



THE 2014 GAZA CONFLICT: FACTUAL AND LEGAL ASPECTS

Executive Summary

May 2015

Introduction (Chapter I)

1. The following Report — The 2014 Gaza Conflict (7 July – 26 August 2014): Factual and Legal Aspects — presents detailed factual and legal information regarding the intensive hostilities that took place from July 7 to August 26, 2014 between the State of Israel and Hamas and other terrorist organisations operating in the Gaza Strip (“the 2014 Gaza Conflict”, also known as Operation “Protective Edge”).
2. This Report is intended to provide information so that others may reach an informed understanding of the reasons for the 2014 Gaza Conflict and the actions of the parties thereto. Although the Report does not purport to provide complete coverage of the 2014 Gaza Conflict, it constitutes an unprecedented effort to present factual and legal aspects concerning the Conflict.
3. The Report includes an assessment of the events leading up to the 2014 Gaza Conflict, describing the overall objectives for Israel and the rationale behind Israel’s strategic decisions. The Report presents Israel’s legal positions concerning the conduct of hostilities, examples of military targets and individuals targeted by the Israel Defense Forces (“IDF”) during the Conflict, statistics concerning the amount of humanitarian aid that entered the Gaza Strip with Israel’s facilitation, details regarding the costs borne by Israel’s civilian population as a result of the 2014 Gaza Conflict, and information revealing the unlawful activities of Hamas and other terrorist organisations. The Report also discusses Israel’s justice system, and its procedures for examining and investigating possible violations of the Law of Armed Conflict.
4. The 2014 Gaza Conflict was another peak of hostilities in the ongoing armed conflict that has been waged against Israel for well over a decade by terrorist organisations operating from the Gaza Strip. The nature of the hostilities between the IDF and these terrorist organisations in the summer of 2014 was characterised by the following two interrelated elements.



5. First, the conflict occurred primarily in an urban environment. Hamas combat manuals and training materials recovered by IDF forces in the Gaza Strip demonstrate that Hamas's strategy was to deliberately draw the hostilities into the urban terrain, and to use built-up areas and the presence of the civilian population for tactical advantage and political gain. This strategy was obvious during the 2014 Gaza Conflict in view of the sheer scope of military activity that Hamas and other terrorist organisations embedded within the urban environment.

6. Second, the conflict involved non-state actors who defy international law, including the Law of Armed Conflict applicable to the hostilities within the Gaza Strip. More than just drawing the fighting into the urban terrain, these organisations often unlawfully intertwined their military operations with the civilian environment. IDF airborne and ground forces faced militants disguised as civilians and as IDF soldiers, residential homes converted to military command centres, multi-story buildings used as pre-prepared surveillance positions, mosque minarets employed as sniping posts, schools utilized as weapons caches, civilian structures extensively booby-trapped, and tunnel openings and infrastructure hidden in and under civilian areas.

7. This exploitation of civilian surroundings — which often constituted war crimes and crimes against humanity — posed significant operational, legal and ethical challenges for the IDF. The IDF is committed to conducting all its operations in accordance with international law and makes efforts, including beyond its legal obligations, to mitigate the risk of harm to civilians when doing so. Despite the IDF's commitment to the rule of law and efforts to protect civilians, an unfortunate result of the complex realities described above is that during the 2014 Gaza Conflict numerous civilians were caught in the hostilities.

8. It is against this background that the harm to civilians and civilian objects in the Gaza Strip that resulted from the 2014 Gaza Conflict should be assessed. In all armed conflicts, the application of military force almost inevitably causes residual and incidental harm; this is even more so when the hostilities occur in the urban environment. The 2014 Gaza Conflict in particular involved high-intensity, protracted hostilities, including close-quarter combat and intensive urban warfare, exacerbating the risk of harm to civilians within the combat arena. Such harm was also the direct result of rockets and mortars that were launched towards Israel from within the Gaza Strip but that fell short. Furthermore, much of what may have appeared to external parties to be indiscriminate harm to civilians or purely civilian objects was in fact legitimate attacks against military targets that merely appear civilian but were actually part of the military operations of these terrorist organisations. Many allegedly "civilian" casualties were in fact militants. Harm to the civilian population also occurred as the result of unfortunate — yet lawful — incidental effects of legitimate military action in the vicinity of civilians and their surroundings, and as a result of the inescapable



constraint of commanders not being infallible, intelligence not being perfect and technological systems sometimes failing.

9. As stated repeatedly by the IDF and the Government of Israel's highest representatives, Israel did not intend, and deeply regrets, the harm caused to the Palestinian civilian population and surroundings during the 2014 Gaza Conflict.

Background to the 2014 Gaza Conflict (Chapter II)

10. Since its inception, Hamas has launched thousands of attacks designed to kill, injure and terrorise the Israeli population, destroy Israeli property, and thwart any attempt to reach a negotiated settlement between Israel and the Palestinians. Israel's citizens have suffered numerous suicide bombings by Hamas in the heart of Israeli cities, rocket and mortar fire on Israeli cities, and raids on Israeli soil through underground cross-border tunnels. Since 2000, terrorist attacks by Hamas and other terrorist organisations have killed at least 1,265 Israelis, wounded thousands more, and terrorised millions. In recent years, Hamas has expanded its terrorist arsenal with increasingly deadly weapons and a vast network of cross-border assault tunnels with concealed exits in Israeli territory.

11. Hamas has forced the Government of Israel to remain constantly vigilant in assessing and responding to the ongoing threat against Israeli civilians. In parallel to its violent campaign against Israel, Hamas has increased its efforts to overthrow the Palestinian Authority, expand its influence in the West Bank, and promote its jihadist ideology in the West Bank and the Gaza Strip, while also operating from other countries in the Middle East and Europe.

12. Hamas's ongoing armed conflict against Israel has been augmented by the actions of additional terrorist organisations operating from the Gaza Strip, including the Palestinian Islamic Jihad and the Al-Aqsa Martyrs Brigade. Despite variations in intensity, the armed conflict between these terrorist organisations and Israel has been ongoing for well over a decade, including since Israel's unilateral withdrawal of all military and civilian presence from the Gaza Strip in 2005. Israel, for its part, has taken steps to prevent escalation of the conflict by, *inter alia*, engaging with the international community and the United Nations ("U.N."), and imposing various security measures intended to stem the organisations' military capabilities. At times when the attacks on Israel reached a level of intensity such that diplomatic efforts or limited military action was insufficient to adequately protect Israel's civilian population, Israel undertook limited military operations in the Gaza Strip.



13. The threat to Israel reached such a critical point in the summer of 2014 when Hamas and other terrorist organisations intensified their rocket and mortar launches towards Israel, firing on an almost daily basis. In June and July 2014, Israel uncovered additional cross-border assault tunnels constructed by Hamas for the purpose of perpetrating terrorist attacks on Israeli soil.

14. These events coincided with Hamas's efforts to destabilise the West Bank by means of incitement to violence and increased terrorist activity, including the kidnapping and murder of three Israeli teenagers. While the IDF sought to locate the kidnapped teenagers and to reduce Hamas's military capabilities in the West Bank, Israel attempted to avoid escalation in the Gaza Strip.

15. In response to Hamas's attacks from the Gaza Strip, Israel engaged in extensive diplomatic efforts and also sought international intervention in an effort to prevent escalation, while limiting its military actions to pinpoint strikes in the Gaza Strip. However, the Hamas-led attacks from the Gaza Strip only intensified.

16. When Hamas and other terrorist organisations fired over 60 rockets at Israel from the Gaza Strip on July 7, the Government of Israel was left with no choice but to launch an aerial campaign, termed Operation "Protective Edge," which focused on reducing the ongoing and imminent threat of attacks, in order to protect its civilian population.

17. Under these circumstances, Israel was justified under international law in resorting to a broader military operation against Hamas and other terrorist organisations in the Gaza Strip, as part of the ongoing armed conflict being waged by these organisations.

Objectives and Phases of the 2014 Gaza Conflict (Chapter III)

18. The Operation began as a measured aerial campaign to disrupt and disable the launching of projectiles into Israel, during which Israel continued to make efforts to de-escalate the conflict, including by accepting numerous ceasefire initiatives put forward by international actors.

19. Despite these efforts, Hamas continued to intensify its attacks, rejected all ceasefire initiatives and, on July 17, conducted a major infiltration into Israeli territory through a cross-border assault tunnel. As a result, and in order to locate and neutralise additional cross-border assault tunnels, the Government of Israel ordered a limited ground operation into the Gaza Strip. This ground operation was confined to the outskirts of the Gaza Strip, where the multiple openings to each cross-border tunnel were embedded within the urban civilian environment.



20. The subterranean element of the 2014 Gaza Conflict was one of the conflict's defining features. Beginning in 2001, Hamas and other terrorist organisations in the Gaza Strip began to dig tunnels for purposes of direct military activity against Israel. Over the years, these tunnels became longer, deeper, more stable, more secure and more daring in purpose. Hamas has used these tunnels for cross-border attacks, smuggling, and as combat tunnels for internal military activity underneath the populated urban areas of the Gaza Strip. Cross-border assault tunnels are particularly conducive to kidnappings, a strategic goal of the terrorist organisations, as the tunnels allow a substantial number of armed militants to penetrate Israel at once, carry out attacks on IDF forces and Israeli civilians, and smuggle kidnapped Israelis — dead or alive — back into the Gaza Strip.

21. On August 5, having located and destroyed 32 cross-border assault tunnels (14 that actually penetrated Israeli territory, mostly with openings in the territory of Israeli residential communities, and 18 that were unfinished but approached the border with Israel), IDF ground troops withdrew from the Gaza Strip. They did so despite continued rocket and mortar attacks on Israeli civilians and the absence of a ceasefire. From August 5 through the ceasefire on August 26, Israel continued targeted airstrikes against military objectives in order to defend its civilian population, while at the same time attempting to reach a ceasefire.

22. Hamas and other terrorist organisations prolonged the hostilities, and repeatedly rejected ceasefires or accepted and then violated them. Had Hamas accepted the initial Egyptian-brokered ceasefire that the Arab League endorsed and Israel accepted on July 15 — which featured the same terms as the ceasefire offer to which Hamas ultimately adhered to on August 26 — approximately 90 percent of the casualties incurred during the 2014 Gaza Conflict could have been avoided.

23. In total, six civilians in Israel (five Israeli citizens and one Thai national) and 67 IDF soldiers lost their lives during the 2014 Gaza Conflict. In the Gaza Strip, approximately 2,125 Palestinians were killed. An analysis by IDF experts found that as of April 2015, at least 44 percent of the total Palestinian fatalities have been positively identified as Hamas militants or militants of other terrorist organisations in the Gaza Strip; this figure may ultimately prove to be even higher.

Violations of the Law of Armed Conflict, War Crimes, and Crimes Against Humanity Committed by Hamas and Other Terrorist Organisations During the 2014 Gaza Conflict (Chapter IV)

24. Throughout the 2014 Gaza Conflict, Hamas and other terrorist organisations in the Gaza Strip intentionally and systematically used strategies designed to maximise harm to civilian life and



property, both in Israel and in the Gaza Strip. These strategies gave rise to violations of the Law of Armed Conflict, war crimes and crimes against humanity.

25. Hamas and other terrorist organisations launched more than 4,500 rockets and mortars during the 2014 Gaza Conflict, approximately 4,000 of which were deliberately directed at Israel's civilian population. The intent to target Israel's civilians was clearly shown both by the sheer volume of projectiles aimed at civilian areas, as well as by official Hamas statements made during the 2014 Gaza Conflict, such as, "our rockets are aimed at the Hebrews, the murderers, the Israelis, the criminals...our missiles accurately target the homes of the Israelis and the Zionists." The rockets and mortars caused deaths and injuries, terrorised millions of Israeli civilians and caused damage to civilian property. The range of these rockets covered more than 70% of Israel's civilian population, bringing the hostilities to the entire country. Those in residential communities near the Gaza Strip had a mere 15 seconds or less to seek shelter. By deliberately targeting Israeli cities and the civilian population, as part of a widespread and systematic policy, Hamas and other terrorist organisations in the Gaza Strip violated customary norms of the Law of Armed Conflict and committed war crimes and crimes against humanity.

26. As noted above, Hamas and other terrorist organisations complemented their rocket and mortar barrage with ground infiltrations into Israel through cross-border assault tunnels designed to facilitate attacks and kidnapping of Israeli civilians and soldiers. On four different occasions in July, armed Hamas militants, in some cases disguised as IDF soldiers, emerged from cross-border assault tunnels into Israeli territory, leaving nearby residents in constant fear of sudden attack. A Hamas-run newspaper boasted that the tunnels "*terrorised millions of Israelis.*"

27. Hamas and other terrorist organisations embedded their military assets and operations within densely populated areas and civilian structures in the Gaza Strip as a matter of military strategy. By conducting hostilities from within civilian surroundings, Hamas and other terrorist organisations frequently turned civilian structures into military objectives, exposing them and surrounding civilians to risk of harm, in a manner which violated the Law of Armed Conflict and often constituted war crimes and crimes against humanity. Hamas and other terrorist organisations used U.N. facilities, schools, hospitals, mosques, residential buildings, and their immediate vicinity, for military purposes: as rocket-launch sites, weapons storage facilities, command-and-control centres, and covers for tunnel entrances. For example, some 550 rockets and mortars were identified by IDF systems as being launched from within or near "sensitive sites" such as schools, U.N. facilities, hospitals, and places of worship.



28. Hamas and other terrorist organisations actively ensured civilian presence in the areas from which they operated by directing civilians either to remain in, or to return to, sites or areas of impending IDF activity. These organisations directed civilian movement for the purpose of shielding both by verbal means — by waging an official campaign pressuring civilians to disregard Israel’s warnings prior to impending IDF military activity — and by explicit physical coercion. By directing the movement of the civilian population and of individual civilians for the purpose of shielding military operations from attack, Hamas and other terrorist organisations committed war crimes.

29. The militants of Hamas and other terrorist organisations frequently disguised themselves as civilians when carrying out attacks, a tactic that often directly violated customary international law. This tactic also gravely endangered the Gaza Strip’s civilian population by impeding the IDF’s ability to identify militants. Furthermore, this tactic also made it possible for Hamas to depict militant fatalities as civilian, which accorded with Hamas’s directions to intentionally inflate purported civilian casualties by characterizing militants killed as “innocent” civilians for propaganda purposes. Indeed, the Hamas-run Ministry of Interior in the Gaza Strip published guidelines for “social media activists,” encouraging the inflation of civilian fatality figures: *“Anyone killed or martyred is to be called a civilian from the Gaza Strip or Palestine, before we talk about his status in jihad or his military rank. Don’t forget to always add ‘innocent civilian’ or ‘innocent citizen’ in your description of those killed in Israeli attacks on the Gaza Strip.”*

30. Hamas and other terrorist organisations also rigged civilian property and residential areas with booby traps and improvised explosive devices. This was a systematic and deliberate Hamas combat strategy, as confirmed by a Hamas combat manual on explosives which was recovered by IDF forces operating in the Gaza Strip. This tactic, too, substantially increased damage to civilian life and property and, in some cases, violated norms of customary international law.

The Threat to Israel’s Civilian Population and Israel’s Civil Defence Measures (Chapter V)

31. Between 2001 and the outset of the 2014 Gaza Conflict, rocket and mortar attacks from the Gaza Strip killed dozens of Israeli civilians and injured thousands. During the same time period, Hamas and other terrorist organisations fired more than 15,200 rockets and mortars at Israel, more than 11,600 of which came after Israel’s full withdrawal from the Gaza Strip in 2005. During the 2014 Gaza Conflict, six civilians in Israel were killed directly by mortars and rockets from the Gaza Strip, and over 1,600 civilians were harmed. Seventeen percent of those evacuated to hospitals during the 2014 Gaza Conflict were children under the age of 18. The 2014 Gaza Conflict and the



period immediately preceding it represented the most intense period of rocket and mortar fire against Israel's civilian population in the nation's history.

32. Given the severity of the threat to Israel's civilian population posed by rocket and mortar fire from the Gaza Strip, Israel invested substantial resources over the years to develop civil defence systems, such as early warning systems and sirens, public safety guidance, policies and legislation for reinforcing homes and public infrastructure, the Iron Dome missile defence system and other measures in order to help defend its civilian population. These civil defence measures have helped to reduce the harm that otherwise would have resulted from these armed attacks.

33. Nevertheless, these measures are not infallible, and do not provide complete protection from rocket and mortar fire and other attacks. Rocket and mortar attacks from the Gaza Strip have caused extensive civilian harm, including deaths, injuries, and damage to public infrastructure, private property, and economic activity in Israel. The growing number of high-trajectory weapons arsenals situated in the Gaza Strip poses, therefore, a very real and increasingly dangerous, multi-layered threat to Israel's national security and Israel's ability to protect the civilian population. Furthermore, Hamas and other terrorist organisations are continuously developing methods and means to evade Israel's civil defence systems in order to carry out their terrorist attacks. This requires ongoing investment, improvement and development of the defence systems in order to protect Israel's civilian population, as well as military action in order to reduce the threat of attack.

34. Apart from the deaths and injuries caused to Israel's civilian population as a result of rocket and mortar attacks, both the short- and long-term psychological effects of the rocket and mortar attacks from the last 14 years have been devastating, and there are strong indications that the effects from the 2014 Gaza Conflict are severe. According to the Ministry of Education, as of February 2015, 38% of children in the immediate area surrounding the Gaza Strip (known as "Otef Aza") were diagnosed as suffering from full or partial symptoms of post-traumatic stress disorder. The 2014 Gaza Conflict was particularly difficult for elderly and disabled persons, who struggled to seek shelter in the short time periods available to take cover from incoming rocket and mortar attacks.

35. In addition to the barrage of rocket and mortar attacks, assaults through cross-border tunnels have terrorised residents of the Israeli communities near the border with the Gaza Strip. While most residents of the Otef Aza area remained in their home communities, an estimated 10,000 Israeli civilians evacuated their homes during the 2014 Gaza Conflict.

36. The intense rocket and mortar attacks against Israel's civilian population also caused significant damage to Israel's economy. Many businesses, shops and restaurants around the country,



especially in the south, closed, as persons remained home with their families near shelters. The Bank of Israel estimates that the loss of GDP deriving from the 2014 Gaza Conflict is around 3.5 billion NIS. In addition, the tourism sector suffered extensive damages and past experience indicates that the effects of the 2014 Gaza Conflict on the tourism sector could last for years. The Israel Tax Authority estimates that the total compensation for direct damages for civilians will reach approximately 150 million NIS (over 39 million USD) and approximately 1.7 billion NIS (approximately 443 million USD) for indirect damages.

IDF Conduct of Operations During the 2014 Gaza Conflict (Chapter VI)

37. As noted above, the vast majority of the combat during the 2014 Gaza Conflict took place in an urban environment. Carrying out operations in urban terrain is particularly challenging for two main reasons: (1) the existence of dense physical infrastructure and (2) the dynamic presence of the civilian population. Military missions in environments where these two factors are present inevitably involve significant risk of harm to the civilian population and the physical infrastructure.

38. These challenges — relevant to any context of urban warfare — were even greater for the IDF during the 2014 Gaza Conflict. Hamas and other terrorist organisations in the Gaza Strip are acutely aware of the operational and strategic advantages offered by dense physical infrastructure and the presence of a civilian population. The longer Hamas has controlled the Gaza Strip, the more it has invested in embedding its military operations within and under the urban terrain. Hamas training and doctrinal materials found by IDF forces during the Operation attest to Hamas's intentional efforts to draw the IDF into combat in densely populated areas and to actively use the civilian population in order to obstruct the IDF's military operations.

39. On top of the distinct dangers inherent in urban warfare is the natural fog of war. Inevitable uncertainties exist in combat. Despite the best efforts of military forces, there is always the possibility that as events unfold in real-time forces may not be fully aware of the operational picture, technology may suffer malfunctions, and the employment of force may result in unintended consequences.

40. When combat is confined to an urban environment — and particularly, in a densely populated area — harm to civilians and civilian structures may be unavoidable. Yet no matter the context in which Israel conducts its military operations, the IDF respects its obligations under international law, including the Law of Armed Conflict. During the 2014 Gaza Conflict the IDF



specifically directed that all its operations accord with the Law of Armed Conflict, including the fundamental rules of distinction, proportionality, and precautions.

41. Israel has developed strict procedures and oversight for compliance with the Law of Armed Conflict. Thus, IDF forces receive training in the Law of Armed Conflict, and IDF directives and procedures are enacted on the basis of legal advice. The IDF's primary operational order for the Operation required compliance with the Law of Armed Conflict at all times, including an explicit statement that all attacks shall be "*strictly limited to military objectives... with strict adherence to the rules of distinction and proportionality.*" The IDF regularly develops, reviews, and revises its operational directives as part of an ongoing lessons-learned process that helps prepare for future potential conflicts, in conjunction with ongoing legal advice. Moreover, the IDF's highly regulated targeting process — which requires input from intelligence sources, operational planners and other relevant professionals before an attack may be approved — is designed to ensure compliance with the Law of Armed Conflict. During this process, IDF lawyers review and provide a binding opinion for all pre-planned attacks regarding the legality of an attack, including any stipulations for its execution.

42. IDF lawyers are available at different command levels to provide advice before, during and after operations. These lawyers are not subordinate to the commanders they advise, but rather are subject only to the Military Advocate General ("MAG"), who himself has an independent status outside the military hierarchy in relation to all legal issues. The legal opinions provided by IDF lawyers are binding on the commanders to whom they are provided, including those regarding the legality of individual attacks. The MAG Corps' legal advice is subject to civilian oversight — the MAG is guided on professional matters by Israel's Attorney General, who may also review the MAG's decisions and policies. The MAG's legal advice is also subject to scrutiny by the civilian judicial system, and many military activities and policies have been brought for consideration before Israel's Supreme Court for review.

43. Despite the serious challenges posed by the conduct of Hamas and other terrorist organisations in the Gaza Strip, and despite the complex nature of urban warfare, the IDF remains committed to the Law of Armed Conflict. Accordingly, in the complex circumstances of the 2014 Gaza Conflict, Israel undertook to attack objects only when there was reasonable certainty — based on reliable intelligence — that they constituted military objectives in accordance with the Law of Armed Conflict. Likewise, the IDF directed attacks on individuals only when there was reasonable certainty that such persons were members of organised armed groups or civilians directly participating in hostilities.



44. Unfortunately, some of these attacks resulted in damage to residential buildings, schools, mosques, and even medical and U.N. facilities. Damage occurred mostly when these sites became lawful military targets due to Hamas's and other terrorist organisation's use of such sites for military purposes; when Hamas and other militants located themselves during the hostilities within such structures; or as unintended incidental harm resulting from IDF attacks against these organisations' military operations in the immediate vicinity of such sites. Israel *did not* intentionally target civilians or civilian objects.

45. In this complex environment, the IDF took various steps to mitigate the risk of harm to civilian objects and the civilian population, including measures not required by the Law of Armed Conflict. Precautionary measures included a multi-layered system of effective advance warnings, sophisticated verification procedures, and the careful choice of means and methods of warfare (including munitions, timing and angle of attack).

46. The IDF's attacks were mandated to accord with the principle of proportionality, which prohibits attacks that may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. When assessing the expected collateral damage in this context, the adherence of civilians to prior general or specific warnings provided by the IDF was not presumed, and any lack of adherence to such warnings did not on its own alter the proportionality assessment required.

47. The IDF also aborted or suspended attacks whenever it became apparent — for example, due to real-time intelligence — that the target was not a military objective, that the target was subject to special protection, or that the expected damage to civilians and civilian property was excessive in relation to the anticipated military advantage. Attacks were also aborted or suspended for reasons of policy, even when they were expected to be within the parameters of the rule of proportionality.

48. In addition, Israel requires that any means of warfare used during its military operations accord with Israel's obligations under international law. Thus, for example, high-explosive artillery was required by IDF directives to be used in accordance with the rules of the Law of Armed Conflict. Beyond these requirements, the IDF puts great efforts and resources into minimising the possibility of harm to civilians that results from the use of such weaponry — for instance, by imposing stringent limitations on the use of certain weapons (including high-explosive artillery) in populated areas.

49. Despite the IDF's efforts to mitigate the risk of incidental harm, civilian casualties and damage to civilian objects regrettably resulted from Israeli attacks against military objectives.



Without ignoring the unfortunate nature of such consequences, they must be assessed in light of the Law of Armed Conflict and the reality of hostilities in a complex and rapidly changing urban terrain against an adversary that deliberately seeks to cause harm to its own civilian population. For example, the principle of proportionality requires consideration of a commander's assessment of the expected collateral damage from an attack. The test is based on the expected collateral damage a "reasonable commander" would have assessed at the time of attack — and not the damage that in actuality occurred as a result of the attack — and whether there is a significant imbalance between that expected damage and the anticipated military advantage.

50. During the 2014 Gaza Conflict, the IDF also captured individuals on the battlefield, such as those suspected of being involved in terror activity. The vast majority of such persons were released shortly after capture. All captured persons were detained pursuant to — and in conditions often exceeding — Israel's legal obligations under Israeli law and the Law of Armed Conflict.

51. Before, during and after the 2014 Gaza Conflict, the IDF made extensive efforts to facilitate humanitarian aid to the civilian population in the Gaza Strip. The IDF did so even though Israel's obligation towards the Gaza Strip under the Law of Armed Conflict was limited generally to allowing — or at most facilitating — humanitarian aid to persons in need where hostilities are taking place. These efforts included providing medical treatment to wounded persons (including militants); facilitating the transfer of food, clothing, medicine and additional supplies into the Gaza Strip; facilitating the repair of power lines, water supply, and other infrastructure (oftentimes, while under fire); coordinating evacuations of wounded and sick persons within the Gaza Strip and also into Israel, the West Bank, and overseas; and unilaterally suspending military operations on multiple occasions to facilitate humanitarian assistance.

52. Hamas and other terrorist organisations frequently impeded Israel's humanitarian efforts by attacking crossings and restricting the movement of persons and supplies. In addition, Hamas consistently rejected proposed ceasefires, violated coordinated ceasefires, and exploited unilateral IDF ceasefires to attack IDF forces and Israeli civilians. In the wake of the 2014 Gaza Conflict, Hamas has continued to undermine humanitarian relief, *inter alia* by diverting for military purposes goods and supplies that were intended for the civilian population, and imposing taxes on donated materials, and has already invested considerable resources in rebuilding its military capabilities.



Israel's Investigation of Alleged Violations of the Law of Armed Conflict (Chapter VII)

53. Israel is aware of allegations that certain IDF actions during the 2014 Gaza Conflict violated international law. Israel reviews complaints and other information it receives suggesting IDF misconduct, regardless of the source, and is committed to investigating fully any credible accusation or reasonable suspicion of a serious violation of the Law of Armed Conflict.

54. Israel maintains a multi-layered investigations system, with numerous checks and balances to ensure impartiality before investigative, administrative, and judicial authorities. Israel's military justice system, and its procedures for investigating possible violations of the Law of Armed Conflict, are continually reviewed and updated. The three main components of the military justice system are the Military Advocate General's Corps ("MAG Corps"), the Military Police Criminal Investigation Division ("MPCID"), and the independent Military Courts. Moreover, Israel's military justice system is subject to civilian oversight by the Attorney General of Israel, and subject to judicial review by Israel's Supreme Court, which has adopted doctrines of standing and justiciability that readily allow for petitions regarding IDF activity.

55. In 2010, the Government of Israel created an independent public commission of inquiry headed by a former Justice of Israel's Supreme Court and that included distinguished international legal observers (the "Turkel Commission"). Following a comprehensive review, the Turkel Commission concluded in 2013 that Israel's mechanisms for examining and investigating complaints and claims of violations of the Law of Armed Conflict generally comply with its obligations under international law, and made a number of recommendations to improve these mechanisms further. The Turkel Commission also found that Israel's system compares favourably with the investigative mechanisms of other democratic countries, including Australia, Canada, Germany, the Netherlands, the United Kingdom and the United States.

56. At the beginning of the 2014 Gaza Conflict, in accordance with one of the recommendations of the Turkel Commission, the IDF Chief of the General Staff ordered the establishment of a permanent new General Staff Mechanism for Fact-Finding Assessment ("FFA Mechanism") to examine exceptional incidents that allegedly occurred during the ongoing conflict. The examination conducted by the FFA Mechanism is intended to provide the MAG with as much information as possible so that the MAG may decide whether to open a criminal investigation. The FFA Mechanism relies on high-ranking IDF reserve and active-duty officers with military operational, legal, and investigative experience outside the chain of command of the operational activity under examination. These examinations may also help to inform the IDF's "lessons-learned" process, so



that steps may be considered in an effort to minimise the risk of such incidents recurring in the future. In some cases, where credible allegations *prima facie* give rise to a reasonable suspicion of criminal wrongdoing, the MAG may open a criminal investigation without requiring an FFA examination.

57. When investigating alleged misconduct that occurred during intensive hostilities, it is important that actions be assessed in accordance with the governing legal framework — the Law of Armed Conflict. Violations of the Law of Armed Conflict cannot be inferred solely from the outcome of a particular incident — even when the outcome may involve considerable harm to civilians or civilian objects. Rather, the legality of particular conduct must be assessed from the perspective of a “reasonable commander,” based on the information that was known (or should have been known) to the commander at the time of the decision at issue, and avoid the bias of hindsight or the convenience of effects-based condemnations.

58. Any investigation of alleged violations of the Law of Armed Conflict inevitably is complicated by numerous challenges, especially in the context of an intensive conflict with a non-state actor like Hamas that embeds its military operations in urban terrain. These (often overlapping) challenges include, for example, the scene of the alleged violation under hostile control; the lack of eyewitnesses to certain military activity, such as an aerial bombing or covert ground operations; the complex, dynamic nature of certain large-scale military operations; the inadvertent destruction of evidence during intense fighting; the failure of potential witnesses to come forward, because they fear retribution for cooperating with the IDF’s investigation or for reporting on terrorist activity; and the concealing of evidence or planting of false evidence by Hamas and other terrorist organisations.

59. As a result of these various challenges, investigations can take significant time and even where an indication of criminal misconduct exists, they can still fail to obtain evidence sufficient to warrant prosecution. Notwithstanding these numerous practical challenges involved in examining and investigating alleged violations of the Law of Armed Conflict in the context of the 2014 Gaza Conflict, Israel is committed to investigating alleged misconduct and holding wrongdoers accountable, through criminal prosecutions or disciplinary action, as may be appropriate in each case, and it takes extensive steps to ensure that investigations are as effective as possible.

60. As of the date of this Report, the IDF is reviewing hundreds of complaints from different sources (such as the U.N., NGO’s and private Palestinian complainants) regarding its conduct of operations during the 2014 Gaza Conflict. The MAG periodically publishes his decisions regarding these examinations. As of March 22, 2015, the following information has been released: The IDF’s new FFA Mechanism has examined, and continues to examine, allegations relating to over 120



incidents that took place during the 2014 Gaza Conflict. The MAG thus far has opened 13 criminal investigations without a prior examination by the FFA Mechanism, based on reasonable suspicion of criminal misconduct. One of these investigations has led to indictments filed against three IDF soldiers. In addition, the MAG has ordered criminal investigations into six incidents that were examined by the FFA Mechanism. The MAG has closed 17 cases after reviewing the findings and material collected by the FFA Mechanism and concluding that the IDF's actions did not raise reasonable grounds for suspicion of criminal behaviour. The Report provides detailed information about several cases closed by the MAG. The examination and investigation process is ongoing, and the MAG is committed to providing further updates on decisions concerning specific incidents.

Conclusion

61. The following Report, “The 2014 Gaza Conflict (July 7 – August 26, 2014): Factual and Legal Aspects” provides detailed information about the conflict, including illustrative examples and previously unreleased information that was declassified for the purposes of this Report. Israel intends to continue to publish updated information regarding the 2014 Gaza Conflict as additional information is obtained or released and as the examination and investigation process continues. Updated and additional information on the factual and legal aspects of the 2014 Gaza Conflict can be found at www.protectiveedge.gov.il.