehicle

The IDF also conducted a field investigation into a complaint that a UNRWA vehicle came under fire in the Tel al-Hawa neighborhood on January 14, 2009. The investigation found that the vehicle bore no U.N. markings at the time of the firing, and was traveling in an area that international organizations had been told was forbidden for movement. Most importantly, the vehicle was transporting a Hamas anti-tank squad, in clear violation of the prohibition on using humanitarian vehicles to support military operations. The IDF had due cause to think the vehicle was a Hamas car bomb, raising legitimate concerns about the security of its own forces. The IDF's use of force against an unmarked vehicle carrying a Hamas anti-tank unit comported with the Law of Armed Conflict.

Q: What complaints were received about harm to medical facilities, vehicles and personnel?

A: Israel is firmly committed to the protection of medical staff and facilities during armed conflict. The IDF trains forces at all levels to exercise extra caution to avoid harming medical crews and facilities. In many cases IDF forces suspended their operations against legitimate military objectives when a medical vehicle or medical staff were in the vicinity, and refrained from attacking medical vehicles even in cases where Hamas and other terrorist organizations were using them for military purposes. Such restraint was not required under the Law of Armed Conflict. Indeed, Hamas itself was violating the Law of Armed Conflict by using ambulances to transport terrorist operatives and weaponry and to evacuate non-wounded terrorists from the battlefield, and by using hospitals and medical infrastructure as headquarters, situation-rooms, command centers and hiding places.

The IDF launched an investigation into allegations about harm to medical facilities, vehicles and crews. The investigation resulted in initial findings, which are now subject to review by the Military Advocate General and the Attorney General, and possibly the ultimate review by the Israeli Supreme Court. The following cases are under investigation:
1) Medical facilities

The IDF investigated an incident in which a building housing a mother-and-child clinic was damaged. The operation caused physical damage to the structure, but no injuries to anyone. The goal was to destroy a Hamas storage site located in the building, containing weapons and military equipment, in gross violation of its duty not to jeopardize civilians and medical facilities. There was no sign indicating the presence of the clinic, and its location was not reported or otherwise known to the IDF prior to the military operation against the weapons depot.

The IDF carefully planned the operation and issued warnings in advance to civilians, by means of leaflets, telephone calls and warning shots with light weapons. This early warning was effective because there were no casualties.

The IDF has also been criticized for attacking the Khan Younis European Hospital and causing damage to infrastructure at al-Quds hospital. There were no injuries in either case and both are under investigation.

2) Medical vehicles

The IDF investigated a number of cases involving attacks on medical vehicles. Some involved vehicles being driven in a suspicious manner, often at night, without prior coordination with IDF forces and without clear markings of medical use. In these situations, IDF soldiers were concerned that the vehicles might be used for military purposes, such as a suicide attack, and in many cases fired warning shots, consistent with applicable procedures under the Law of Armed Conflict. The IDF investigation concluded that IDF forces were mistaken in some of these assessments, but the standard against which the action is gauged is one of reasonableness of the commander making decisions in real time. Under this standard, the conduct of IDF forces was reasonable and did not violate the Law of Armed Conflict.

3) Medical Personnel

IDF investigations into allegations regarding health service staff wounded or killed during the Gaza operation revealed that some of the reported cases were based on false information. For instance, The IDF investigation found that a member of a Palestinian medical team reported killed in an IDF strike was, in fact, alive. Similarly, an ambulance driver was reported killed in Beit Lahia, but the "deceased" ambulance driver was interviewed on a Hamas website a few days after the incident. The IDF investigation found that the only Palestinian killed in that incident was, in fact, a Hamas operative.

Q: What are the facts behind the incidents involving multiple civilian casualties?

A: The IDF acknowledges a number of unfortunate incidents during the operation in Gaza, in which multiple civilians were harmed. Consistent with the high standards to which it holds its armed forces, Israel is rigorously investigating these incidents.
The IDF conducted a field investigation examining seven incidents in which the IDF allegedly harmed civilians, and concluded that IDF operations did harm civilians. The IDF is deeply saddened by the deaths and injuries of all civilians, especially of children. The harm to these individuals was not intentional and there appears no basis for the serious charges to that effect. To the contrary, where the risk of harm to civilians could be foreseen, the IDF fully complied with the Law of Armed Conflict by taking many measures to minimize this risk, including using precise intelligence and providing warnings prior to the attack. Unfortunately, a significant proportion of the incidents occurred as a result of Hamas' taking cover among the civilian population and using civilian facilities and structures as part of its terrorist operation against Israel. Investigation of the following incidents has reached the following preliminary conclusions:

1) The Al-Daia Family Residence, Zeitun Neighborhood

During this extremely unfortunate incident, members of the Al-Daia family were killed when the Israeli Air Force bombed their house as a result of an operational error. An investigation determined that the IDF intended to strike a weapons' storehouse located in an adjacent building, but erroneously targeted the Al-Daia residence instead.

Israel deeply regrets the tragic outcome and is examining how the unfortunate operational error occurred, in order to prevent any recurrence. The lack of unlawful intent has been a critical factor in past incidents involving operational mistakes by other armies and, although its attack on the Al-Daia residence was a tragic error, it did not constitute a violation of the laws of war.

2) The House of Nazar Ri'an

During this episode Ri'an and members of his family were killed in an aerial strike that hit their home. Ri'an was a senior Hamas operative, but he was not the target of the attack, although the IDF legitimately could have treated him as a military target. Instead, the operational goal was to destroy Hamas' central compound in the Jabaliya refugee camp, which included several storage sites for a large quantity of sophisticated weapons.

The IDF issued several warnings before the attack, including specific phone calls to warn the residents of the targeted buildings to evacuate the premises. The IDF also fired two separate rounds of preliminary warning shots with light weapons, which were evidently understood by the residents, as a group of them did leave the building - a fact confirmed by IDF surveillance before proceeding with the strike. After the strike, secondary explosions were visible, confirming that Hamas used the buildings for weapons storage, making it a legitimate military objective under the Law of Armed Conflict. Only later was it discovered that Ri'an and his family chose to remain in the building after others had evacuated, leading to their deaths.

The deaths of the Ri'an family members were tragic, but it must be underscored that the IDF took appropriate steps to tailor its military strike to a proper military objective (the weapons storage site) and to extricate civilians from possible harm. That some civilians heeded these warnings, while the Ri'an family apparently did not, does not render the IDF's action unlawful.
3) The House of Dr. Abu el Eish

The IDF thoroughly investigated this incident, in which the doctor's three daughters were killed. The investigation concluded that an IDF tank fired two shells, which resulted in these unfortunate casualties.

An IDF force came under sniper and mortar fire in an area laden with explosives and IEDs, and identified the source of fire as a house adjacent to the doctor's. The IDF saw several figures moving suspiciously in the upper level of a house nearby, which was, in fact, Dr. Abu El-Eish's house. The IDF troops concluded that these figures were spotters directing the arms fire of the snipers, a target location method used by Hamas throughout the Gaza operation. Under heavy fire, the IDF commander waited about 20 minutes to ascertain that the suspicious figures were Hamas operatives, then gave the order to open fire on the presumed spotters. Hearing screams from the direction of the house, he immediately halted all fire.

In the days leading up to the incident, Dr. Abu El-Eish was directly contacted several times to urge him to temporarily evacuate his home, as many others in the neighborhood already had. Dr. Abu El-Eish chose to remain in the house with his family, despite the evident risks associated with Hamas sniper activity from the adjacent building. The IDF regrets the tragic deaths of Dr. Abu El-Eish's daughters, however, the decision to target the building was intended only to respond to a perceived threat, and in no way breached the Law of Armed Conflict.

4) Attack on Truck Carrying Oxygen Tanks

IDF surveillance identified a truck carrying objects that looked like Grad rockets, which were being loaded into the truck next to a recognized Hamas rocket manufacturing site, and near an area used by Hamas to launch rockets towards Israel. In fact, the truck was carrying oxygen tanks and not rockets. The strike against the truck killed four Hamas operatives and four civilians.

The error was caused by the proximity to terrorist sites used for rocket launches. There was no intent to attack civilians. Destroying rockets before they reach a launch site was considered an urgent operational objective.

5) Alleged Attacks on Mosques

IDF rules of engagement expressly forbid attacks directed against sacred places, unless they are used for military purposes. Hamas frequently used mosques for such purposes, in particular for the storage of weapons and munitions. Allegations were examined regarding alleged IDF attacks on two religious sites, in which it was claimed that civilians were injured or killed.

One incident involved an alleged attack against Maqadme Mosque in Beit Lahia. The IDF inquiry revealed that the mosque was not attacked at all. The individuals reported as killed in this incident were in fact killed in other incidents not involving the mosque. Further, the supposed "civilians" who were casualties of the attack were in fact Hamas operatives killed while fighting against the IDF.
The second incident involved alleged strikes against the Rabat Mosque in Beit Lahia. The IDF investigation found no evidence that such a strike took place.

Q: Did the IDF use munitions containing white phosphorous and flechettes?

A: The IDF uses only weapons and munitions defined as legal under international law and authorized as such by the relevant IDF authorities, including MAG officers. All weapons and munitions are employed in accordance with the general rules of International Humanitarian Law, such as distinction and proportionality.

During the Gaza operation, IDF forces used munitions containing white phosphorous, which is in common use by militaries worldwide. The IDF used two different types of munitions containing white phosphorous - exploding munitions and smoke projectiles. A small number of exploding munitions containing white phosphorous were used by the IDF during the operation, as mortar shells fired by ground forces and as rounds from naval vessels. These munitions were fired only at open unpopulated areas and were used only for marking and signaling. No exploding munitions containing white phosphorous were used in built-up areas of the Gaza Strip or for anti-personnel purposes.

In the course of the ground maneuver, the IDF also used smoke screening projectiles containing felt wedges dipped in white phosphorous. These shells contained relatively small amounts of white phosphorous and were used exclusively to create smoke screens for military requirements, such as camouflaging armored forces from anti-tank squads deployed by Hamas in Gaza's urban areas. The smoke projectiles may, on occasion, produce incidental incendiary effects, but this does not make them incendiary weapons for purposes of international law.

Q: What is the international law applicable to the use of incendiary weapons?

A: The use of munitions containing white phosphorous is not prohibited by any international treaty, including CCW Protocol III. Accordingly, although Israel is not a party to CCW Protocol III, it is clear that the use of munitions containing white phosphorous as a smokescreen is not regulated or prohibited by it. The fact sheet on white phosphorous by the Federation of American Scientists rates the lethality of white phosphorus as "low" and notes its current status as being "in use around the world," including by the U.S. and other military forces, for a variety of purposes.

Q: In using these weapons, did Israel comply with the principle of distinction?

A: The obscurant smoke shells were used by the IDF for military purposes only (e.g. camouflaging armored forces from anti-tank squads deployed by Hamas in Gaza's urban areas), and were not aimed at civilians. At no time did IDF forces have the objective of inflicting any harm on the civilian population. Smoke projectiles are not designed or intended to be lethal or destructive - they are intended to disorient and neutralize the enemy by creating obscuration of the enemy's field of view. Therefore, smoke obscurants containing white phosphorous cannot be classified as an indiscriminate weapon; otherwise, any smoke-screening means would be prohibited, in contrast to the well-established practice of militaries worldwide.
Q: Did Israel comply with the duty to minimize the risk to civilians?

A: During the Gaza operation, the IDF used smoke-screening projectiles containing white phosphorous in a manner corresponding with its duty to minimize the risk to civilians. Abstaining from using smokescreens in densely populated areas of Gaza, i.e. precisely in those areas where Hamas deployed most of its forces, would undoubtedly have compromised the safety of Israeli troops and would have increased the risk for civilians, as a result of cross-fire. The smoke obscurants proved to be a very effective means of protecting Israeli forces and in many cases prevented the need to use explosive munitions whose impact would have been considerably more dangerous. The IDF took the appropriate precautions and other measures with respect to these particular munitions. All the precautions taken by the IDF may not have completely eliminated the risk of civilian casualties, but the Law of Armed Conflict only requires parties to minimize the risk to civilians to the extent possible, subject to the legitimate military necessities. The IDF's use of smoke obscurants fully complied with this rule.

Q: Did Israel comply with the principle of proportionality?

A: The issue of proportionality turns on the reasonableness of a commander's decision to use a particular munition in a particular context, taking into account the expected military benefit and the expected collateral damage. Second-guessing the reasonableness of a commander's decision in a rapidly evolving and complex battlefield situation should not be done lightly, and must take into account the information available to the commander at the time of the decision (not what actually occurred) and the value of the military objective to a reasonable commander (rather than to a third-party observer). In the case of smoke munitions containing white phosphorous, the expected military benefit was that they would protect Israeli forces from attack - a compelling military objective.

Against this objective, one must weigh the anticipated risk of harm to civilians and property from the use of smoke munitions, which are designed to be a non-lethal type of munition. The non-lethal nature of smoke screens when compared to the effect of explosive munitions was particularly important, given that Hamas and other terrorist organizations sought to blend in with the civilian population, making it difficult or impossible to use explosive munitions without-inflicting substantial civilian casualties.

While the actual (as opposed to the anticipated) extent of damage caused by the use of munitions containing white phosphorous is not clear, Israel recognizes the unfortunate reality that a number of civilians and civilian structures might have been harmed by such use during the Gaza operation. Israel sincerely regrets every civilian injury that may have occurred, but notes that evidence regarding the extent of collateral damage caused by these munitions in Gaza is unclear.

There appears to be insufficient evidence to conclude that white phosphorous caused extensive injuries to civilians in the course of the Gaza operation. However, complaints on damages and harm are still being investigated by the IDF and any definite conclusions in this regard would be premature. In addition to some civilian injuries, the use of smoke projectiles containing white phosphorous appear to have set fire to a number of civilian buildings. Such fires were an unwelcome effect of the IDF's operations but given the fact that thousands of smoke screen
projectiles were launched by the IDF, each projectile with 116 felt wedges, the damage from this use cannot be regarded as excessive. The scope of casualties and damage actually resulting from use of the smokescreen projectiles appears to have been relatively limited compared to the significant military advantage gained by smoke-screening.

**Q: What did the investigations show and what lessons were learned?**

**A:** In light of claims that the IDF made illegal use of munitions containing white phosphorous during the Gaza operation, the IDF launched a field investigation into this matter. The investigation has now been completed and has uncovered no violations of international law, although further stages of the review are ongoing.

**Q: What are the facts about the IDF's use of munitions containing flechettes?**

**A:** Flechettes - anti-personnel darts typically dispersed by means of an explosive shell - were also used to a very limited extent by IDF forces during the Gaza operation. Flechettes are a legal munition, and are not prohibited under the Law of Armed Conflict or under specific conventional prohibitions or restrictions. Many armies in the world have employed them in a variety of armed conflict situations.

Naturally, the use of flechettes must comply with the general requirements of the Law of Armed Conflict, so the use of flechette munitions is regulated both by the IDF standing rules of engagement, and by specific professional instructions, designed to ensure respect for the legal requirements of distinction and proportionality, and the requirement to minimize the risk to civilians.

In 2002, the issue of employing flechette munitions by the IDF in the course of military operations in the Gaza Strip was brought before the Israeli Supreme Court, but the Court concluded that this type of weapon was not illegal under the Law of Armed Conflict. Following the Gaza operation, however, several complaints were made concerning their use in particular instances. These claims are currently being examined by the relevant IDF authorities, and it is therefore premature to comment on those incidents. Any findings will be subject to review by the MAG, the Attorney General, and the Israeli courts.

**Q: Why was private property destroyed in the Gaza operation?**

**A:** Some destruction of private property and infrastructure is an unfortunate but inescapable by-product of every armed conflict. While recognizing this reality, the Law of Armed Conflict requires that the damage be justified by military necessity. The investigations thus far reveal that although IDF forces were instructed to minimize collateral damage to civilian property to the extent possible, extensive damage to civilian infrastructure and personal property did occur in the course of the Gaza operation. Much of the damage resulted from the necessities of war and was the outcome of Hamas' mode of operating.
Hamas based its main line of defense on civilian infrastructure in the Gaza Strip, and specifically on booby-trapped structures (mostly residential), the digging of explosive tunnels and tunnels intended for the moving of fighters and weaponry. During the Gaza operation, IDF troops were forced not only to fight the terrorists themselves, but also to deal with the physical infrastructure prepared in advance by Hamas and other terrorist organizations.

As part of this challenge, IDF forces demolished structures that threatened their troops and had to be removed. The IDF launched a full investigation into allegations of excessive damage to civilian objects during the Gaza operation, which is now being examined by the Military Advocate General. It confirmed that although relatively extensive damage was caused to private property, the IDF’s activities which caused this damage complied with the Law of Armed Conflict. The Law of Armed Conflict allows the destruction of private property where, as here, it is a matter of military necessity.

The investigation showed that in all the areas of operation, the decision to authorize the demolition of houses was made only by high ranking officers, and was only made after it was determined by the forces that they were vacant in order to minimize civilian casualties.

The investigation showed that, in many cases, the preparations made by Hamas and other terrorist organizations were responsible for the significant damage caused to houses. Unanticipated damage to some buildings occurred due to the existence of subterranean tunnels that were unknown to IDF forces. In other cases, the damage was due to the secondary explosions caused by the detonation of explosive devices or weaponry placed by Hamas within the structures.

It should be emphasized that IDF orders and directions dealing with the destruction of private property in the Gaza operation stressed that all demolition should be carried out in a manner that would minimize, to the greatest extent possible, the damage caused to any property not used by Hamas and other terrorist organizations in the fighting.