



Hamas' use of human shields in Gaza

NATIONS INVOLVED: Israel; Palestine

TIME PERIOD: 2008 – 2014

THEMATIC AREA: Lawfare

EXECUTIVE SUMMARY

Hamas, an Islamist militant group and the *de facto* governing authority of the Gaza Strip, has been using human shields in conflicts with Israel since 2007. According to the Statute of the International Criminal Court (ICC), the war crime of using human shields encompasses “utilizing the presence of a civilian or other protected person to render certain points, areas, or military forces immune from military operations.” Hamas has launched rockets, positioned military-related infrastructure-hubs and routes, and engaged the Israeli Defense Forces (IDF) from, or in proximity to, residential and commercial areas.

The strategic logic of human shields has two components. It is based on an awareness of Israel’s desire to minimise collateral damage, and of Western public opinion’s sensitivity towards civilian casualties. If the IDF uses lethal force and causes an increase in civilian casualties, Hamas can utilise that as a lawfare tool: it can accuse Israel of committing war crimes, which could result in the imposition of a wide array of sanctions. Alternatively, if the IDF limits its use of military force in Gaza to avoid collateral damage, Hamas will be less susceptible to Israeli attacks, and thereby able to protect its assets while continuing to fight. Moreover, despite the Israeli public’s high level of support for the Israeli political and military leadership during operations, civilian casualties are one of the friction points between Israeli left-wing and right-wing supporters, with the former questioning the outcomes of the operation.

KEY POINTS

- The **use of human shields** can be considered an **example of ‘lawfare’** – i.e. the use of the legal system against an enemy by damaging or delegitimising them, tying up their time or winning a public relations victory.
- Even if a targeted strike may be justifiable from a legal perspective, **first impressions frame the narrative**. Public opinion tends to be influenced more by images depicting the suffering of innocent civilians than by well-thought-out legal arguments.
- National governments should be able to **publicly justify their position, and reveal their adversary’s use of civilians in combat**. This can only be accomplished by thoroughly documenting incidents, preparing supportive messages, and working across multiple channels to convey those narratives.
- Priority should be given to information activities **aimed at the very civilians who are used as human shields**, in order to undermine the adversary and convince civilians to actively or passively refuse to serve as human shields. Such activities need to be coherent, consistent and coordinated.

SUMMARY

Hamas is an Islamist militant group based in the Gaza Strip, which has been designated by the US, the EU and other countries as a terrorist group. Hamas has been using human shields in conflicts with Israel since 2007. Although the definition of human shields is not consistent among states and inter-governmental organisations, the Statute of the International Criminal Court (ICC) states the war crime of using human shields encompasses “utilizing the presence of a civilian or other protected person to render certain points, areas, or military forces immune from military operations.”¹

Hamas relies on the Israeli government’s aim to minimise collateral damage, and is also aware of the West’s sensitivity towards civilian casualties. Hamas’ use of human shields is therefore likely aimed at minimising their own vulnerabilities by limiting the Israeli Defense Forces’ (IDF) freedom of action. It is also aimed at gaining diplomatic and public opinion-related leverage, by presenting Israel and the IDF as an aggressor that indiscriminately strikes civilians.²

Hamas’ most common uses of human shields include:

- Firing rockets, artillery, and mortars from or in proximity to heavily populated civilian areas, often from or near facilities which should be protected according to the Geneva Convention (e.g. schools, hospitals, or mosques).
- Locating military or security-related infrastructures such as HQs, bases, armouries, access routes, lathes,³ or defensive positions within or in proximity to civilian areas.
- Protecting terrorists’ houses and military facilities, or rescuing terrorists who were besieged or warned by the IDF.⁴
- Combating the IDF from or in proximity to residential and commercial areas, including using civilians for intelligence gathering missions.

By engaging in these acts, Hamas employs a win-win scenario: if indeed the IDF uses kinetic power, and the number of civilian casualties surges, Hamas can use that as a weapon in the lawfare⁵ it conducts. It would be able to accuse the IDF (and Israel) of committing war crimes, which in turn could result in the imposition of a wide

¹ Douglas Fischer, “Human Shields, Homicides, and House Fires: How a Domestic Law Analogy Can Guide International Law Regarding Human Shield Tactics in Armed Conflict,” *American University Law Review* 57, no. 2 (December 2007): 488. <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1029&context=aulr>

² This modus operandi is inspired by Hezbollah’s use of human shields in Lebanon. See: No Author, “Deadly Hezbollah Chess Match,” *The Washington Times*, 26 October 2006. <http://www.washingtontimes.com/news/2006/oct/25/20061025-092622-2090r/>

³ Lathes are used to produce weapons and ammunition, especially rockets and mortar shells.

⁴ The IDF often uses telephone calls and leaflets to tell occupants to leave before striking. In some cases, the Israelis fire missiles without explosive warheads onto the roof to get Palestinians who had gathered there to leave. The Israelis call it “the knock on the roof.” Steven Erlanger and Fares Akram, “Israel Warns Gaza Targets by Phone and Leaflet,” *The New York Times*, 8 July 2014. <https://www.nytimes.com/2014/07/09/world/middleeast/by-phone-and-leaflet-israeli-attackers-warn-gazans.html?mcubz=1>

⁵ Lawfare refers to the use of the legal system against an enemy, such as by damaging or delegitimising them, tying up their time or winning a public relations victory (From: <https://scholarlycommons.law.case.edu/jil/vol43/iss1/>). Originally defined by Dunlap as ‘a method of warfare where [international] law is used as a means of realizing a military objective’, or ‘as a weapon of war’ (From: <http://people.duke.edu/~pfeaver.dunlap.pdf>). The term is more broadly understood as the exploitation of real, perceived or even manipulated instances of international law violations in order to undermine the target nation and their values.

array of sanctions. On the other hand, if the IDF limits its use of military power in Gaza to avoid collateral damage, Hamas will be less vulnerable to Israeli attacks, and thereby able to protect its assets while continuing to fight.

Hamas' growing strategic distress in the face of recent geopolitical developments will probably push the organisation towards a more pragmatic strategy in the near future. However, the movement is simultaneously preparing itself for yet another round of armed conflict with Israel. If this indeed happens, and in light of the success of the human shield practice, there is every reason to believe Hamas will continue resorting to the use of civilians as human shields.



Map of Gaza Strip.

CONTEXT

Militant and terror organisations in the Gaza Strip have built an extensive military infrastructure with corresponding capacities. By both smuggling and self-production, these organisations have acquired large quantities of missiles, rockets, and mortar shells which actively target Israel's civilian centres. The IDF estimates that Hamas has about 10,000 rockets on hand.⁶ This infrastructure is concealed in private homes, tunnels, and public buildings such as mosques among 1.85 million Gazans, who reside in the relatively small area of 362 square kilometres, thus making Gaza the third most densely populated polity in the world.⁷

The practice of using human shields is common to most violent extremists operating in the Gaza Strip. The following Palestinian organisations have resorted to human shields in the Gaza Strip, both defensively and offensively:

- **Hamas** (Arabic: حماس) – A Palestinian, Sunni-Islamic, fundamentalist organisation. The *de facto* governing authority of the Gaza Strip since its takeover in 2007. It has a social service wing, Dawah, and a military wing, the Izz ad-Din al-Qassam Brigades (Arabic: كتائب الشهيد عز الدين القسام), which was established in 1991. The initial objective of the brigades was to torpedo the Oslo Accords negotiations, by executing large scale terror attacks against Israeli military and civilian populations. Since Hamas' takeover of the Strip in June 2007, the brigades have grown exponentially, and now consist of 20,000 – 30,000 militants.⁸
- **The Islamic Jihad Movement in Palestine** (Arabic: حركة الجهاد الإسلامي في فلسطين) – Known in the West as simply the **Palestinian Islamic Jihad** (PIJ). It is a Palestinian Islamist terror organisation formed in 1981, whose objective is the destruction of the State of Israel and the establishment of a sovereign, Islamic Palestinian state.
- **The Popular Resistance Committees** (PRC) (Arabic: لجان المقاومة الشعبية) – A coalition of several armed Palestinian groups opposed to what they regard as the conciliatory approach of the Palestinian Authority and Fatah towards Israel. The PRC is especially active in the Gaza Strip through its military wing, the Al-Nasser Salah al-Deen Brigades.



⁶ "Hamas Rockets," *Global Security*, n.d., accessed on 6 April 2018, <https://www.globalsecurity.org/military/world/para/hamas-qassam.htm>; "Iron Dome (Israel)," *Missile Threat: CSIS Missile Defense Project*, 14 April 2016, <https://missilethreat.csis.org/defsyst/iron-dome/>

⁷ The territory of the Gaza Strip is 41 kilometres (25 miles) long, and from 6 to 12 kilometres (3.7 to 7.5 miles) wide, with a total area of 365 square kilometres (141 sq. miles), *CIA World Factbook*, "Gaza Strip." <https://www.cia.gov/library/publications/the-world-factbook/geos/gz.html>

⁸ These estimations consist of additional military and para-military forces operated by Hamas. Mohammed Omer, "Hamas Growing in Military Stature, Say Analysts," *Middle East Eye*, 17 July 2014. <http://www.middleeasteye.net/news/hamas-gains-credibility-fighting-force-analysts-say-371780262>

- **The Humanitarian Relief Foundation (IHH)** (Turkish: İHH İnsani Yardım Vakfı) – A conservative Turkish NGO whose members are predominantly Turkish Muslims, active in more than 100 countries. The IHH was owner and operator of three flotilla ships involved in the convoy intended to breach the Gaza blockade in 2010 and 2011.



This report focuses on Hamas, which is the largest, most prominent, and most militarily developed organisation in the Strip. It describes various cases in which Hamas have used human shields, mainly in conflicts with Israel between 2007 and 2014 – primarily the Gaza War (2008 – 2009), also known as Operation Cast Lead; the 2012 conflict, also known as Operation Pillar of Defense; and the 2014 Israel-Gaza conflict, also known as Operation Protective Edge.

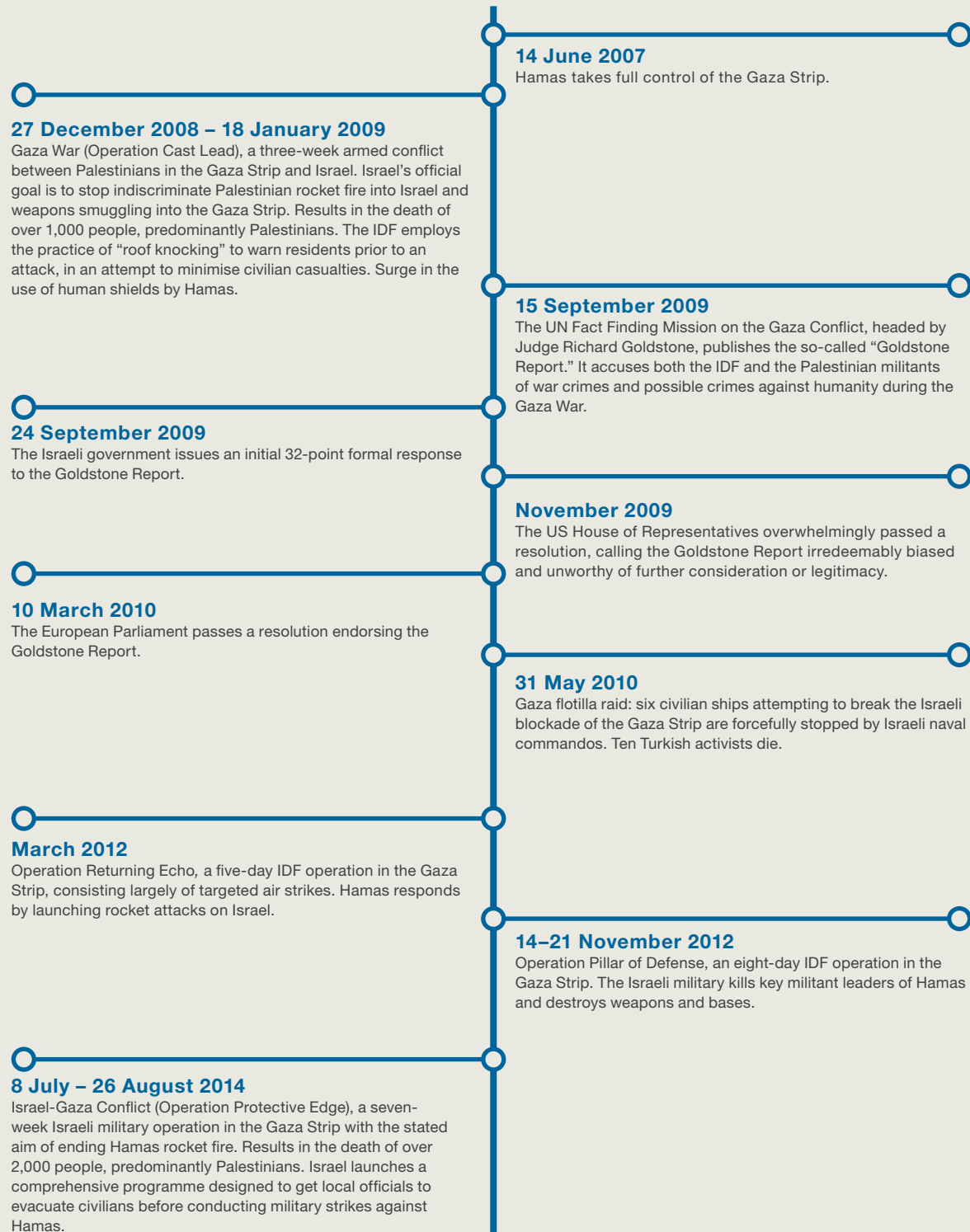
It is worth noting that the IDF also used Palestinian citizens as human shields on past occasions, especially in its operation in the West Bank. However, this practice was declared unlawful by the Israeli Supreme Court, and several officers were court martialled for applying the technique.⁹

Past occasions in which Hamas used, or was accused of having used, civilians as human shields:

Date	Description	Reference
May 2004	Ambulance marked with UN designation used to transport Hamas combatants.	<i>Channel 10 (Israel), 24 May 2004</i>
October 2006	Ammunition found by IDF soldiers in a residential building.	<i>IDF Spokesman</i>
20 November 2006	Hamas encouraged civilians to climb the rooftop of a Hamas executive's house, following the IDF's early warning.	<i>ANB TV, 20 November 2006</i>
12 June 2007	Accidental explosion during the assembly of an IED at a residential house, which collapsed; 10 civilians were killed and 40 injured.	<i>Al-Hayat newspaper, 14 June 2007</i>
2008	Lathes used to produce weapons and ammunition, located in or near residential areas.	<i>IDF Spokesman</i>
2008	Tunnel entry and exit points located in residential houses.	<i>IDF Spokesman</i>
29 January 2008	Rocket production facility was located inside a residential house in the northern part of the Strip.	<i>Der Spiegel newspaper, 30 January 2008</i>
August 2008	Hamas' Special Forces train in the streets of Tufah neighbourhood, Gaza.	<i>Palestine Info Center, 20 August 2008</i>
2 January 2009	A mosque was used as Hamas HQ and armoury.	<i>IDF Spokesman, 2 January 2009</i>
28 December 2009	During the first week of Operation Cast Lead the IDF attacked Hamas' R&D centre, located in the Islamic University in Gaza.	<i>IDF Spokesman, December 28 2009; Al-Aqsa TV, 28 December 2009</i>
8 July 2014	Civilians went on the rooftop of a Hamas executive's house, following the IDF's early warning.	<i>Alwatan TV, 9 July 2014</i>

⁹ Harriet Sherwood, "Israeli Soldiers Convicted of Using Palestinian Boy as Human Shield," *The Guardian*, 3 October 2010, <https://www.theguardian.com/world/2010/oct/03/israel-soldiers-human-shield-palestinian>

Timeline of Key Events



Hamas Narratives

- Israel commits war crimes, indiscriminately killing Palestinian civilians.
- The Palestinian people support Hamas unconditionally, even if that means risking civilian lives.
- It is the Palestinian people's religious and national duty to serve as human shields, in order to serve the resistance and support its cause.
- Israel's early warning messages prior to an airstrike are psychological warfare.

Hamas (via spokespeople)

2006: "The citizens will continue defending their pride and houses and will continue to serve as human shields until the enemy will withdraw."¹⁰

2014: "The fact that people are willing to sacrifice themselves against Israeli warplanes in order to protect their homes, I believe this strategy is proving itself. And we, Hamas, call on our people to adopt this practice."¹¹

2014: "Hamas despise those defeatist Palestinians that criticize the high number of civilian casualties. The resistance praises our people...we lead our people to death...I mean, to war."¹²



Ismail Haniyeh, former Prime Minister of the Palestinian National Authority (2006-2014), Head of Hamas Political Bureau in Gaza (since 2017)

2006: Citizens were encouraged to gather at Muhammad Baroud's house (a prominent PRC combatant) in Jabaliya refugee camp, after the IDF issued a warning. Following the event, Haniyeh stated: "I believe that what has happened tonight will be a role model... an example to our Palestinian people and a clear message, that the [Zionist] aggression will not break our will."¹³

2008: "Israel threatens to bombard houses [in which freedom fighters live], but hundreds and thousands of Palestinians climb to those houses rooftops in the middle of the night to defend those houses."¹⁴



Fathi Hamad, Hamas MP

2008: "For the Palestinian people, death has become an industry [...]. This is why they have formed human shields of the women, the children, the elderly and the mujahideen."¹⁵



¹⁰ Statement by spokesperson Mushir Al-Masri following a telephone alert issued by the IDF, which was planning to strike Hamas executive Waal Rajub Al-Shakra's house in Beit Lahiya. *Al-Aqsa TV*, 20 November 2006.

¹¹ Statement by spokesperson Sami Abu Zuhri after the IDF aborted an airstrike to avoid civilian casualties. Quoted in: Israel Defense Forces, "Hamas Spokesperson Encourages Use of Human Shield," *Youtube Video*, 9 July 2014, <https://www.youtube.com/watch?v=UXZEzbTOH1s>

¹² Statement by spokesperson Sami al-Zuhari. *Al-Aqsa TV*, 13 July 2014.

¹³ *Al-Quds Radio*, 18 November 2006.

¹⁴ Interview, *Al-Jazeera*, 29 February 2008.

¹⁵ *Al-Aqsa TV*, 29 February 2008. Clip can also be found in: <https://www.youtube.com/watch?v=giJIG3KXq8c>

Khaled Mashal, Head of the Hamas Political Bureau (1996-2017)

“If you will foolishly decide to enter Gaza, we will fight you. You will face not only thousands of our combatants, but also a million and a half of our population, driven by the desire to become martyrs.”¹⁶



Ministry of Interior in the Gaza Strip (via spokespeople)

2009: “Men in uniform have been declared targets for air strikes. As a result, while outside in the terrain, uniforms are to be discarded and civilian clothes are to be worn.”¹⁷

2014: “We call those who evacuated their houses to return immediately and stay there... Israel’s warnings are nothing but psychological warfare... by leaving your houses you assist the enemy to fulfil its plans, that is, annihilating your belongings and houses.”¹⁸



Children observe launching of Hamas mortar.¹⁹

¹⁶ Press Conference, 1 March 2008.

¹⁷ Statement by spokesperson Aslam Shahuan; various sources, 5 January 2009.

¹⁸ Statement by spokesperson Iad al-Bazam; Hamas Facebook page, 13 July 2014.

¹⁹ Screenshot from: Mark Jonson, “Hamas Using Children as Human Shields,” Youtube Video, 15 July 2014, <https://www.youtube.com/watch?v=Imo0ZHioJ4E>

Israeli Government Narratives

- Israel uses military force to protect its citizens in light of Hamas' aggression. It only targets Hamas' military facilities and militants.
- Civilian casualties are caused by Hamas' use of human shields to protect its assets and to enable its aggression towards Israel.
- Israel actively engages in all possible efforts to avoid harming civilians, including alerting them before strikes. Sometimes the IDF will cancel planned strikes, when there is a risk to civilians.
- The Palestinian population in the Gaza Strip is subjected to Hamas' terror, and does not support the movement's use of human shields.

The Israel Defense Forces (IDF), the military forces of the State of Israel.

2014, example of an IDF warning: "The IDF will conduct airstrikes against terrorists and their infrastructure, in the area of Zeitun, from which rockets are being fired at Israel. You should protect yourselves and immediately evacuate your houses [...]. The IDF is not interested in harming you."²⁰



The Israel Security Agency (ISA), Israel's internal security service. Also known as Shabak or the Shin Bet. Monitoring terrorist activity in the Gaza Strip and the West Bank has become the most prominent part of the ISA's mission.

2009: "[The ISA detected a] soaring trend towards adopting a 'defensive Modus Operandi' aiming to turn civilians into Hamas' 'human shields.' This trend existed earlier but was propelled again following the Gaza Operation (late 2008). Hamas' rationale emanates from the understanding that Israel is making maximum efforts to eschew hurting innocent civilians."²¹



Israel Ministry of Foreign Affairs

2009: "The residents of Gaza are not the target of the operation. Those who use civilians, the elderly, women and children as 'human shields' are responsible for any and all injury to the civilian population. Anyone who hides a terrorist or weapons in his house is considered a terrorist."²²



Danny Danon, Israel's Permanent Representative to the UN

2017, after a Hamas tunnel was discovered underneath two UN-run schools in Gaza: "The latest finding verifies once again that Hamas's cruelty knows no limits, including endangering centers of learning and education, and using children as human shields [...]. I call on the Security Council to strongly and unequivocally condemn Hamas and its repeated abuse of civilian infrastructure, and designate this group as a terrorist organization."²³



²⁰ Channel 2 News, 16 July 2014.

²¹ "Hamas Exploitation of Medical Institutions as 'Human Shield,' Israeli Security Agency, 16 May 2009, https://www.shabak.gov.il/SiteCollectionImages/%D7%A1%D7%A7%D7%99%D7%A8%D7%95%D7%AA%20%D7%95%D7%A4%D7%A8%D7%A1%D7%95%D7%9E%D7%99%D7%9D/terror-portal/docs/english/hamasshield_en.pdf

²² "Operation Cast Lead Expanded," Israel Ministry of Foreign Affairs, 3 January 2009, http://mfa.gov.il/MFA/PressRoom/2009/Pages/Second_stage_Operation_Cast_Lead_begins_3-Jan-2009.aspx

²³ A letter of protest submitted by Danon to UN Secretary-General Antonio Guterres and the UN Security Council. *Times of Israel*, 10 June 2017, <https://www.timesofisrael.com/israel-protests-hamas-tunnel-under-gaza-un-schools/>.

The Meir Amit Intelligence and Terror Information Centre (co-funded by Israeli government)



2010: “Throughout Operation Cast Lead itself, Hamas implemented a combat doctrine which made massive use of civilians as human shields. The doctrine, inspired by Hezbollah’s experience in Lebanon, was formulated in the years preceding the operation. The Goldstone Report does not deal with Hamas’ combat doctrine and its implications for asymmetric warfare in urban settings. [...] The report systematically ignores or rejects Israel’s position on the issue of human shields. [...]

[Hamas’] tactics included forcing residents to stay at home in neighborhoods where the IDF operated; assimilating terrorist operatives into civilian neighborhoods; exchanging their uniforms for civilian clothing while fighting the IDF; surrounding operatives with children to facilitate their escape from combat zones; making large-scale military use of civilian houses, which included constructing tunnels for assault and escape; situating its military infrastructure within civilian houses and public institutions; turning residential neighbourhoods into combat zones [...]; firing rockets and mortar shells from within civilian population centers [...]; and summoning civilians to come to operatives’ houses to serve as human shields for terrorist operatives in danger of being attacked by the IDF.”²⁴



*Tweet by the IDF.*²⁵

²⁴ “Response to the Goldstone Report: Hamas and the Terrorist Threat from the Gaza Strip – the Main Findings of the Goldstone Report Versus the Factual Findings,” *The Meir Amit Intelligence and Terrorism Information Center*, March 2010, <https://web.archive.org/web/20101130054754/http://terrorism-info.org.il/site/content/T1.asp?pid=334&sid=13>

²⁵ Israel Defense Forces, Tweet from 20 July 2014, <https://twitter.com/idfspokesperson/status/490877848165421056?lang=en>

MEASURES

Strategic Logic

The dense, heavily populated Gaza Strip provides the ideal setting for a terrorist and paramilitary organisation. The region consists of a variety of populated areas both organised and unorganised, temporary and permanent, aboveground and under the surface. Those areas, consisting of cities and refugee camps (which are even more densely populated), enhance the defender's advantage. Hamas' defensive and offensive strategies are based on leveraging these advantages in combat with the IDF, inspired by Hezbollah's strategy in Lebanon.²⁶

The objective of this strategy is to maximise the IDF's casualties while protecting Hamas' forces and infrastructure from the IDF's military supremacy. This strategy accepts the possibility of civilian casualties, and even leverages these for internal and external propaganda.

Diplomacy. Hamas' struggle against Israel is based on a three-pronged strategy: continuing the armed conflict with Israel; terminating the internal rifts within the Palestinian people; and maintaining the diplomatic struggle, aimed at tarnishing Israel in the eyes of the international community in order to ensure ongoing support for the Palestinian cause, including the right of the Palestinians to resist Israel (i.e. Intifada – Arabic: انتفاضة).²⁷

From a diplomatic perspective, Hamas uses human shields as a military practice to earn points in the global and regional arena (as well as in the Palestinian one). This is used to weaken Israel's ability to justify its claims regarding the Palestinian problem, to create continuous political pressure through international institutions (e.g. the UN and the EU) and NGO groups, and to support and promote sanctions and prosecution by international tribunals. Hamas records most incidents in which civilians are killed and injured by the IDF, and then uses this "evidence" to demonstrate the IDF's alleged lack of legal and moral standards. This also serves Hamas in the diplomatic theatre, as any collateral damage caused by the IDF usually yields harsh criticism from the UN and its institutes, Israel's rival countries (e.g. Turkey), and sometimes even friendly countries (e.g. UK, Germany, France, Sweden).



Aftermath of a 2014 IDF bombing on the family home of a Hamas activist; despite IDF warnings to the inhabitants to leave the building; 2 adults and 6 children died following the drone strike. IMAGE – WIKIMEDIA / Muhammad Sabah and B'Tselem

²⁶ This rationale reached its full manifestation during the Second Lebanon war in June 2006, "Hezbollah's Human Shields," *The Washington Times*, 30 July 2006. <http://www.washingtontimes.com/news/2006/jul/30/20060730-093558-9976r/>

²⁷ For example, Khaled Mashal's speech on Hamas' 28th anniversary (16 December 2015), in which he describes this strategy. Khaled Mashal, *Press Conference*, 1 March 2008. <https://www.youtube.com/watch?v=zmXX1VnWgMo>. See also Ismail Haniyeh speech at the 9th Al-Kuds conference in Gaza (17 December 2015): Jamal Reith, "معدلة يروى تاراسمة عديراً: قةئذه", *Felesteen-Online*, 18 December 2015. go.gol/9PkDdS

Since Hamas' rule over the Gaza Strip is not legitimised by the UN, and since Hamas is not recognised by the international community as the political representative of the Palestinian people, its diplomatic activities are usually carried out by third party states and pro-Palestinian organisations. These entities will often present "proof" of alleged war crimes to attack Israel in the international arena.

The most prominent example of this is the Goldstone Report. This report sheds light on the diplomatic context of the practice of human shields: about 1,400 Gazans and 13 Israelis were killed in the Gaza War.²⁸ A UN fact-finding mission headed by Judge Richard Goldstone was established in April 2009 following the war, and published its 574-page report in September 2009. The report called for both parties, Hamas and Israel, to investigate their own actions and accused both of deliberately targeting civilians. However, before expanding its mandate to investigate both parties' actions, the preliminary purpose of the commission was to investigate only Israel's alleged war crimes against Palestinians.

The final report criticised Israel harshly for attacking civilians and civilian facilities.²⁹ It disputed Israel's claim that the Gaza War was initiated as a response to rockets fired from the Gaza Strip, claiming that, at least in part, the war was targeted against the "people of Gaza as a whole."³⁰

The report also stated that there was evidence that Palestinian armed groups committed war crimes and possibly crimes against humanity by deliberately launching rockets and firing mortars into Israel, calculated to intentionally kill civilians and damage civilian structures. The report accused Palestinian armed groups of causing psychological trauma to the civilians within the range of the rockets. It also concluded that killings and abuses of members of the Fatah political movement amounted to a "serious violation of human rights." However, the mission found no evidence of Palestinian armed groups placing civilians in areas where attacks were being launched, or engaging in combat in civilian dress, or using a mosque for military purposes or to shield military activities. This statement contrasted with both Israeli and international media reports that Hamas fighters wore civilian clothes and concealed their weapons.³¹

Despite placing the blame on both sides, the mission *de facto* rejected Israel's claims that the IDF had only attacked Hamas' targets, and that civilian casualties were caused mainly due to Hamas' use of civilians as human shields.³² This was a severe diplomatic blow to Israel. In fact, the international community barely distinguished between the activities of a terror organisation and those of a sovereign state. The UN High Commissioner for Human Rights endorsed the report and supported the call for Israel and Hamas to investigate and prosecute those who committed war crimes. UN Secretary General Ban Ki-Moon urged "credible" investigations by both sides into the conduct of the Gaza conflict "without delay." The European Parliament passed a resolution endorsing the Goldstone Report in March 2010. The resolution called on the bloc's member states to "publicly demand the implementation of [the report's] recommendations and accountability for all violations of international law, including alleged war crimes." These declarations, as well as others, demonstrate Hamas' triumph in controlling the narrative. Hamas' ability to control the narrative limits Israel's strategic choices, and in doing so it causes reputational damage that limits any claim Israel might have regarding the fact the Hamas

²⁸ Called Operation Cast Lead (מבצע עופרת יצוקה) by Israel, and the Battle of al-Furqan (معركة الفرقان) by Hamas. It was a three-week armed conflict between Palestinians in the Gaza Strip and Israel that began on 27 December 2008 and ended on 18 January 2009 in a unilateral ceasefire.

²⁹ United Nations General Assembly, *Human Rights in Palestine and Other Occupied Arab Territories: Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, 25 December 2009. <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>

³⁰ Ibid.

³¹ Steven Erlanger, "A Gaza War Full of Traps and Trickery," *The New York Times*, 10 January 2009; Byalan Dershowitz, "The Case against Goldstone Report: Study in Evidentiary Bias," *The Jerusalem Post*, 31 January 2010.

³² The Goldstone Report focused on 36 cases that it claimed constituted a representative sample. In 11 of these episodes, it stated that the Israeli military carried out direct attacks against civilians, including some in which civilians were shot "while they were trying to leave their homes to walk to a safer place, waving white flags."

is considered a terrorist organisation. Pictures of dead civilians have the immediate and short-term impact of limiting Israel's freedom to exercise retaliatory military power. As a further consequence of the use of such evocative images the international community places pressure on Israel to cease fighting (even if they did not initiate the conflict or if Israel's national and military objectives were not achieved).

As previously mentioned, Hamas records many of its activities, as well as the IDF's attacks against military and non-military targets. It then manipulates the footage (e.g. by hiding its military presence in areas that were then attacked by the IDF, thus causing civilian casualties), and disseminates this manufactured evidence across a wide array of media channels (with a growing presence on social media).³³

These information activities,³⁴ in the context of human shields, are conducted during, and especially right after, IDF military operations. During the fighting itself, Hamas' efforts are usually limited, due to the organisation's limited resources. They usually target the local Palestinian population, pushing the narrative that Hamas' leadership and combatants are not hiding behind civilians, but are in fact willing to sacrifice their lives for the sake of the Palestinian people. However, Hamas' post-conflict efforts are aimed primarily at the international community.

During wartime, the purpose of publicising civilian casualties is to build up enough public pressure so that Israel is forced to cease military operations. In the aftermath of such operations, the purpose of Hamas' information warfare is to delegitimise Israel's claims, and to constrain its ability to use military power in future conflicts. Finally, Hamas uses information activities to deepen the internal divisions in Israeli society, fully aware of the controversy across the political spectrum on the subject of the Palestinian problem. These efforts are usually taken after the fighting ends, as Hamas is aware of Israeli society's tendency to rally around the flag during wartime, and to critically examine the war's outcome once it ends.

Hamas uses several prominent media outlets to deliver these messages, including satellite television channels *Al-Aqsa* (Arabic: قناة الأقصى) and *Al-Quds* (Arabic: قناة القدس), newspapers, and radio stations, as well as several official websites and social media accounts.³⁵ In addition, Hamas uses unofficial Islamic and/or Arabic media channels, websites, and social media accounts that are not necessarily identified with Hamas, but are heavily influenced by its materials and messages. Hamas also operates an information centre under its military wing, which supports the organisation's messages, especially during wartime.

Military. Hamas' defensive strategy is based on the use of its primary military force from within heavily populated areas, which are the organisation's main area of activity. It also operates its secondary efforts in fighting from open spaces, with the purpose of tiring IDF forces without necessarily halting IDF manoeuvres. In those open areas, the fighting is characterised by directly confronting Israeli forces (e.g. using IEDs, ambushes, mortars, or anti-tank missiles). The populated areas are the main battlefield, in which Hamas conducts uncompromised fighting while blending in with the local population. Hamas thus responds to the IDF's military and technological supremacy by creating an asymmetric equation, leveraging terrain advantages and using civilian populations to protect their military assets.



Logo for the Izz ad-Din al-Qasam Brigades, the military wing of Hamas.

³³ See for example: Neil Meads, "BBCtrending: Are #GazaUnderAttack Images Accurate?" BBC, 8 July 2014. <http://www.bbc.com/news/av/magazine-28198163/bbctrending-are-gazaunderattack-images-accurate>; Sudarsan Raghavan, "A Reporter Explains What It's like Being Trapped in the Gaza Propaganda War," *The Washington Post*, 4 August 2014; Israel Defense Forces, "Hamas Social Media Rules: Describe Terrorists as Innocent Civilians," *IDF Website*, 21 July 2014. <https://www.idfblog.com/2014/07/21/hamas-teaches-gazas-facebook-users-secret-spinning-terror/>

³⁴ Information Warfare is defined as actions designed to affect information and/or information systems, which can be performed by any actor and include protection measures. From: MC 0422/5 NATO Military Policy on Information Operations.

³⁵ E.g. www.palesitnr-info.info and www.aqstav.ps

The use of civilians as human shields is also manifested in Hamas' offensive strategy, especially when launching rockets and mortar shells at Israeli population centres. Small groups of combatants find positions near or within residential areas and facilities, from which they launch their attacks. The groups and their launchers are therefore camouflaged, while protecting them from potential Israeli retaliation.³⁶

Economic. Hamas' use of human shields has no direct economic manifestations, but it is worth mentioning that Hamas uses (and pays) civilians to dig tunnels, and uses civilian houses and facilities to conceal the entry/exit points. These tunnels, especially in the near-Egyptian border town of Rafah, are a primary source of revenue, commodities, arms, and fighters for Hamas.³⁷ According to several estimations, there are 400-600 such tunnels – the vast majority of which are run directly by Hamas (civilian operators of the rest are taxed by the Hamas government).³⁸

Despite the fact that the local population benefits from these tunnels (for many, they are a primary source of income), the civilians used to dig and conceal them risk falling victim to frequent accidents (most commonly the collapse of tunnels), and are more exposed to IDF attacks.³⁹ This technique prevents the IDF from freely attacking tunnels during construction. The IDF does not attack "civilian" tunnels (i.e. tunnels that do not directly support Hamas military actions), but it is very hard to distinguish between "civilian" criminal use and "military" use of the tunnels, as they are often used for both purposes.

Finally, Hamas also uses the damage caused to civilians and civilian infrastructure as a justification to raise funds from its donor nations (e.g. Qatar, Turkey) and other allies, to rebuild the ruined infrastructure. However, there are many reports that prove Hamas diverts funds meant for reconstruction directly to its armed wing.⁴⁰

Legal. Hamas aspires to exploit its rival's commitment to normative and explicitly defined international law. Acknowledging Israel's military and technological supremacy, Hamas' use of human shields is one aspect of its asymmetric response, utilising another form of warfare: lawfare.⁴¹

In practice, Hamas employs the best of both worlds: if indeed the IDF uses kinetic force on a massive scale, and the number of civilian casualties surges, Hamas will be able to use that as a weapon in the lawfare it conducts. It will be able to accuse the IDF (and Israel) of committing war crimes, which in turn could result in a wide array of sanctions.⁴² On the other hand, if the IDF limits its use of military force in Gaza in order to avoid collateral damage, Hamas will be less susceptible to Israeli attacks, thus protecting its assets, while continuing to fight.

Hamas operates effective mechanisms to gather any potentially incriminating information that will prove that the IDF indeed commits war crimes in the Gaza Strip. For example, during operations Pillar of Defense (14-21

³⁶ The most used launching sights are located in settled areas in the northern part of the Strip, e.g. Jabalia refugee camp, and the small towns of Beit Hanun and Beit Lahia. From these areas, Hamas launches attacks against Israel's southern cities. Hamas also fires from the southern parts of the Strip, especially from Khan Yunis and Rafah. During IDF operations in Gaza (and in light of IDF manoeuvres in those areas), Hamas has extended its range and launched attacks from the centre of the Strip, including from Gaza City itself.

³⁷ "The Rafah Crossing - The Border with Gaza," in: *Global Security Watch – Egypt: A Reference Handbook*, eds. Denis Joseph Sullivan and Kimberly A. Jones (Santa Barbara: ABC-CLIO, 2008), 116-8.

³⁸ United Nations, Trade and Development Board, *Report on UNCTAD Assistance to the Palestinian People: Developments in the Economy of the Occupied Palestinian Territory*, 6 July 2015, 14-6. http://unctad.org/en/PublicationsLibrary/tdb62d3_en.pdf

³⁹ Calev Ben-David, "Maze of Secret Gaza Tunnels Targeted by Israel Offensive," *Bloomberg*, 21 July 2014. <https://www.bloomberg.com/news/articles/2014-07-20/israel-gaza-ground-war-puts-maze-of-attack-tunnels-in-its-sights>

⁴⁰ Ben Hartman, "Palestinian Charged With Diverting Gaza Rehabilitation Materials to Hamas Terrorists," *Jerusalem Post*, 4 November 2015. <http://www.jpost.com/Arab-Israeli-Conflict/Palestinian-charged-with-diverting-materials-for-Gaza-rehabilitation-to-Hamas-terrorists-432009>

⁴¹ Michael Schmitt, "Asymmetrical Warfare and International Humanitarian Law," in: *International Humanitarian Law Facing New Challenges*, eds. Heintschel von Heinegg and Wolff Epping (New York: Springer, 2007), 11-48.

⁴² Such as bringing IDF soldiers to the International Criminal Court (ICC). See for example: Peter Beaumont, "Israel May Face War Crimes Trials over Gaza," *The Guardian*, 1 March 2009. <https://www.theguardian.com/world/2009/mar/02/israel-war-crimes-gaza>

November 2012), Cast Lead, and Protective Edge, Hamas operated hundreds of active members, along with sister organisations (e.g. Muslim-Brotherhood affiliated organisations in Europe), Palestinian (e.g. The Palestinian Centre for Human Rights – PCHR) and pro-Palestinian European groups (e.g. the BDS movement), to collect information to later put Israeli officials on trial. Once evidence is gathered, Palestinian supporters (usually lawyers) will file complaints against Israel in courts of European nations.

Hamas' use of legal instruments to restrict Israel's actions exploits the legal asymmetry between Israel and Hamas. When Hamas claims that Israel violates the Geneva Convention, Israel experiences condemnation from the international community that results in both short-term and long-term reputational losses. Hamas skilfully manages to prolong reputational losses for Israel by effectively using the time it takes to have cases heard and adjudicated to their advantage.

NATIONAL SECURITY INTERESTS

Critical Functions

Political. The use of human shields can cause collateral damage and civilian casualties and create tension between Israel and its allies. As fighting continues and the number of civilian casualties rises, the international community (including Israel's strongest allies) pressure Israel to cease its military operations. Additionally, in the aftermath of such operations, Israel sometimes faces harsh criticism from its allies for an excessive use of power.⁴³

Military. Human shields limit the IDF's ability to use its military capabilities power freely.

Social. Despite the fact that during operations the public generally supports the Israeli political and military leadership, civilian casualties are one of the friction points between Israeli left-wing and right-wing supporters, with the former questioning the outcomes of the operation.

Infrastructure. Human shields do not pose a direct threat to critical Israeli infrastructure, but the limitations it imposes on the IDF's use of military power often allow Hamas to operate relatively freely, thus threatening critical Israeli infrastructure with potential rockets and mortar shells.

Vulnerabilities

Political/Military. From a purely military perspective, Israel's commitment to international law, especially the Geneva Convention (1977), limits its ability to freely terminate the threats posed by Hamas. The organisation is aware of Israel's desire to adhere to international law, its dependency on international support as a cornerstone of its foreign policy, and Israeli society's sensitivity to any civilian casualty. Hamas therefore exploits these factors as "vulnerabilities" to achieve its strategic, operational, and tactical goals.

Threats

Political/Military. When the weaker of two adversaries engages in conflict using a strategy to offset its rival's supremacy to achieve its long-term goals, it is known as asymmetric warfare. Operationally, using civilians as human shields limits the IDF's ability to effectively combat Hamas with their technological supremacy and military power. It forces the IDF to either avoid attacking targets, inform civilians that a certain target will be attacked (hence, losing the element of surprise), or use ground forces, which by nature are more vulnerable.

⁴³ For example: In December 2009, an arrest warrant was issued for the then leader of the opposition Tzipi Livni under charges of war crimes allegedly committed during the 2008-09 Gaza War, when Livni was Foreign Minister. These incidents strained relations between Israel and the United Kingdom, and Israel urged the UK to rethink its policies to prevent a further breakdown. Roni Sofer, "Israel: If UK Doesn't Act, Relations Will Suffer," *Ynet*, 15 December 2009.

Hamas' growing strategic distress in light of recent geopolitical developments (i.e. Hamas' strained relations with Egypt, the worsening conditions of the Gazan population, the crisis between Qatar – Hamas' patron – and other Sunni states, and the overall change in the White House's attitude towards the Palestinians) will probably push them towards a more pragmatic strategy in the near future. This strategy will likely manifest itself as a willingness to reconcile with the Palestinian Authority, thus putting it in a position to avoid clashes with Israel. At the same time, the movement appears to be preparing for another round of armed conflict with Israel. If this happens (according to Shin Bet's chief, Nadav Argaman, it is a viable option in the near future)⁴⁴ – there is no reason to believe that Hamas will cease using civilians as human shields. Notably, improving relations between Hamas and Hezbollah – including political and military cooperation – are part of the overall warming atmosphere between Hamas and Iran. As mentioned above, Hezbollah's own use of human shields was Hamas' inspiration and model, and the current coordination between the two movements may well also manifest in the implementation of mutual tactical and strategic lessons learned.

Effects

Political. Over the years of conflict with Hamas in the Gaza Strip, Israel paid a heavy price in the international arena, and its public image has suffered tremendously. Reports and images of killed Palestinians have significantly delegitimised Israel's strategies and actions; in this regard, Hamas' efforts have been successful.

Almost every large-scale conflict in the Gaza Strip yielded an international investigation committee, usually led by the UN, with the main purpose of examining whether the IDF operations were conducted in accordance with international law.⁴⁵ In addition, Israel has been widely criticised by countries across the globe, including its closest allies (e.g. UK, Germany, and France), not to mention by other, more hostile countries (such as Turkey, who has tried to take legal measures against Israel and against IDF officers that participated in those conflicts).⁴⁶ Furthermore, groups of pro-Palestinian lawyers backed by Palestinian and human rights activists have created lists of IDF officers accused of taking part in alleged war crimes, with the intention of prosecuting them should they arrive in one of the countries that allows prosecuting foreign allies accused of such crimes (e.g. Britain, Netherlands, Spain, Belgium, and Norway). Though no officer has ever been actively prosecuted or put on trial, these moves have put limits on senior officers travelling around the world.⁴⁷

Finally, Hamas is clearly aware of the Israeli internal debate over killing innocent civilians, an issue that has only deepened internal rifts, and has led to a deterioration of the public's trust in the legal system.

⁴⁴ Jack Moore, "Israel's Next War? Spy Chief Warns Hamas, Hezbollah Gearing Up For New Conflict," *Newsweek*, 12 September 2017. <http://www.newsweek.com/israels-next-war-spy-chief-warns-hamas-setting-lebanon-help-iran-663273>

⁴⁵ For example, the UN Fact Finding Mission on the Gaza Conflict (the Goldstone committee) following the conflict that took place between 27 December and 28 January 2009. The President of the UN Human Rights Council announced that a panel of experts would investigate whether Israel's Gaza flotilla raid on 31 May 2010 breached international law. The UN Human Rights Council also set up a panel of five human rights experts to examine the conclusions of the Palmer report. UN Independent Commission of Inquiry on the 2014 Gaza Conflict following the conflict that took place between 8 July 2014 and 26 August 2014.

⁴⁶ In several cases arrest warrants against IDF officers have been issued by countries like the UK, Belgium, South Africa, Turkey, and others. None of those officers were arrested. See additional examples here: Herzberg, Anne. *NGO Lawfare: Exploitation of Courts in the Arab-Israeli Conflict*. (Jerusalem: NGO Monitor, 2008). <http://www.ngo-monitor.org/data/images/File/lawfare-monograph.pdf>

⁴⁷ The most prominent incident is that of Major General Doron Almog. On 10 September 2005, he and his wife arrived in London on an El Al flight to fundraise for a disabled services organisation which he helped found. Almog was tipped off by the Israeli Embassy that a warrant had been issued for his arrest on suspicion of violating the 1949 Geneva Convention in connection with home destructions in Gaza. The petition had been filed by Daniel Machover and Kate Maynard, acting as attorneys for the Palestinian Centre for Human Rights. News of the plan leaked to the Israeli Embassy, and the Israeli military attaché advised Almog to stay on the plane and return to Israel. El Al denied police permission to board the plane. Almog and his wife remained on the plane for two hours before it took off for Ben Gurion Airport. Police did not board the plane to arrest Almog and did not prevent the plane from departing. Vikram Dode and Conal Urquhart, "Israeli Evades Arrest at Heathrow Over Army War Crime Allegations," *The Guardian*, 11 September 2005. <https://www.theguardian.com/uk/2005/sep/12/israelandthepalestinians.warcrimes>

Military. The use of human shields poses a great challenge for the IDF. On the one hand, the IDF is committed to the security of Israeli citizens by retaliating against Hamas' provocations and attacking the movement's executives, combatants, arms, and infrastructure. On the other hand, the IDF is legally and morally constrained in its ability to cause collateral damage and harm civilians. The IDF therefore employs several mechanisms that allow it to achieve both objectives:

- (1) It puts certain limitations on the use of power;⁴⁸
- (2) It developed the means (accurate weapons, surgical strikes, special forces operations, real-time intelligence gathering tools, etc.) to accurately strike individuals and infrastructure;
- (3) It often informs civilians who reside in proximity to Hamas' targets that an attack is approaching, thus allowing civilians to evacuate, though also limiting the effect of a surprise attack.⁴⁹

Economic. Despite being heavily criticised for striking civilians, Israel has not been economically affected by political attempts to impose sanctions and/or boycott Israeli companies and products.⁵⁰

Social. It is difficult to weigh the consequences of Hamas' use of human shields on the Israeli social domain. However, two main aspects are apparent in the aftermath of conflicts in the Gaza Strip:

- (1) In the aftermath of wars and significant military operations, the already divided Israeli society usually goes through a process of internal examination: the liberal left criticises the government and the IDF for its excessive use of power (as part of a broader criticism over the government's failure to find a solution to the Palestinian problem) and the centre and right wing unconditionally defend and support both the government and the military's right to use excessive power, seeing collateral damage as the results of Hamas' provocations. The important point here is the second-order effect that the practice of human shields has on deepening the divide within Israeli society.⁵¹ It is worth mentioning that overall, the Israeli population supports the IDF, including in cases where the military itself admits it used power in an unlawful way.⁵²
- (2) The cultural (and academic) boycott of Israel usually intensifies after a conflict, especially those conflicts that involve severe civilian casualties on the Palestinian side. These boycotts are led by pro-Palestinian artists and academics who claim that Israel commits war crimes against the Palestinian people, and therefore should be culturally and academically isolated as a means of political pressure.⁵³

Information. Broadly speaking, as long as pictures of dead civilian Palestinians continue to appear on the media (regardless of why they were killed), it will be hard for Israel to: (1) argue that Hamas is a terrorist organisation that provokes Israel; and (2) justify the ongoing occupation of the Palestinian people, including in Judea and Samaria.

⁴⁸ E.g. firing in proximity to civilians will usually be ordered only if there is an immediate threat to Israeli soldiers and/or civilians and/or physical assets.

⁴⁹ Warning methods include text messages, phone calls, radio messages and air-dropped leaflets, but also dropping of non-lethal explosives.

⁵⁰ Discussing the economic implications of BDS and other pro-Palestinian organisations to boycott Israel is beyond the scope of this work, as it relates to the larger context of the Israeli-Palestinian conflict. However, most observers believe that the economic effect of those attempts is marginal, or even non-existent. See for example Yoon Sangwon, "The Boycott Israel Movement May be Failing," *Bloomberg*, 5 June 2016. <http://www.bloomberg.com/news/articles/2016-06-02/israel-boycott-is-failing-when-measured-by-main-economic-gauge>

⁵¹ See for example a book that was published after operation "Protective Edge," which analyses its consequences. An article by Yehuda Ben Meir describes the fluctuations in Israeli public opinion during and after the operation, including the criticism towards the Israeli leadership in the aftermath of the war. Anat Kurtz and Shlomo Brom, *Operation Protective Edge: Lessons Learned* (Tel-Aviv, INSS, 2014). See also: Yehuda Ben Meir and Dafna Shaked, "The People Speak: Israeli Public Opinion on National Security 2005-2007," *Memorandum No. 90* (Tel Aviv: Institute for National Security Studies, 2007).

⁵² See for example: Amos Harel and Anshel Pfeffer, "IDF Admits 'Mistake' Killed Three Daughters, Niece of Palestinian Doctor," *Haaretz*, 5 February 2009; Peter Beaumont, "Israel Admits Troops May Have Used Phosphorus Shells in Gaza," *The Guardian*, 21 January 2009.

⁵³ E.g. following the flotilla events, many artists (e.g. the singer Elvis Costello and the bands Pixies and Archive) cancelled their planned visits to Israel. Some argued that the cancellation stemmed directly from the dire consequences of the flotilla, while others were vague in their reasoning. See for example: Sean Michaels, "Pixies Cancel Israel Gig Following Gaza Raid," *The Guardian*, 7 June 2010, <https://www.theguardian.com/music/2010/jun/07/pixies-cancel-israel-gig>

CONCLUSIONS

During the time period reviewed for this case study, Israel's efforts to avoid civilian casualties have been multifaceted: the IDF imposed restrictions on the use of force in the vicinity of civilians, focused on precision airpower to reduce the risk of collateral damage, and warned residents to evacuate prior to an impending air strike. Hamas exploited Israel's casualty sensitivity by using human shields, including by encouraging residents to defy IDF warning messages and widely publicising incidents of civilian casualties in order to gain international support.

Israel in turn has attempted to counter this practice of lawfare in various ways. As part of a wide range of legal safeguards within the IDF's operational chain of command, the IDF's international law unit (the "Dabla") has to approve each target to ensure compliance with international law.⁵⁴ Moreover, the IDF has taken pains to explain their targeted strikes to both internal and external audiences, in particular via social media.⁵⁵

Despite all these efforts, Israel has not dominated the narrative, with many international human rights organisations accusing Israel of using disproportionate force and even of committing war crimes, and many media outlets and observers at least holding that both sides were partially to blame. However legitimate a targeted strike may be from a legal perspective, first impressions frame the narrative, and public opinion tends to be influenced more by images of horrific tragedies than by well-thought-out legal arguments.⁵⁶ As a response IDF created a new lawfare section at general staff level, tasked with conducting "offensive" lawfare, i.e. "proactively explaining why an IDF operation is legal in the first place rather than responding to accusations after the fact."⁵⁷

Recommendations

Without delving into the complex landscape of Pol/Mil responses to asymmetric challenges, countries and militaries that wish to protect their national security interests and fulfil their strategic objectives must address the following issues:

Strategically, nations should prepare to publicly justify their position, and reveal their adversary's use of civilians in combat. That can only be accomplished by thoroughly documenting incidents, preparing supportive messages, and working across multiple channels to convey those narratives. Target audiences should be thoroughly considered, including governments, NGOs, transnational organisations, colleges and universities, and general public opinion (including social media platforms and other fora). Such a plan should be an inherent part of any strategy, and should be prepared before commencing any military operation.

⁵⁴ Raphael S. Cohen et al., *From Cast Lead to Protective Edge; Lessons from Israel's Wars in Gaza* (Santa Monica, CA: RAND, 2017), 45, 153-4.

⁵⁵ Ibid. 102, 154.

⁵⁶ David Rothkopf, "The Slaughter of Innocents: Why Collateral Damage Undoes the Best-Laid Plans of 'Limited' War Makers," *Foreign Policy*, 17 June 2014.

⁵⁷ Raphael S. Cohen et al., *From Cast Lead to Protective Edge; Lessons from Israel's Wars in Gaza* (Santa Monica, CA: RAND, 2017), 155.

Operationally, priority should be given to information activities aimed at the very civilians who are used as human shields, in order to undermine the adversary and convince civilians to actively or passively refuse to serve as human shields. These aspects should be an inherent part of any operational plan, and should be prepared before commencing any military operation. Such activities need to be coherent, consistent and coordinated.

When it comes to lawfare, nations should focus on two sets of measures:

a. Defensive. Governments should thoroughly investigate every case in which the military is accused of committing war crimes, even if the alleged government knows the claims to be false. Governments should not ignore any claims, as this allows the adversary to control the narrative. Such investigations should be conducted in accordance with international law best practices. Nations who are or who have been subject to allegations (founded or unfounded) of war crimes that occurred specifically in an urban or contested environment should proactively engage the international community to evaluate and revise – if necessary – international law to fit the 21st century battlefield. Special attention should be given to the legal aspects of warfare, in the sense that military planning should include legal advisors who are highly familiar with international law.

Prevention: Risk and Crisis Communications

- Senior officials should refrain from making statements from which one could conclude that their country does not operate according to international law. This is especially crucial when dealing with “on the record” statements that could later be used as evidence in international courts of law. For example, military and political spokespersons should be trained to avoid statements such as “International law is not relevant to conflicts between a sovereign state and a terror organisation.”
- Militaries should consistently demonstrate commitment to the enforcement of international law, and ensure that strategic and operational planning teams include legal counsel before and during the fighting.
- When dealing with the legal domain, countries and militaries should refrain from using moral or ethical arguments, which are irrelevant to legal arguments.
- Most importantly, before, during, and after the fighting, countries and their militaries should systematically collect evidence proving that the adversary has conducted war crimes and/or did not act according to international law.

Mitigation: Establish Transparent Early Warning Systems & Investigative Mechanisms

- It is important to quickly identify an adversary’s attempts to use lawfare, and quickly mitigate the reputational losses that occur through the use of countermeasures, so that the adversary does not establish an unfounded narrative. Such measures could include participating in international fora and legal proceedings, publishing counter-reports, engaging in dialogue with influential organisations and individuals, and demonstrating transparency of process.
- Investigations into any and all accusations of “war crimes” should be quickly, efficiently and *transparently* conducted in adherence to the highest standards of international law. If investigations reveal that misconduct did occur, militaries should take decisive legal measures. Any discussions on punitive measures should be widely communicated using multiple platforms and languages. Moreover, ensuring convictions is necessary, as is communicating these even after the public has ‘forgotten’ them.

- b. Offensive.** Rather than merely reacting to accusations of war crimes, governments should consider the use of legal instruments to actively counter adversaries who use human shields. They should direct their intelligence agencies to gain access to materials that prove the adversary's illegal use of human shields, and publicise these materials in international tribunals.

Integrated Communications

In the context of warfare, the basic message delivered by countries and militaries throughout modern history has not changed much ("you will not be able to beat a well-organised military"). However, the means by which this message is disseminated are going through significant changes, most notably, the use of social media and other information-age-related platforms. The ubiquity of these platforms means that they are dual-use tools: both sides of a conflict have access to these tools, and therefore, they require ongoing monitoring and the ability to quickly react to an adversary's attempt to establish their narratives. The most important elements in this regard are the need to diversify the target audiences of such messages, and to tailor the message for each type of recipient (e.g. the adversary, the local population, the international community, and the country's own population). Militaries should therefore create a holistic and comprehensive communications plan which integrates communications with military activity, to include the use and threat of force. Such a plan should obviously be exercised during the fighting itself, but also *before* and *after* the conflict. Countries and militaries should:

- Establish a national-level function, which will be responsible for the coordination of all the involved entities. Such an organisation will be the lynchpin of all communication functions, connecting decision-makers with practitioners, and ensuring that all activities and messages are well synchronised.
- Form joint tasks forces, which include both civilian and military functions.
- Conduct simulations and exercises that will allow them to examine collaboration between these functions, think creatively about target audiences, messages and platforms, and to examine potential reactions to the messages delivered.
- Create partnerships with local and global news outlets to provide multiple, open-source verification or validation of an incident.

Strategic Planning of PsyOps Campaigns

Assessing the likely success of a PsyOps campaign is also critical to the strategic planning process. The decision-making calculus necessary for introducing a PsyOps component in an attempt to disrupt or degrade adversarial lawfare activities must take into consideration the endemic nature of the message(s) seeking to be overturned. For example, with respect to the Gazan population and Hamas:

- Local Gazans are not necessarily ideologically linked with Hamas' struggles, but rather are facing existential crises, e.g. loss of life, livelihood, property, and controlled access to basic necessities (e.g. food/water/medicines), and this level of duress causes Gazans to choose the closer, more tangible support system, i.e. Hamas.
- The Gazan defensive worldview is deeply engrained into the social fabric of the population. Children are raised to revile the enemy, i.e. Israel. There is limited critical thinking and access to information or to independent analysis. This significantly limits Israel's ability to influence the Gazan population in such a way that it recognises the actual benefits of not being aligned with Hamas.

Given the demographic and geographic conditions within which Hamas operates, there is a relationship between geographic proximity and governance where Hamas uses its governance framework to control (providing or withholding) access to vital goods and services. Reliance on or rejection of 'alternative welfare' networks provide the Gazan population with limited options:

- (1) They can support and defend Hamas' ideology and Hamas' tactics (including the use of human shields) – be it out of conviction, existential necessity, fear, or due to lack of alternatives.
- (2) They can support Hamas' ideology, but reject Hamas' tactics.
- (3) They can passively or actively break with Hamas' ideology and reject Hamas' tactics, although in doing so they risk loss of life, livelihood, property, and collateral social and familial degradation and distancing (this can include emigrating).

Given these choices for Gazans, Israel's use of PsyOps would not only need to capture first order repercussions for Gazans choosing to reject ideology and/or practices but it would also need to consider second and third order effects of Gazans who would prefer to stay in Gaza or cannot leave Gaza (for a variety of reasons). The likelihood of a narrative or strategic communications plan to have this penetration is unlikely. Furthermore, the inability of Israel to provide alternatives for Gazans could backfire and provide more fodder for Hamas to recruit and retain supporters (active and passive). Should Israel or Israeli partners not be able to fill the vacuum provided by Gazans breaking with Hamas, the Gazan population could be placed in a more vulnerable and exploitable position by Hamas and foreign sympathisers who will seize upon this narrative for their own purposes.

Successful PsyOps plans should ideally move audiences along a psycho-social continuum that spans internalising messaging using critical thinking to externalising behavioural changes. Consequently, PsyOps must:

- (1) Foment dissent in targeted populations; and
- (2) Produce active and passive rejection of a worldview or set of associated practices.

Should the first pillar be achieved without the second, the operation will likely be unsuccessful. There is a limited likelihood of success in the case of Hamas' use of lawfare and Israel's ability to successfully counter these messages through PsyOps.

PsyOps during times of peace (or absence of conflict) is more strategic than during active military operations. PsyOps aimed at the Palestinian population, at Hamas' leaders and militants, and at the Western public (and maybe even the Muslim/Arab world) all require different narrative streams: targeting each audience effectively requires understanding how each audience consumes information as well as aligning that with the effects that Israel is seeking to achieve. Furthermore, the level of sub-group targeting will also impact both the structure, content, and desired outcome. While the chances of generating substantial influence during inter-conflict periods is relatively low due to the reasons already listed, an operational or tactical approach during a military operation can find varying levels of success.

