



AL - HAQ

# DIVIDE AND CONQUER

A LEGAL ANALYSIS OF ISRAEL'S 2014 MILITARY  
OFFENSIVE AGAINST THE GAZA STRIP

AL - HAQ

2015



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## INTRODUCTION

Between 8 July and 26 August 2014, Israel carried out a massive offensive on the occupied Gaza Strip, codenamed 'Operation Protective Edge'. The offensive, which escalated on 17 July 2014 with the commencing of an Israeli ground invasion, is characterized by Israel's unlawful attacks on Palestinian civilians and civilian objects and infrastructure resulting in a staggering death toll and the devastating destruction of entire neighbourhoods. It is estimated that it will take 20 years to rebuild the

Gaza Strip following 'Operation Protective Edge'.<sup>1</sup> Field documentation demonstrates that Israel, as an Occupying Power engaged in hostilities, did not conduct itself in line with its obligations under international humanitarian law.

According to documentation jointly compiled by the Palestinian human rights organisations Al-Haq, Al Mezan, Aldameer and the Palestinian Center for Human Rights (the Palestinian human rights coalition), a total of 2,215 Palestinians, including 1,639 civilians, were killed during 'Operation Protective Edge'. Of these victims, 556 were children.<sup>2</sup> And according to data supplied by the Palestinian Ministry of Health, 10,918 Palestinians, including 3,312 children, were injured during the offensive.

In terms of civilian objects, the Palestinian human rights coalition documented damage to 32,028 residential, including 8,359 Palestinian residential houses that were completely destroyed. According to the Palestinian human rights coalition, 5,323 residential houses were directly targeted.

According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), 108,000 Palestinians are homeless as a result of the offensive. At its peak, 485,000 Palestinians were internally displaced.<sup>3</sup> According to the Palestinian human rights coalition, 43,503 Palestinian families, including 125,079 children, were affected by the destruction and damage to residential house.

<sup>1</sup> Romtveit, G., 'The rebuilding of Gaza will take 20 years', (Norwegian Refugee Council, 11 September 2014), available at: <http://www.nrc.no/?did=9183563> (last accessed 19 January 2015).

<sup>2</sup> This is the Palestinian human rights coalition's final data as of 6 February 2015. The number of Palestinians killed does not include 6 unidentified bodies that have been buried and a suspected 9 Palestinians missing that crossed into Israel during the offensive.

<sup>3</sup> UN Office for the Coordination of Humanitarian Affairs in the occupied Palestinian territories (henceforth OCHA oPt), 'Occupied Palestinian Territory: Gaza Emergency Situation (as of 4 September 2014, 08:00 hrs)' (OCHA, 04 September 2014), available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_sitrep\\_04\\_09\\_2014.pdf](http://www.ochaopt.org/documents/ocha_opt_sitrep_04_09_2014.pdf) (last accessed 19 January 2015).

### Palestinian residential houses destroyed between 7 July and 26 August 2014 \*

Per Governorate	Completely destroyed	Partially destroyed	Total
North Gaza	1998	6285	<b>8283</b>
Gaza	2691	7225	<b>9916</b>
Deir al-Balah/Middle Area	1059	3605	<b>4664</b>
Khan Younes	1443	3506	<b>4949</b>
Rafah	1168	3048	<b>4216</b>
<b>Total</b>	<b>8359</b>	<b>23669</b>	<b>32028</b>

### Palestinian individuals and families affected by the destruction of houses \*

Per Governorate	Number of houses	Number of families	Permanent residents	Women	Children
North Gaza	8283	12333	73195	18326	37760
Gaza	9961	13948	74827	20714	41513
Deir al-Balah/Middle Area	4664	5854	35498	9646	15578
Khan Younes	4949	6278	37579	10721	15864
Rafah	4216	5090	30491	8181	14364
<b>Total</b>	<b>32028</b>	<b>43503</b>	<b>251590</b>	<b>67588</b>	<b>125079</b>

### Public Buildings destroyed between 7 July and 26 August 2014 \*

Type	Completely destroyed	Partially destroyed	Total
Health Facilities, including hospitals	7	27	<b>34</b>
Mosques	61	120	<b>181</b>
Churches	0	1	<b>1</b>
Banks	1	3	<b>4</b>
Civil society	29	51	<b>80</b>
Schools	7	57	<b>64</b>
Pre-schools	8	44	<b>52</b>
Colleges and universities	0	6	<b>6</b>

\* This is the Palestinian human rights coalition's final data as of 6 February 2015. Other bodies may provide higher figures. The Palestinian human rights coalition bases its figures on the destruction of residential houses on ownership of property.

This publication applies Israel's obligations under international humanitarian law (IHL) to select aspects of its conduct of hostilities. Israel's IHL obligations are primarily set out in the 1907 annex to Convention (IV) respecting the Laws and Customs of War on Land (Hague Regulations), the 1949 Geneva Convention Relative to the Protection of Civilian Persons in time of War (Fourth Geneva Convention), and 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I). These instruments are considered to be largely reflective of customary international law.<sup>4</sup>

<sup>4</sup> While Israel has accepted the applicability of the Hague Regulations on the basis of their customary nature, it has declared that it will only abide by the 'humanitarian provisions' of the Fourth Geneva Convention, although it has refused to specify which provisions it regards as humanitarian. For a recent judgment see *Yesh Din et al. v Commander of the IDF Forces in the West Bank et al*, Israeli High Court of Justice 2690/09, (Judgment, 23 March 2010), para 6.





## CONTEXT

‘Operation Protective Edge’ took place in the context of a prolonged belligerent occupation that consistently and intentionally denies the occupied Palestinian people their inherent right to self-determination in the Occupied Palestinian Territory (OPT). The occupation has been marked by Israel’s measured fragmentation of the OPT through the transfer of its citizens into the Palestinian territory; the construction of the Annexation Wall; the annexation of East Jerusalem; and Israel’s exploitation of Palestinian natural resources for its own benefit. Israel

has also ensured a physical separation between Palestinians in the West Bank and Palestinians in the Gaza Strip by prohibiting travel and trade between the areas. Since 2007, Israel has imposed an eight-years-long closure on the Gaza Strip that amounts to collective punishment and isolates its population from the outside world. Nevertheless, on 2 June 2014 - imminently preceding the military operation in the Gaza Strip - the Palestinian Authority (PA) and Hamas formed a unity government, ending years of internal political division. Israel immediately refused to recognise the unity government and cancelled the then on-going peace negotiations whilst threatening to take “measures” against the PA.<sup>5</sup>

The offensive was also closely related to Israel’s parallel military operation in the West Bank codenamed ‘Operation Brother’s Keeper’. On 12 June 2014, three Israeli teenage settlers disappeared near the West Bank city of Hebron. The three individuals were later found dead. Under the pretext of their disappearance and subsequent murder, Israel carried out extensive searches, hundreds of house raids, and thousands of arrests across the West Bank. Within the context of ‘Operation Brother’s Keeper’ and ‘Operation Protective Edge’, Israel also resorted to excessive force against Palestinian in the West Bank. According to OCHA, between 1 June and 31 August 2014, Israel killed 27 Palestinians in the West Bank, including 5 children.<sup>6</sup> “This is more than double the number of Palestinians fatalities recorded in the first five months of the year, and equals the figure of Palestinians killed by Israeli forces during all of 2013”.<sup>7</sup>

<sup>5</sup> Hatuqa, D., ‘Palestinians form consensus government’, *Al-Jazeera* (03 June 2014), available at: <http://www.aljazeera.com/news/middleeast/2014/06/palestinians-set-swear-unity-government-20146281348223961.html>, (last accessed 19 January 2015); ‘Israel to suspend talks over Palestinian unity deal’, *BBC News* (24 April 2014), available at: <http://www.bbc.com/news/world-middle-east-27146734> (last accessed 14 October 2014); Rudoren, J., ‘Israel Halts Talks, Citing Palestinian Unity Agreement’, *New York Times* (24 April 2014), available at: [http://www.nytimes.com/2014/04/25/world/middleeast/israel.html?\\_r=0](http://www.nytimes.com/2014/04/25/world/middleeast/israel.html?_r=0) (last accessed 19 January 2015).

<sup>6</sup> OCHA oPt, ‘Humanitarian Bulletin, Monthly Report, June – August 2014’ (OCHA, 03 October 2014), p 3, available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_the\\_humanitarian\\_monitor\\_2014\\_10\\_03\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_10_03_english.pdf) (last accessed 19 January 2015)

<sup>7</sup> OCHA oPt, ‘Humanitarian Bulletin, Monthly Report, June – August 2014’ (OCHA, 03 October 2014) p 3, available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_the\\_humanitarian\\_monitor\\_2014\\_10\\_03\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_10_03_english.pdf) (last accessed 19 January 2015).

In relation to Israel's operation in the West Bank, Israel also stepped up its practice of punitive house demolitions. Al-Haq documented the demolition of 11 houses in the West Bank for punitive reasons during 2014. From the outset, Israel blamed Hamas as well as the then recently formed Palestinian unity government for the disappearance and death of the settlers.<sup>8</sup>

The timing of the military operations in the Gaza Strip and the West Bank, Israel's rhetoric, as well as its large-scale and indiscriminate conduct, strongly indicates that Israel's military operations were punitive in nature and motivated by Palestinian reconciliation. In both operations, the entire Palestinian population was made to bear the brunt of Israel's actions. As such, Israel's 2014 offensive on the Gaza Strip forms part of Israel's over-arching policy of separating the OPT and its Palestinian population with the desired end-goal of conquering the entire territory.

On this note, IHL prohibits acts or threats of violence with the "primary purpose of which is to spread terror among the civilian population".<sup>9</sup>

<sup>8</sup> 'Bodies of missing settlers found in West Bank', *Al-Jazeera* (30 June 2014), available at: <http://www.aljazeera.com/news/middleeast/2014/06/report-israel-finds-three-bodies-hebron-2014630162857704850.html> (last accessed 19 January 2015); Wilner, M., 'Netanyahu to Kerry: PA's Hamas-backed unity government to blame for missing teens', *The Jerusalem Post* (13 June 2014), available at: <http://www.jpost.com/Diplomacy-and-Politics/US-expresses-concern-over-possible-kidnappings-Kerry-confers-with-Livni-Abbas-358281>, (last accessed 19 January 2015); 'Israel accuses Hamas of abducting missing teenagers', *BBC News* (15 June 2014), available at: <http://www.bbc.com/news/world-middle-east-27855994>, (last accessed 19 January 2015); Rudoren, J., 'Netanyahu Says Three Were Taken by Hamas', *The New York Times* (13 June 2014), available at: [http://www.nytimes.com/2014/06/16/world/middleeast/netanyahu-blames-hamas-in-kidnapping-of-israeli-youths.html?\\_r=0](http://www.nytimes.com/2014/06/16/world/middleeast/netanyahu-blames-hamas-in-kidnapping-of-israeli-youths.html?_r=0) (last accessed 19 January 2015).

<sup>9</sup> Henckaerts, J., et al., *Customary international humanitarian law: Rules*. Vol. 1. (Cambridge University Press, 2005) (henceforth ICRC Customary IHL), Rule 2.



# 1

## ISRAEL'S CONTINUED OCCUPATION OF THE GAZA STRIP

### 1.1 ISRAEL'S CONTROL OVER THE GAZA STRIP

During the 1967 Six Day War with Egypt and other countries in the Middle East, Israel seized effective control of the Palestinian territory, including the Gaza Strip.<sup>10</sup> Since then, Israel exercises exclusive control

<sup>10</sup> Dinstein, Y., *The International Law of Belligerent Occupation* (Cambridge University Press, 2009), paras 28 and 30



over the strip's airspace and territorial waters and has full control over its land borders, with the exception of the Rafah crossing.<sup>11</sup> In addition, Israel is in charge of the population registry applied to the occupied population. Any changes made to the registry must be approved by Israel, including the registration of births, marriages, deaths and places of residence. Travel documents are further issued on the basis of information in the registry and with additional approval from Israel. As a result, Israel ultimately controls Palestinian movement – including travel through the Rafah crossing.<sup>12</sup>

Israel also sets and collects the customs and Value Added Tax rates for Palestinian goods, thereby affecting the price of goods in the Gaza Strip.<sup>13</sup> Israel has repeatedly abused its role as tax collector; in May 2011, Israel withheld Palestinian tax revenue in reaction to a unity deal reached between Fatah and Hamas. Similarly, in October 2011, Israel withheld 100 million USD in tax revenue in objection to Palestine's admission to the United Nations Educational, Scientific and Cultural Organisation.<sup>14</sup> Most recently, in 2015, Israel decided to withhold Palestinian revenue in response to Palestine's accession to the Rome Statute of the International Criminal Court.<sup>15</sup>

11 UN General Assembly, 'Report of the United Nations Fact Finding Commission on the Gaza Conflict', (25 September 2009) UN Doc A/HRC/12/48 para. 278; 'Al-Haq's Rejoinder to Gisha's 'Scale of Control' Report: Israel's Continued Responsibility as the Occupying Power in the Gaza Strip' (Gisha, 18 December 2011), available at: <http://gisha.org/en-blog/2011/12/18/al-haqs-rejoinder-to-gishas-scale-of-control-report-israels-continued-responsibility-as-the-occupying-power-in-the-gaza-strip/> (last accessed 20 January 2015).

12 UN General Assembly, *Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance* (27 September 2010), UN Doc A/HRC/15/21, para 64; Gisha, 'Scale of control Israel's Continued Responsibility in the Gaza Strip', (Gisha, November 2011), pages 17-18, available at: [http://gisha.org/UserFiles/File/scaleofcontrol/scaleofcontrol\\_en.pdf](http://gisha.org/UserFiles/File/scaleofcontrol/scaleofcontrol_en.pdf) (last accessed 20 January 2015).

13 Gisha, 'Scale of Control: Israel's Continued Responsibility in the Gaza Strip' (Gisha, November 2011), pages 19-20, available at: [http://gisha.org/UserFiles/File/scaleofcontrol/scaleofcontrol\\_en.pdf](http://gisha.org/UserFiles/File/scaleofcontrol/scaleofcontrol_en.pdf) (last accessed 19 January 2015).

14 Al-Haq, 'Israel's Illegal Freeze on Palestinian Tax Revenue' (Al-Haq, 06 December 2011), available at: <http://www.alhaq.org/advocacy/targets/european-union/506-israels-illegal-freeze-of-palestinian-tax-revenue-> (last accessed 19 January 2015).

15 Deitch, L., 'Israel Withholds Palestinian Tax Revenues After Move to join ICC', *Huffington Post* (03 January 2015), available at: [http://www.huffingtonpost.com/2015/01/03/israel-palestinian-tax-revenues\\_n\\_6411010.html](http://www.huffingtonpost.com/2015/01/03/israel-palestinian-tax-revenues_n_6411010.html) (last accessed 19 January 2015).

Israel's continued administration of the above mentioned aspects and its ultimate control over the lives of the Palestinian population of the Gaza Strip, has been maintained despite Israel's 2005 withdrawal from the territory.

### 1.1.1 The 'Disengagement Plan'

On 6 June 2004, the Israeli Cabinet approved a plan to unilaterally withdraw from the Gaza Strip. The 'Disengagement Plan' encompassed the removal of Israeli settlers and ground forces from the Gaza Strip.<sup>16</sup> Prior to the withdrawal, almost 8,500 Israeli citizens had illegally settled in the Gaza Strip.<sup>17</sup>

According to the Israeli Cabinet, its decision to disengage was based on, *inter alia*, the consideration that Israel's illegal settlements in the occupied West Bank and "other places of special interest to Israel" would form part of the Israeli State in the future.<sup>18</sup> Furthermore, the Israeli Cabinet put forward that the completion of its plan "will serve to dispel the claims regarding Israel's responsibility for the Palestinians in the Gaza Strip".<sup>19</sup>

Israel's withdrawal was implemented between 15 August and 12

16 Israel Ministry of Foreign Affairs, 'Cabinet Resolution Regarding the Disengagement Plan', Addendum A- revised Disengagement Plan (6 June 2004), Article 2(3.1), available at: <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/MFADocuments/Pages/Revised%20Disengagement%20Plan%206-June-2004.aspx> (last accessed 19 January 2015).

17 Al-Haq, 'One Year after the 'Disengagement': Gaza still Occupied and under Attack ' (Al-Haq, 2005) available at: <http://www.alhaq.org/images/stories/Publications/Gaza.still.Occupied.and.under.Attack.pdf> (last accessed 20 January 2015).

18 Israel Ministry of Foreign Affairs, 'Cabinet Resolution Regarding the Disengagement Plan' (6 June 2004), Addendum A- revised Disengagement Plan article 1, available at: <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/MFADocuments/Pages/Revised%20Disengagement%20Plan%206-June-2004.aspx> (last accessed 19 January 2015).

19 Israel Ministry of Foreign Affairs, 'Cabinet Resolution Regarding the Disengagement Plan' (6 June 2004), Addendum A- revised Disengagement Plan article 1, available at: <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/MFADocuments/Pages/Revised%20Disengagement%20Plan%206-June-2004.aspx> (last accessed 19 January 2015).



September 2005,<sup>20</sup> and since then Israel has claimed that it does not occupy the Gaza Strip.<sup>21</sup> However, the plan itself provided that Israel will continue to “guard and monitor the external land perimeter of the Gaza Strip, will continue to maintain exclusive authority in Gaza air space, and will continue to exercise security activity in the sea off the coast of the Gaza Strip.”<sup>22</sup>

On 19 September 2007, Israel declared the Gaza Strip a ‘hostile territory’ in response to the Palestinian legislative elections of 2006 that resulted in the creation of a *de facto* Hamas government in the Gaza Strip.<sup>23</sup> Israel’s declaration came hand in hand with its imposition of an on-going closure on the Gaza Strip.

### 1.1.2 The Closure

As part of its decision to declare the Gaza Strip a ‘hostile territory’, the Israeli Cabinet announced that it would impose “sanctions [...] on the Hamas regime in order to restrict the passage of various goods to the

Gaza Strip and reduce the supply of fuel and electricity”.<sup>24</sup> Israel also announced that it would impose restrictions “on the movement of people to and from the Gaza Strip”.<sup>25</sup> In the same vein, Israel’s Deputy Defense Minister Vilnai subsequently stated that Israel “will need to reduce the scope of goods and thus create pressure on the Hamas organization”.<sup>26</sup>

The so called sanctions have taken the form of an unlawful eight-years-long closure which includes severe restrictions on the freedom of movement of Palestinians and the free flow of goods. The Karm Abu Salem border crossing with Israel remains the only official crossing open for the movement of goods.<sup>27</sup> Between 6 July and 2 August 2014, Israel only allowed the restricted entrance of medicine, fuel and food.<sup>28</sup> Moreover, whereas prior to the latest offensive small quantities of construction materials entered through the Rafah crossing with Egypt for reconstruction projects funded by Qatar, such materials have not been allowed to enter the Gaza Strip since 30 June 2014. Furthermore, although Israel has at will prohibited the entrance of construction material into the Gaza Strip, it allowed such material destined for international aid organisations and the Palestinian Water Authority to enter as of 2 September 2014.<sup>29</sup> The heavy restrictions placed on the entrance of construction materials and humanitarian aid, in particular

20 Al-Haq, ‘One Year after the ‘Disengagement’: Gaza still Occupied and under Attack ‘ (Al-Haq, 2005) available at: <http://www.alhaq.org/images/stories/Publications/Gaza.still.Occupied.and.under.Attack.pdf> (last accessed 20 January 2015)

21 Gisha, ‘Disengaged Occupiers: the Legal Status of Gaza’ (Gisha, January 2007), pages 22-27, available at: [http://www.gisha.org/UserFiles/File/publications\\_english/Publications\\_and\\_Reports\\_English/Disengaged\\_Occupiers\\_en.pdf](http://www.gisha.org/UserFiles/File/publications_english/Publications_and_Reports_English/Disengaged_Occupiers_en.pdf) (last accessed 19 January 2015), referring to, *inter alia*: *Mezan Center for Human Rights v. Defense Minister*, Israeli High Court of Justice 2990/06 (State Response, 26 April 2006) ; *Physicians for Human Rights v. Defense Minister*, Israeli High Court of Justice 10265/05 (State Submission, 11 July 2006); *Public Committee against Torture in Israel v Government of Israel*, Israeli High Court of Justice 769/02 (State Submission 5 December 2005); *Hamdan v. Southern Military Commander and related cases*, Israeli High Court of Justice 11120/05 (State Response, 19 January 2006).

22 Israel Ministry of Foreign Affairs, ‘Cabinet Resolution Regarding the Disengagement Plan’ (6 June 2004), Addendum A- revised Disengagement Plan article 1, available at: <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/MFADocuments/Pages/Revised%20Disengagement%20Plan%206-June-2004.aspx> (last accessed 19 January 2015); article 3.1, available at: <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/MFADocuments/Pages/Revised%20Disengagement%20Plan%206-June-2004.aspx> (last accessed 19 January 2015).

23 Israel Ministry of Foreign Affairs, ‘Security Cabinet declares Gaza hostile territory ‘ (19 September 2007), available at: <http://www.mfa.gov.il/mfa/pressroom/2007/pages/security%20cabinet%20declares%20gaza%20hostile%20territory%2019-sep-2007.aspx> (last accessed 19 January 2015); Al-Haq, ‘Israel declares Gaza “enemy entity” ‘ (The Electronic Intifada, 23 September 2007), available at: <http://electronicintifada.net/content/israel-declares-gaza-enemy-entity/3282> (last accessed 20 January 2015).

24 Israel Ministry of Foreign Affairs, ‘Security Cabinet declares Gaza hostile territory ‘ (19 September 2007), available at: <http://www.mfa.gov.il/mfa/pressroom/2007/pages/security%20cabinet%20declares%20gaza%20hostile%20territory%2019-sep-2007.aspx> (last accessed 19 January 2015).

25 Israel Ministry of Foreign Affairs, ‘Security Cabinet declares Gaza hostile territory ‘ (19 September 2007), available at: <http://www.mfa.gov.il/mfa/pressroom/2007/pages/security%20cabinet%20declares%20gaza%20hostile%20territory%2019-sep-2007.aspx> (last accessed 19 January 2015).

26 As quoted in ‘Gaza Closure Defined: Collective Punishment’ (December 2008) p 4, available at: <http://www.gisha.org/UserFiles/File/publications/GazaClosureDefinedEng.pdf> (last accessed 19 January 2015).

27 Gisha, ‘Gaza Cheat Sheet’ (Gisha, 19 January 2015), available at: [http://www.gisha.org/UserFiles/File/publications/Info\\_Gaza\\_Eng.pdf](http://www.gisha.org/UserFiles/File/publications/Info_Gaza_Eng.pdf) (last accessed 19 January 2015).

28 See e.g.: Gisha, ‘Blackouts approximately 15 hours per day for 400.000 people, Kerem Shalom closed’ <http://www.gisha.org/updates/3018> (last accessed 19 January 2015) ; Gisha, ‘What you need to know about Gaza’ (Gisha, 11 July 2014), available at: <http://gisha.org/en-blog/2014/07/11/what-you-need-to-know-about-gaza/> (last accessed 19 January 2015).

29 Gisha, ‘Gaza Cheat Sheet’ (Gisha, 19 January 2015), available at: [http://www.gisha.org/UserFiles/File/publications/Info\\_Gaza\\_Eng.pdf](http://www.gisha.org/UserFiles/File/publications/Info_Gaza_Eng.pdf) (last accessed 19 January 2015).

following the devastating damage and destruction of civilian objects and infrastructure caused by Israel during its military offensives of 2008-09 and 2014, have a detrimental effect on the ability of Palestinians to recover.

In regard to the closure's effects on the movement of people, there are only two crossings that Palestinians can travel through; the Erez border crossing into Israel and the Rafah crossing into Egypt. Palestinians can only travel through Erez "in exceptional humanitarian cases, with emphasis on urgent medical cases", with the exception of some merchants. While Palestinians generally travel abroad through the Rafah crossing, that crossing has not been open for movement at all times. Indeed, Egypt has restricted Palestinian travel through the Rafah crossing due to instability.<sup>30</sup>

In general, the closure has had all-encompassing effects on Palestinians' access to employment, livelihood, education and health in the Gaza Strip.<sup>31</sup> For example, according to OCHA, around two thirds of the occupied population in the Gaza Strip received food assistance prior to 'Operation Protective Edge'.<sup>32</sup> Furthermore, hospitals and health facilities have suffered from "chronic shortages in medicine, medical supplies and equipment".<sup>33</sup> And according to the International Committee of the Red Cross (ICRC), the closure imposed on the Gaza Strip is "choking

off any real possibility of economic development".<sup>34</sup> Moreover, because the "whole of Gaza's civilian population is being punished for acts for which they bear no responsibility", the ICRC considers that the closure amounts to collective punishment.<sup>35</sup>

### *Israel's Separation Policy*

Israeli military and government officials have over the past years repeatedly stated that Israel is carrying out a separation policy.<sup>36</sup> This separation policy – which is applied to the Gaza Strip and the West Bank – has been underlined in court proceedings and the Israeli High Court of Justice has purposefully refrained from interfering in it.<sup>37</sup> Most recently, Israel's separation policy was argued before the Israeli High Court of Justice in the 2014 case *Nader 'Abdallah 'Abd al-Razeq Masri v. Minister of Defense et al.* Nader, a Palestinian marathon runner and resident of the Gaza Strip, had requested permission to travel to the West Bank for the purpose of participating in a race.<sup>38</sup> The respondents argued that the Gaza Strip is considered a 'hostile territory' and that the separation policy in effect "is highly restrictive and the decision in the petitioner's matter – which is not a humanitarian case – was made by high-ranking

30 Gisha, 'Gaza Cheat Sheet' (Gisha, 19 January 2015), available at: [http://www.gisha.org/UserFiles/File/publications/Info\\_Gaza\\_Eng.pdf](http://www.gisha.org/UserFiles/File/publications/Info_Gaza_Eng.pdf) (last accessed 19 January 2015); The Rafah crossing opened in 2010. Before that time, Palestinians could only travel through Erez, see B'Tselem, 'The Siege on Gaza' (B'Tselem, 01 January 2011), available at: [http://www.btselem.org/gaza\\_strip/siege](http://www.btselem.org/gaza_strip/siege) (last accessed 19 January 2015).

31 See OCHA oPt, 'Gaza Initial rapid Assessment' (27 August 2014), page 6, available at: [http://www.ochaopt.org/documents/gaza\\_mira\\_report\\_9september.pdf](http://www.ochaopt.org/documents/gaza_mira_report_9september.pdf) (last accessed 19 January 2015).

32 OCHA oPt, 'Gaza initial Rapid Assessment' (27 August 2014), page 4, available at: [http://www.ochaopt.org/documents/gaza\\_mira\\_report\\_9september.pdf](http://www.ochaopt.org/documents/gaza_mira_report_9september.pdf) (last accessed 19 January 2015).

33 OCHA, oPt, 'Gaza initial Rapid Assessment' (27 August 2014) page 3, available at: [http://www.ochaopt.org/documents/gaza\\_mira\\_report\\_9september.pdf](http://www.ochaopt.org/documents/gaza_mira_report_9september.pdf) (last accessed 19 January 2015).

34 ICRC, 'Gaza Closure: Not Another Year!' (ICRC, 14 June 2010), available at: <https://www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm> (last accessed 19 January 2015); ICRC, 'Practice relating to Rule 103, Collective Punishments', available at: [https://www.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule103](https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule103) (last accessed 20 January 2015).

35 ICRC, 'Not another Year!' (ICRC, 15 June 2010), available at: <https://www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm> (last accessed 20 January 2015); ICRC, 'Practice relating to Rule 103, Collective Punishments', available at: [https://www.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule103](https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule103) (last accessed 20 January 2015).

36 For a list of statements made by Israeli military and government officials, please see [http://gisha.org/UserFiles/File/publications/separation\\_policy\\_2014.pdf](http://gisha.org/UserFiles/File/publications/separation_policy_2014.pdf) (last accessed 20 January 2015).

37 Gisha, 'The Separation Policy: List of references prepared by Gisha' (Gisha, July 2014), pages 4-5, available at: [http://gisha.org/UserFiles/File/publications/separation\\_policy\\_2014.pdf](http://gisha.org/UserFiles/File/publications/separation_policy_2014.pdf) (last accessed 19 January 2015).

38 *Nader 'Abdallah 'Abd al-Razeq Masri v. Minister of Defense et al.*, Israel Supreme Court Sitting as the High Court of Justice, HCJ 2486/14, para 1, unofficial translation available at: [http://gisha.org/UserFiles/File/LegalDocuments/2486-14/verdict-Nader-al-Masri\\_en.pdf](http://gisha.org/UserFiles/File/LegalDocuments/2486-14/verdict-Nader-al-Masri_en.pdf) (last accessed 20 January 2015).





officials inside the security establishment”.<sup>39</sup> The High Court went on to confirm that the decision to deny Nader the possibility to travel to the West Bank and participate in the race was approved by Israel’s Minister of Defense.<sup>40</sup> The High Court further explained in its five-paragraph judgment that “[o]ne hopes, of course, for an improvement in the security situation in the future, one that will bring with it relief in this area as well”,<sup>41</sup> without looking into the legality of the separation policy and the way that it had been applied to Nader – effectively depriving him of an individual judicial review on the infringement of his freedom of movement.

<sup>39</sup> *Nader ‘Abdallah ‘Abd al-Razeq Masri v. Minister of Defense et al*, Israel Supreme Court Sitting as the High Court of Justice, HCJ 2486/14, para 2, unofficial translation available at:

[http://gisha.org/UserFiles/File/LegalDocuments/2486-14/verdict-Nader-al-Masri\\_en.pdf](http://gisha.org/UserFiles/File/LegalDocuments/2486-14/verdict-Nader-al-Masri_en.pdf) (last accessed 20 January 2015).

<sup>40</sup> *Nader ‘Abdallah ‘Abd al-Razeq Masri v. Minister of Defense et al*, Israel Supreme Court Sitting as the High Court of Justice, HCJ 2486/14, para 3, unofficial translation available at:

[http://gisha.org/UserFiles/File/LegalDocuments/2486-14/verdict-Nader-al-Masri\\_en.pdf](http://gisha.org/UserFiles/File/LegalDocuments/2486-14/verdict-Nader-al-Masri_en.pdf) (last accessed 20 January 2015).

<sup>41</sup> *Nader ‘Abdallah ‘Abd al-Razeq Masri v. Minister of Defense et al*, Israel Supreme Court Sitting as the High Court of Justice, HCJ 2486/14, para 4, unofficial translation available at:

[http://gisha.org/UserFiles/File/LegalDocuments/2486-14/verdict-Nader-al-Masri\\_en.pdf](http://gisha.org/UserFiles/File/LegalDocuments/2486-14/verdict-Nader-al-Masri_en.pdf) (last accessed 20 January 2015).

Israel’s separation policy comes to light through a variety of Israeli measures,<sup>42</sup> such as Israel’s blanket prohibition against students from the Gaza Strip to access education in the West Bank.<sup>43</sup> As part of the policy, Israel further treats Palestinians in the West Bank that are listed as residents of the Gaza Strip in the Palestinian population registry - which is controlled by Israel – as “illegal aliens”. Simultaneously, Israel has made it virtually impossible for Palestinians in the Gaza Strip to relocate to the West Bank.<sup>44</sup> Compounded by Israel’s closure, including a general ban on Palestinian travel between the West Bank and the Gaza Strip, it is not possible for Palestinian family members that are split between the two Palestinian areas to unite.<sup>45</sup> Furthermore, the separation policy is realized through Israel’s prohibition against the free flow of goods between the Gaza Strip and the West Bank since 2007.<sup>46</sup>

In essence, the separation policy aims at maintaining a *de facto* division

<sup>42</sup> Gisha, ‘What is the “separation policy”?’ (Gisha, June 2014), available at: <http://www.gisha.org/UserFiles/File/publications/Bidul/bidul-infosheet-ENG.pdf> (last accessed 19 January 2015); OCHA oPt, ‘The Gaza Strip:

The Humanitarian Impact Of Movement Restrictions On People And Goods’ (OCHA, July 2013), available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_gaza\\_blockade\\_factsheet\\_july\\_2013\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_gaza_blockade_factsheet_july_2013_english.pdf) (last accessed 19 January 2015).

<sup>43</sup> Al Mezan Center for Human Rights (henceforth Al Mezan), ‘Students from Gaza: Disregarded victims of Israel’s siege of the Gaza Strip’ (Al Mezan, July 2010), available at: <http://www.mezan.org/upload/10683.pdf> (last accessed 19 January 2015); Abu Rahma, M., ‘Fact Sheet: Gaza Students Anxious to Complete Their Educations in the West Bank’ (Al Mezan 14 June 2012), available at: [http://www.mezan.org/en/details.php?id=14407&ddname=Crossings&id\\_dept=22&p=center](http://www.mezan.org/en/details.php?id=14407&ddname=Crossings&id_dept=22&p=center) (last accessed 20 January 2015); Geisha, ‘Student Travel between Gaza and the West Bank 101’ (Gisha, September 2012), available at: <http://www.gisha.org/UserFiles/File/publications/students/students-2012-eng.pdf> (last accessed 20 January 2015); Gisha, ‘The Impact of Separation’ (Gisha, May 2010), available at: <http://www.gisha.org/userfiles/file/safepassage/InfoSheets/English/students.pdf> (last accessed 20 January 2015).

<sup>44</sup> Hamoked Center for the defense of the Individual (henceforth Hamoked), ‘Israel continues to pursue its policy of separation between the West Bank and the Gaza Strip: the Coordinator of Government Activities in the Territories presents a revised procedure for the passage of Palestinians from Gaza to the West Bank for the purpose of relocation, which proves to be no less draconian than the original procedure’ (Hamoked, 01 November 2011), available at: <http://www.hamoked.org/Document.aspx?dID=Updates1257> (last accessed 19 January 2015).

<sup>45</sup> Hamoked, and B’Tselem, ‘So Near and Yet So Far: Implications of Israeli-Imposed Seclusion of Gaza Strip on Palestinians’ Right to Family Life’ (B’Tselem, January 2014), available at: [http://www.btselem.org/publications/201401\\_so\\_near\\_and\\_yet\\_so\\_far](http://www.btselem.org/publications/201401_so_near_and_yet_so_far) (last accessed 19 January 2015).

<sup>46</sup> Gisha, ‘Gaza Cheat Sheet’ (Gisha, 19 January 2015), available at: [http://www.gisha.org/UserFiles/File/publications/Info\\_Gaza\\_Eng.pdf](http://www.gisha.org/UserFiles/File/publications/Info_Gaza_Eng.pdf) (last accessed 19 January 2015).

between the Gaza Strip and the West Bank and driving a wedge between their respective residents, thereby encroaching on the territorial integrity of the OPT and denying Palestinians' their right to exercise self-determination in the Palestinian territory.

### 1.1.3 The Buffer Zone

The buffer zone is an imprecise military no-go area that reinforces Israel's grip on the Gaza Strip's borders, both at land and sea.<sup>47</sup> Although Israel's imposition of the buffer zone on Palestinian land in the Gaza Strip can be traced back to the year 2000,<sup>48</sup> its parameters are generally unknown.<sup>49</sup> Nevertheless, certain Israeli practices do provide some guidance on the existence of the buffer zone at any particular point of time: in areas close to the border, the Israeli Occupying Forces (IOF) carries out regular incursions into what would be the buffer zone. Palestinians are also shot at within certain distances of the border with Israel.<sup>50</sup> In addition, the buffer zone is discerned by the leveling of farmland and destruction and damage of private property located

47 Diakonia, 'Within range' (Diakonia, January 2011), page 11, available at: [http://www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/within\\_range\\_legal\\_analysis\\_of\\_the\\_gaza\\_buffer\\_zone\\_on\\_land\\_diakonia\\_sept2011.pdf](http://www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/within_range_legal_analysis_of_the_gaza_buffer_zone_on_land_diakonia_sept2011.pdf) (last accessed 19 January 2015).

48 Diakonia, 'Within range' (Diakonia, January 2011), page 11, available at: [http://www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/within\\_range\\_legal\\_analysis\\_of\\_the\\_gaza\\_buffer\\_zone\\_on\\_land\\_diakonia\\_sept2011.pdf](http://www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/within_range_legal_analysis_of_the_gaza_buffer_zone_on_land_diakonia_sept2011.pdf) (last accessed 19 January 2015); OCHA oPt, 'Between the Fence and a Hard Place' (OCHA, August 2010), page 8, available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_special\\_focus\\_2010\\_08\\_19\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_special_focus_2010_08_19_english.pdf) (last accessed 19 January 2015).

49 Diakonia, 'Within range' (Diakonia, January 2011), page 11, available at: [http://www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/within\\_range\\_legal\\_analysis\\_of\\_the\\_gaza\\_buffer\\_zone\\_on\\_land\\_diakonia\\_sept2011.pdf](http://www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/within_range_legal_analysis_of_the_gaza_buffer_zone_on_land_diakonia_sept2011.pdf) (last accessed 19 January 2015); OCHA oPt, 'Between the Fence and a Hard Place' (August 2010), page 8, available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_special\\_focus\\_2010\\_08\\_19\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_special_focus_2010_08_19_english.pdf) (last accessed 19 January 2015).

50 Al-Haq, 'Shifting Paradigms' (Al-Haq June 2011), pages 9-27, available at:

<http://www.alhaq.org/publications/publications-index/item/shifting-paradigms-israel-s-enforcement-of-the-buffer-zone-in-the-gaza-strip> (last accessed 20 January 2015); Diakonia, 'Within range' (Diakonia, January 2011), pages 19-21, available at: [http://www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/within\\_range\\_legal\\_analysis\\_of\\_the\\_gaza\\_buffer\\_zone\\_on\\_land\\_diakonia\\_sept2011.pdf](http://www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/within_range_legal_analysis_of_the_gaza_buffer_zone_on_land_diakonia_sept2011.pdf) (last accessed 19 January 2015); OCHA oPt, 'Between the Fence and a Hard Place' (August 2010), pages 8-9, available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_special\\_focus\\_2010\\_08\\_19\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_special_focus_2010_08_19_english.pdf) (last accessed 19 January 2015).



in proximity to certain parts of the border.<sup>51</sup> Additionally, in May 2009 and March 2011, Israel dropped leaflets from the air over the Gaza Strip warning Palestinians not to go within 300 meters of the land border between Israel and the Gaza Strip or risk being fired upon.<sup>52</sup> In reality, before 'Operation Protective Edge', Israel appeared to impose the buffer zone in areas ranging between 300 meters and 2 kilometers off the land border with Israel.<sup>53</sup>

At sea, Israel has steadily decreased the area that Palestinians can access and fish in. Whereas the 1995 *Interim Agreement* stipulates that

51 Al-Haq, 'Shifting Paradigms' (Al-Haq, June 2011), page 10, available at: [http://www.alhaq.org/publications/publications-index?task=callelement&format=raw&item\\_id=100&element=304e4493-dc32-44fa-8c5b-57c4d7b529c1&method=download](http://www.alhaq.org/publications/publications-index?task=callelement&format=raw&item_id=100&element=304e4493-dc32-44fa-8c5b-57c4d7b529c1&method=download) (last accessed 19 January 2015); OCHA oPt, 'Between the Fence and a Hard Place' (OCHA, August 2010), page 16, available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_special\\_focus\\_2010\\_08\\_19\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_special_focus_2010_08_19_english.pdf) (last accessed 19 January 2015); Diakonia, 'Within range' (Diakonia, January 2011), pages 22-26, available at: [http://www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/within\\_range\\_legal\\_analysis\\_of\\_the\\_gaza\\_buffer\\_zone\\_on\\_land\\_diakonia\\_sept2011.pdf](http://www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/within_range_legal_analysis_of_the_gaza_buffer_zone_on_land_diakonia_sept2011.pdf) (last accessed 19 January 2015).

52 Diakonia, 'Within range' (Diakonia, January 2011), pages 11-12, available at: [http://www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/within\\_range\\_legal\\_analysis\\_of\\_the\\_gaza\\_buffer\\_zone\\_on\\_land\\_diakonia\\_sept2011.pdf](http://www.diakonia.se/globalassets/documents/ihl/ihl-in-opt/within_range_legal_analysis_of_the_gaza_buffer_zone_on_land_diakonia_sept2011.pdf) (last accessed 19 January 2015).

53 Palestinian Center for Human Rights (henceforth PCHR), 'The Buffer Zone in the Gaza Strip' (PCHR, May 2010), available at: <http://www.pchrgaza.org/facts/factsheet-bufferzone-2.pdf> (last accessed 19 January 2015).



Palestinians are allowed to access 20 nautical miles off the coast,<sup>54</sup> the 2002 *Bertini Commitment* restricted Palestinian access to 12 nautical miles.<sup>55</sup> In October 2006, Israel further restricted access to 6 nautical miles and in 2007 the accessible area was decreased to 3 nautical miles.<sup>56</sup>

During 'Operation Protective Edge', Israel declared that 44 per cent of the entire Gaza Strip formed part of the buffer zone.<sup>57</sup> The expansion of the buffer zone, contributed significantly to the internal displacement of Palestinians during the offensive.

## 1.2 LEGAL ANALYSIS

Article 42 of the Hague Regulations of 1907, which reflects customary international law, provides that:

Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.

The essential ingredient necessary to determine the existence of belligerent occupation is effective control over an area where authority has been established and can be exercised.<sup>58</sup> Effective control is established when the Occupying Power has "sufficient force present, or the capacity

<sup>54</sup> The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Annex I, Protocol Concerning Redeployment and Security Arrangements, Article XIV, available at: <http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT%20-%20Annex%20I.aspx> (last accessed 20 January 2015).

<sup>55</sup> Commitments made by the State of Israel to the Ms. Catherine Bertini, Personal Humanitarian Envoy to the Middle East for the Secretary-General (OCHA, 31 May 2003), available at: <http://unispal.un.org/UNISPAL.NSF/0/3C484FF2A4F05BF285256D58004FF446> (last accessed 14 January 2015).

<sup>56</sup> PCHR, 'The Buffer Zone in the Gaza Strip' (PCHR, May 2010), available at: <http://www.pchrgaza.org/facts/factsheet-bufferzone-2.pdf> (last accessed 19 January 2015).

<sup>57</sup> OCHA oPt, 'Occupied Palestinian Territory: Gaza Emergency Situation Report (as of 22 July 2014, 1500 hrs)' (OCHA, 23 July 2014), page 1, available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_sitrep\\_23\\_07\\_2014.pdf](http://www.ochaopt.org/documents/ocha_opt_sitrep_23_07_2014.pdf) (last accessed 19 January 2015).

<sup>58</sup> Dinstein, Y., *The international law of belligerent occupation* (Cambridge University Press, 2009), pages 43 and 47; According to Dinstein, "[b]elligerent occupation is forged by effective control in land areas. When effective control is established on land, it attaches itself also to any abutting maritime areas and to the superjacent airspace".



to send troops within a reasonable time to make the authority of the occupying power felt".<sup>59</sup> Indeed, the American Military Tribunal found in the *Hostages* trial that "[w]hile it is true that partisans were able to control sections of [Greece and Yugoslavia] at various times, it is established that the Germans could at any time they desired assume physical control of any part of the country".<sup>60</sup> Considering the aforementioned, effective control can therefore, to some degree, be remote.<sup>61</sup> This understanding is echoed in State practice. For example, the UK military manual establishes that a territory is occupied when "the former government has been rendered incapable of publicly exercising its authority in that area: and secondly that the occupying power is in *a position to substitute its own authority* for that of the former government [italics added]".<sup>62</sup> Moreover, as outlined by the *International Court of Justice in its Advisory Opinion on the Wall*, the transfer of certain governmental powers to local authorities does not

<sup>59</sup> *Prosecutor v. Naletilic et al.*, (Judgment), IT-98-34, ICTY, 31 March 2003, para 217; US Department of the Army, *Field Manual: The Law of Land Warfare*, (Department of the Army, 18 July 1956) p 139.

<sup>60</sup> *Hostages* trial (List et al.) (US Military Tribunal, Nuremburg 1948), 8 LRTWC 34, page 56.

<sup>61</sup> Dinstein, Y., *The international law of belligerent occupation* (Cambridge University Press, 2009), p 44.

<sup>62</sup> UK Ministry of Defence, *The Manual of the Law of Armed Conflict* (Oxford; New York: University Oxford Press, 2004), at 11.3.

bring an occupation to an end.<sup>63</sup>

Israel's control over the Gaza Strip rises to the level of effective control within the meaning of Article 42 of the Hague Regulations of 1907; first, Israel's 2008-09 and 2014 ground invasions of the Gaza Strip show that Israel can assume physical control over the territory at will. Second, the imposition of the closure as well as the buffer zone illustrate that Israel continues to control the Gaza Strip's land, airspace and territorial waters. Third, Israel exerts paramount authority over the population registry, VAT rates, customs, currency and otherwise the movement of goods and people. As such, Israel's control is both 'felt' and real.

The conclusion that Israel occupies the Gaza Strip is coherent with the positions taken by the United Nations,<sup>64</sup> the European Union,<sup>65</sup> and the ICRC.<sup>66</sup>

<sup>63</sup> *Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice, (9 July 2004), Despite the fact that certain governmental powers had been transferred to the Palestinian Authority, the Court applied the laws of occupation to the entire West Bank.

<sup>64</sup> UN Security Council Resolution 242 (22 November 1967), UN Doc S/RES/242, available at: <http://unispal.un.org/unispal.nsf/d744b47860e5c97e85256c40005d01d6/7d35e1f729df491c85256ee700686136?OpenDocument> (last accessed 19 January 2015); Security Council Resolution 1860 (8 January 2009), UN Doc S/RES/1860, available at: <http://unispal.un.org/unispal.nsf/d744b47860e5c97e85256c40005d01d6/96514396e8389a2c852575390051d574?OpenDocument> (last accessed 19 January 2015).

<sup>65</sup> Council of the European Union, Council Conclusions on the Middle East Peace Process, Foreign Affairs Council Meeting (22 July 2014).

<sup>66</sup> Maurer, P., 'Challenges to international humanitarian law: Israel's occupation policy', *International Review of the Red Cross* 94.888 (2012) at 1503-1510, available at: <https://www.icrc.org/eng/assets/files/review/2013/irrc-888-maurer.pdf> (last accessed 19 January 2015).



Survivor Sayyed Ramez Bakr. 4 children killed and 3 injured during attack on beach. 16 July 2014. (c) Al-Haq

## 2

## TARGETED KILLING OF CIVILIANS

### 2.1 ISRAELI POLICIES AND PRACTICES REGARDING CIVILIANS

According to the Palestinian human rights coalition's documentation, 2,215 Palestinians were killed, including 1,639 civilians, over the course of Israel's offensive on the Gaza Strip in 2014. Of these victims, 556 were children.<sup>67</sup>

<sup>67</sup> This is the Palestinian human rights coalition's final data as of 6 February 2015. The number of Palestinians killed does not include 6 unidentified bodies that have been buried and a suspected 9 Palestinians missing that crossed into Israel during the offensive.



The high death toll can be attributed to Israel's unlawful combat policies. Such policies include Israel's alarming redefinition of who is considered a legitimate target and the morphing of a civilian into a combatant. Moreover, such policies include the prioritization of the security of an Israeli soldier above the lives of Palestinian civilians.

Palestinians killed by Israel between 7 July and 26 August 2014 *					
Per Governorate	Palestinians	Palestinians linked with the resistance**	Unknown***	Children	Women
North Gaza	369	98	18	97	49
Gaza	514	83	51	125	57
Deir al-Balah/Middle Area	286	61	22	75	48
Khan Younes	602	123	33	128	60
Rafah	444	55	32	131	79
<b>Total</b>	<b>2215</b>	<b>420</b>	<b>156</b>	<b>556</b>	<b>293</b>

\*This is the Palestinian human rights coalition's final data as of 6 February 2015. The figures provided do not include 6 unidentified bodies that have been buried and a suspected 9 Palestinians missing that crossed into Israel during the offensive.

\*\* These are Palestinians that were killed in circumstances related to the resistance, including 31 Palestinians that were assassinated by Israel.

\*\*\* These are Palestinians that were killed amongst civilians and further investigations are required into their status.

### Palestinian civilians killed whilst at home \*

Per Governorate	Number	Women	Children
North Gaza	155	39	71
Gaza	224	49	84
Deir al-Balah/Middle Area	154	46	58
Khan Younes	271	55	96
Rafah	206	57	81
<b>Total</b>	<b>1010</b>	<b>246</b>	<b>390</b>

## 2.1.1 Enemies as 'Automatic' Legitimate Targets

According to a long-standing Israeli policy, all members of Hamas - including civilian members - are considered legitimate targets.<sup>68</sup> For example, on 20 August 2014, Israel's Prime Minister Netanyahu stated in a press conference that "[n]o Hamas member is immune".<sup>69</sup> By extension, Israel views facilities and objects with a connection to Israeli defined enemy organisations like Hamas, as military targets. Israel therefore targeted so called "symbols of the Hamas government"<sup>70</sup> - such as government buildings, police officers and stations, as well as homes

68 Human Rights Watch (henceforth HRW), 'Israel/Palestine, Unlawful Israeli Airstrikes Kill Civilians' (HRW, 16 July 2014), available at: <http://www.hrw.org/news/2014/07/15/israel-palestine-unlawful-israeli-airstrikes-kill-civilians> (last accessed 19 January 2015); Al Mezan, 'Death Toll Rises to 210 as IOF Intensify Attacks on Gaza, More Arbitrary Warnings Spread Panic but Offer no Safe Shelters for Civilians' (Al Mezan, 16 July 2014), available at: [http://www.mezan.org/en/details.php?id=19238&ddname=IOF&id2=9&id\\_dept=9&p=center](http://www.mezan.org/en/details.php?id=19238&ddname=IOF&id2=9&id_dept=9&p=center) (last accessed 19 January 2015).

69 Lewis, R., 'Netanyahu: All Hamas members legitimate targets for Israeli attacks', *Al Jazeera America* (20 August 2014), available at: <http://america.aljazeera.com/articles/2014/8/20/israel-hamas-assassination.html> (last accessed 19 January 2015).

70 Sfard, M., 'A Targeted Assassination of International Law', *Haaretz* (04 August 2014), available at: <http://www.haaretz.com/opinion/.premium-1.608744> (last accessed 20 January 2015).

of members of Palestinian political parties in the Gaza Strip - during the latest offensive.<sup>71</sup> For example, on 8 July 2014, Israel admitted that its forces bombed four houses belonging to the families of members of Hamas, thereby killing innocent civilians.<sup>72</sup>

### Police Officers

During 'Operation Protective Edge', the Palestinian human rights coalition documented direct attacks against 22 police stations. The coalition also documented the killing of 3 police officers.

In terms of Israel's attacks on police stations, Al-Haq recorded two incidents where civilians were killed during strikes on police stations, including police officers. On Saturday 12 July, one missile struck and killed three police officers evacuating al-Tuffah Police Station: Ibrahim Hamada, 22 years old, Hasan Abu-Ghosh, 28 years old, and Ahmad al-Bal'awi, 24 years old.<sup>73</sup> On Wednesday 23 July Al-Haq documented an attack where an unmanned drone struck the police station in al-Qarara, killing Hassan Abu-Jamus, 29, and injuring six others.<sup>74</sup>

In the same vein, Israel targeted and attacked the Director General of the Gaza police who was visiting relatives, killing eighteen members

of his family, including nine children.<sup>75</sup> OCHA documented that the Director General of the Gaza police was reportedly the intended target of the attack.<sup>76</sup> The Palestinian human rights coalition considers that the Director-General was a civilian.

### 2.1.2 Voluntary human shields

Israel has applied a policy of unquestionably transforming the status of a civilian into that of a combatant and legitimate target if he/she does not leave his/her home or neighbourhood following warnings issued by the IOF. In essence, Israel claims that Palestinians become 'voluntary human shields' that do not enjoy the protection of civilians following advance warnings.<sup>77</sup> This policy was made clear during Israel's 2009 offensive on the Gaza Strip, when representatives of Israel's international law division of the office of the Israeli Military Advocate General stated that:

The people who go into a house despite a warning do not have to be taken into account in terms of injury to civilians, because they are voluntary human shields. From the legal point of view, I do not have to show consideration for them. In the case of people who return to their home in order to protect it, they are taking part in the fighting.<sup>78</sup>

<sup>71</sup> Sfar, M., 'A Targeted Assassination of International Law', *Haaretz* (04 August 2014), available at: <http://www.haaretz.com/opinion/premium-1.608744> ; HRW, 'Israel/Palestine, Unlawful Israeli Airstrikes Kill Civilians' (HRW, 16 July 2014) <http://www.hrw.org/news/2014/07/15/israel-palestine-unlawful-israeli-airstrikes-kill-civilians> (last accessed 19 January 2015).

<sup>72</sup> B'Tselem, 'Protect civilians from the impact of hostilities' (B'Tselem, 08 July 2014), available at: [http://www.btselem.org/gaza\\_strip/20140708\\_gaza\\_operation](http://www.btselem.org/gaza_strip/20140708_gaza_operation) (last accessed 19 January 2015); B'Tselem, 'Death Foretold: the inevitable outcome of bombing homes and inhabited areas of the Gaza Strip' (B'Tselem, 12 August 2014), available at: [http://www.btselem.org/gaza\\_strip/20140811\\_a\\_death\\_foretold](http://www.btselem.org/gaza_strip/20140811_a_death_foretold) (last accessed 19 January 2015).

<sup>73</sup> Al-Haq, 'Al-Haq Field Updates from the Gaza Strip' (Al-Haq, 10 July 2014), Saturday 12 July Gaza Governorate, available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 19 January 2015).

<sup>74</sup> Al-Haq, 'Al-Haq Field Updates from the Gaza Strip' (Al-Haq, 10 July 2014), Wednesday 23 July Khan Younes Governorate, available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015).

<sup>75</sup> "10:15 P.M. A residence was struck and destroyed, injuring approximately 50 people, most of whom belong to the same family and killing 18 members of the same family (al-Batsh), including nine children: Nahed, 41 years old, Majed, 28, Qusay, 12, Muhammad, 17, Samah, 22 years old, and her eight-month-old unborn baby, Yahya, 18, Ibrahim, 18, Manar, 13, Amal, 49, Anas, 12, Aziza, 55, Amal, one year and a half, and Abdallah, three years old. Three neighbouring residences were damaged", Al-Haq, 'Al-Haq Field Up-dates from the Gaza Strip', Saturday 12 July Gaza Governorate, available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015); Laub, K., 'Gaza Police Chief Survives Israeli Airstrike on Family Home – but Bombs Kill 18 Relatives including Children', *National Post* (13 July 2014), available at: [http://news.nationalpost.com/2014/07/13/gaza-police-chief-survives-israeli-airstrike-on-family-home-but-bombs-kill-18-relatives-including-children/?\\_federated=1](http://news.nationalpost.com/2014/07/13/gaza-police-chief-survives-israeli-airstrike-on-family-home-but-bombs-kill-18-relatives-including-children/?_federated=1) (last accessed 19 January 2015).

<sup>76</sup> OCHA oPt, 'Gaza Emergency Situation Report' (OCHA, 13 July 2013), page 2, available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_sitrep\\_14\\_07\\_2014.pdf](http://www.ochaopt.org/documents/ocha_opt_sitrep_14_07_2014.pdf) (last accessed 19 January 2015).

<sup>77</sup> 'Israel army tells all north Gaza residents to flee their homes', *Ma'an News Agency* (28 July 2014), available at: <http://www.maannews.net/eng/ViewDetails.aspx?ID=716715> (last accessed 19 January 2015).

; Al-Haq, 'An Open Letter from Al-Haq to the Media on "Operation Protective Edge"' (Al-Haq, 24 July 2014), available at: <http://www.alhaq.org/advocacy/topics/gaza/829-an-open-letter-from-al-haq-to-the-media-on-operation-protective-edge> (last accessed 20 January 2015).

<sup>78</sup> Feldman, Y, and Uri Blau, 'Consent and advise', *Haaretz* (29 January 2009), available at: <http://www.haaretz.com/consent-and-advise-1.269127> (last accessed 19 January 2015).



This policy was implemented in the Gaza Strip during 'Operation Protective Edge'. Remarkably, the Palestinian human rights coalition documented the killing of 1010 Palestinians whilst in their homes during the offensive.

### 2.1.3 The Hannibal Directive

The Hannibal directive was reportedly coined in mid-1986 by the former Head of the IDF's Northern Command, Yossi Peled, following the capture



Chicken farm destroyed by Israel. Al-Shawka, Rafah. 5 August 2014. (c) Al-Haq

of an Israeli soldier in southern Lebanon. Although the order is open to interpretation, it essentially obliges Israeli soldiers to risk the life of a soldier that may be captured.<sup>79</sup> In 2009, the Israeli Brigadier-General, Mori Baruch, elaborated on the Hannibal Directive, stating that:

no soldier is to be captured, and that is an unambiguous message. In the end, an incident like this is first and foremost an encounter with the enemy; you must think about the enemy before the capture soldier.<sup>80</sup>

<sup>79</sup> Pfeffer, A., 'The Hannibal Directive: Why Israel risks the life of the soldier being rescued', *Haaretz* (03 August 2014), available at: <http://www.haaretz.com/news/diplomacy-defense/premium-1.608693> (last accessed 19 January 2015).

<sup>80</sup> Pfeffer, A., 'The Hannibal Directive: Why Israel risks the life of the soldier being rescued', *Haaretz* (03 August 2014), available at: <http://www.haaretz.com/news/diplomacy-defense/premium-1.608693> (last accessed 19 January 2015).

According to Israeli army sources, leaked IDF communications the Hannibal Directive was implemented in Rafah during the 2014 offensive.<sup>81</sup>

#### *The Killing of Palestinian Civilians in Rafah*

On 1 August 2014, at 8:00 a.m., a 72-hour humanitarian ceasefire came into force in the Gaza Strip. In light of the agreed upon ceasefire agreement, many internally displaced Palestinians returned to their homes for the first time in weeks. Fishermen also went into the sea.<sup>82</sup> However, the ceasefire didn't hold and fighting resumed on the same day with the IDF quickly reporting the disappearance of Israeli Lieutenant Goldin.<sup>83</sup>

In an attempt to prevent his abduction, the IDF resorted to disproportionate and indiscriminate force. Sources within the Israeli army divulged to the media that the IDF had activated the Hannibal directive to the fullest extent during the search for the missing soldier and that "heavy fire was inflicted on the area".<sup>84</sup> Furthermore, according to army sources, "almost all the fire means that were located in the center-southern part of the strip were now shifted to Rafah" and

<sup>81</sup> Zitun, Y., 'Hannibal Directive: Exclusive tapes reveal details of IDF's Black Friday' *Ynet News* (31 December 2014), available at: <http://www.ynetnews.com/articles/0,7340,L-4609436,00.html> (last accessed 19 January 2015).

<sup>82</sup> OCHA oPt, 'Occupied Palestinian Territory: Gaza Emergency Situation Report (as of 1 August 2014, 1500 hrs)' (OCHA, 02 August 2014), page 1, available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_sitrep\\_02\\_08\\_2014.pdf](http://www.ochaopt.org/documents/ocha_opt_sitrep_02_08_2014.pdf) (last accessed 19 January 2015).

<sup>83</sup> Israel Defense Forces, "'If I'm not back in 5 minutes, I'm dead': Testimony of Lt. Eitan' (15 August 2014), available at: <http://www.idfblog.com/blog/2014/08/15/im-back-5-minutes-im-dead-testimony-lt-eitan/> (last accessed 19 January 2015); OCHA oPt, 'Occupied Palestinian Territory: Gaza Emergency Situation Report (as of 1 August 2014, 1500 hrs)' (OCHA, 02 August 2014), page 2, available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_sitrep\\_02\\_08\\_2014.pdf](http://www.ochaopt.org/documents/ocha_opt_sitrep_02_08_2014.pdf) (last accessed 19 January 2015).

<sup>84</sup> Cohen, G., 'Dozens of innocent people were hurt from the operation of "Hannibal" in the Rafah area', *Haaretz* (03 August 2014), available at: <http://www.haaretz.co.il/news/politics/premium-1.2396220> (last accessed 19 January 2015); Harel, A. and Cohen, G., 'What happened in Gaza's Rafah on "Black Friday"?' *Haaretz* (08 August 2014), available at: <http://www.haaretz.com/news/diplomacy-defense/premium-1.609533> (last accessed 19 January 2015); The testimony of fellow soldier Lt. Eitan can be found on <http://www.idfblog.com/blog/2014/08/15/im-back-5-minutes-im-dead-testimony-lt-eitan/> (last accessed 20 January 2015).

massive fire was opened “from every direction”.<sup>85</sup> Subsequently leaked communications within the IDF during the time of the assault also reveal the massive and indiscriminate force employed by the Israeli forces in order to hinder the abduction of Lieutenant Goldin.<sup>86</sup>

Israel’s heavy assault on Rafah lasted from 1 until 3 August 2014. During that time, Israeli ground forces went into the most densely populated areas.<sup>87</sup> According to the Palestinian human rights coalition, Israel resorted to a wide range of weaponry against Palestinians in Rafah, including tanks, artillery, warplanes, ground forces, navy ship missiles and mortars. Furthermore, the same source documented how the IDF employed their weapons indiscriminately - shooting at anything and anybody.

As a result of the IDF’s activation of the Hannibal Directive, the Palestinian human rights coalition documented Israel’s killing of 225 Palestinians between 1 and 3 August alone. Most of these Palestinians lost their lives during the first day of the assault. In the meantime, the main hospital in the area, the Abu Yousef Al Najjar hospital, was evacuated and closed on 1 August due to threats of upcoming attacks.<sup>88</sup> Israel also destroyed 2,579 houses during those three days.

<sup>85</sup> Cohen, G., ‘Dozens of innocent people were hurt from the operation of “Hannibal” in the Rafah area’, *Haaretz* (03 August 2014), available at: <http://www.haaretz.co.il/news/politics/.premium-1.2396220> (last accessed 20 January 2015).

<sup>86</sup> Zitun, Y., ‘Hannibal Directive: Exclusive tapes reveal details of IDF’s Black Friday’, *Ynet News* (31 December 2014), available at: <http://www.ynetnews.com/articles/0,7340,L-4609436,00.html> (last accessed 19 January 2015).

<sup>87</sup> OCHA oPt, ‘Occupied Palestinian Territory: Gaza Emergency Situation Report (as of 2 august 2014, 1500 hrs)’ (OCHA, 03 August 2014), page 1, available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_sitrep\\_03\\_08\\_2014.pdf](http://www.ochaopt.org/documents/ocha_opt_sitrep_03_08_2014.pdf) (last accessed 19 January 2015).

<sup>88</sup> World Health Organisation, OCHA, and UNRWA, ‘United Nations warns of “rapidly unfolding” health disaster in Gaza’ (2 August 2014), available at: [http://reliefweb.int/sites/reliefweb.int/files/resources/Press\\_Release\\_UN\\_warns\\_of\\_imminent\\_health\\_disaster\\_in\\_Gaza.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Press_Release_UN_warns_of_imminent_health_disaster_in_Gaza.pdf) (last accessed 22 January 2015).

Palestinians killed and houses destroyed in connection with Hannibal Directive *			
	Rafah 1 August 2014	Rafah 2 August 2014	Rafah 3 August 2014
Palestinians Killed	<b>127</b> (9 died later of injuries sustained)	<b>61</b> (1 died later of injuries sustained)	<b>37</b> (4 died later of injuries sustained)
Residential houses partially or completely destroyed	<b>2201</b>	<b>240</b>	<b>138</b>

\*This is the Palestinian human rights coalition’s final data as of 6 February 2015.

## 2.2 LEGAL ANALYSIS

According to Pictet’s *Commentary IV Geneva Convention*, a general principle embodied in all four Geneva Conventions of 1949 provides that “every person in enemy hands must have some status under international law [...] nobody in enemy hands can be outside the law”.<sup>89</sup> According to the rules of customary international law, parties to a conflict must distinguish between combatants and civilians.<sup>90</sup> An individual’s status determines the degree of protection afforded.

The characterization of Palestinians as either civilians or combatants at any given time depends on the typology of the on-going armed

<sup>89</sup> Pictet, J., ed. *The Geneva Conventions of 12 August 1949: Geneva convention relative to the protection of civilian persons in time of war*. Vol. 4. International Committee of the Red Cross, 1958, at 51.

<sup>90</sup> Henckaerts, J., Doswald-Beck, L., and Alvermann, C., eds. *Customary international humanitarian law: Rules Vol. 1*. (henceforth ICRC customary IHL) (Cambridge University Press, 2005) Rule 1.



conflict.<sup>91</sup> According to common Article 2 of the Geneva Conventions, international armed conflicts arise between two or more States, even in cases where the state of war is not recognized by one party to the conflict, and in cases of total or partial belligerent occupation.<sup>92</sup> As such, in the case of Israel's occupation of the Palestinian territory, the parties are involved in an international armed conflict and the laws governing such a situation must be respected.

## 2.2.1 Characterization of Civilians

According to the rules of customary international law, civilians are negatively defined as "persons who are not members of the armed forces" and the civilian population "comprises all persons who are civilians".<sup>93</sup> Article 3 of the Hague Regulations establishes that the armed forces may consist of combatants and non-combatants who have rights to prisoner of war status when captured.<sup>94</sup> Under customary law, all members of the armed forces are considered combatants with the exception of medical and religious personnel. The latter are considered non-combatants for the purposes of the principle of distinction.<sup>95</sup>

Essentially, combatants are legitimate targets during war whereas civilians enjoy general protection against the "dangers arising from military operations" and "shall not be the object of attack".<sup>96</sup> Civilians

91 International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts* (henceforth additional Protocol I), 8 June 1977, 1125 UNTS 3, Article 43 and 50; International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Treatment of Prisoners of War* (henceforth Third Geneva Convention), 12 August 1949, 75 UNTS 135, Article 4A(1)(2)(3)(6); International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts* (henceforth Protocol II), 8 June 1977, 1125 UNTS 609, Article 1.

92 Common Article 2, Four Geneva Conventions (1949); The ICTY considered that an international armed conflict exists "whenever there is a resort to armed force between States", *The Prosecutor v. Dusko Tadic*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para. 70.

93 ICRC Customary IHL, Rule 5; Additional Protocol I, Article 50.

94 *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land* (henceforth Hague regulations) 18 October 1907, article 3.

95 ICRC Customary IHL, Rule 3, Definition of Combatants.

96 Additional Protocol I, Article 51(1)(2).

and non-combatants lose the protection that is afforded to them "unless and for such time as they take a direct part in hostilities".<sup>97</sup>

## 2.2.2 Protection of Civilians and Advance Warnings

Israel has invested a lot of effort in categorizing Palestinians that do not leave their homes following warnings about upcoming attacks as legitimate targets. With respect to these individuals the starting point is that civilians and non-combatants<sup>98</sup> only lose their protection against direct attacks "for such time as they take a direct part in hostilities", thereby becoming legitimate subjects of attack.<sup>99</sup> In doubt as to whether an individual is a civilian, that person shall be considered to be a civilian.<sup>100</sup> In *Tadic*, the International Criminal Tribunal for the former Yugoslavia (ICTY) established that the presence of non-civilians within the civilian population does not change the overall character of the civilian population.<sup>101</sup> Similarly, the Special Court for Sierra Leone considered that the presence of members of resistance groups within the civilian population does not alter the nature of the civilian population.<sup>102</sup> Thus, in stark contrast to Israel's viewpoint, advance warnings do not affect the civilian status of persons or the protection that international

97 Additional Protocol I, Article 51(3); Hague Regulations, Article 3; Additional Protocol II, Article 13(3).

98 Non-combatants being religious and medical personnel accompanying armed forces as per ICRC, Customary IHL, Rule 3.

99 Additional Protocol I, Article 51(3); Hague Regulations, Article 3; Additional Protocol II Article 13(3) (1977).

100 *Prosecutor v. Galic*, Judgment (*Trial Judgment*), IT-98-29-T, ICTY, 5 December 2003, para 15; Schmitt, M. N., ed. *Talinn Manual on the International Law Applicable to Cyber Warfare* (Cambridge University Press, 2013) p 115; Additional Protocol I, Article 50(1).

101 *Prosecutor v. Dusko Tadic (Opinion and Judgment)*, IT-94-1-T, ICTY, 7 May 1997, paras 644-646; ICRC Customary IHL, Rule 6; Additional Protocol I, article 50(1).

102 *The Prosecutor v. Fofana and Kondewa (Judgment)* SCSL-04-14-A, Special Court for Sierra Leone, 02 August 2007, paras 116-117, and 136-137. "116. The term "civilian population" must be interpreted broadly. The Chamber is satisfied that customary international law, determined by reference to the laws of armed conflict, has established that the civilian population includes all of those persons who are not members of the armed forces or otherwise recognised as combatants. 117. In order for a population to be considered "civilian", it must be predominately civilian in nature; the presence of certain non-civilians in their midst does not change the character of the population. In determining whether the presence of soldiers within a civilian population deprives it of its civilian character, the Chamber must examine, among other factors, the number of soldiers as well as their status. The presence of members of resistance armed groups or former combatants who have laid down arms, within a civilian population, does not alter its civilian nature."



Collection of bodies from under rubble. Khuza'a. 3 August 2014. (c) Al-Haq

humanitarian law affords them.

That being said, Israel is under an obligation to issue effective advance warnings of attacks that may affect the civilian population, unless circumstances do not permit.<sup>103</sup> The consequential refusal or inability of Palestinians to leave their homes and neighbourhoods does not absolve Israel from abiding by the principle of distinction and to protect civilians from the dangers of war.<sup>104</sup> This is the case even in the event that civilians are in proximity to a military objective. Palestinians might not leave the vicinity of a military objective for many compelling reasons; it might be too dangerous, there might be elderly or infirm persons not willing or able to depart and those tending to their needs may not willing to leave them behind.<sup>105</sup> Indeed, civilians that receive warnings about upcoming attacks are under no obligation to leave their homes and do not *per se* become voluntary human shields and in turn legitimate targets of attack.<sup>106</sup>

<sup>103</sup> ICRC Customary IHL, Rule 20.

<sup>104</sup> ICRC Customary IHL, Rule 20; Additional protocol I, Article 51(8).

<sup>105</sup> Schmitt, M. N., 'Human shields in international humanitarian law', *Essays on Law and War at the Fault Lines*, (TMC Asser Press, 2012) pp 547-586.

<sup>106</sup> ICRC Customary IHL, Rule 20.

Nevertheless, international humanitarian law recognizes instances where civilians may voluntarily act as human shields in violation of international customary law.<sup>107</sup> For example, Article 28 of the Fourth Geneva Convention provides that "the presence of a protected person may not be used to render certain points or areas immune from military operations".<sup>108</sup> Additionally, Article 51(7) of Additional Protocol I provides that "the presence or movements of the civilian population or individual civilians" shall not be used to shield military objectives from attack.<sup>109</sup> The *ICRC Interpretative Guidance on the Notion of Direct Participation in Hostilities* suggests, however, that there must be an intention on the part of the individuals to act as voluntary human shields.<sup>110</sup> The *ICRC Commentary to Additional Protocol I* considers "movements" to mean "cases where the civilian population moves of its own accord".<sup>111</sup> Certainly, children do not have the capacity to intentionally become voluntary shields and Israel cannot target children for 'direct participation in hostilities' on this basis.<sup>112</sup>

Neither, can civilians present on rooftops be considered as voluntarily shielding property from aerial attacks. Here, the *ICRC Interpretative Guidance on the Notion of Direct Participation in Hostilities* makes a distinction between voluntary shielding in ground operations where civilians granting physical cover to combatants may qualify as direct participation in hostilities, and voluntary shielding during air or artillery attacks, where "the presence of voluntary human shields often has no

<sup>107</sup> ICRC, Customary IHL, Rule 97.

<sup>108</sup> International Committee of the Red Cross (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (henceforth *Fourth Geneva Convention*), 12 August 1949, 75 UNTS 287 Article 28.

<sup>109</sup> Additional Protocol I, Article 51(7).

<sup>110</sup> Melzer N., *Interpretative Guidance on the Notion of Direct Participation in Hostilities*, (ICRC, 2009) pp 56-57; Schmitt, M.N., 'Human Shields in International Humanitarian Law' *Israel Yearbook on Human Rights*, Volume 38 (2008) 39.

<sup>111</sup> ICRC Commentary, *Protection of the Civilian Population, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, para 1988.

<sup>112</sup> UN General Assembly, *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, 25 May 2000 A/RES/54/263.



adverse impact on the capacity of the attacker to identify and destroy the shielded military objective".<sup>113</sup> In such cases, civilians are factored into a proportionality analysis, weighing the expected incidental harm against anticipated military advantage".<sup>114</sup>

In any case, Israel is and was strictly prohibited from directly targeting Palestinian civilians, despite IOF-issued warnings. As has been established above, according to international humanitarian law, advance warnings do not strip the civilian population of their status or protection.

### 2.2.3 Distinction and Proportionality

With respect to the Hannibal directive, Israel has implemented a policy that unequivocally violates the core principles of distinction and proportionality during hostilities. Whereas international humanitarian law accepts incidental loss of civilian life, injury to civilians and damage to civilian objects that is not excessive in relation to the concrete and military advantage,<sup>115</sup> it strictly prohibits *direct* attacks against civilians and civilian objects. As such Palestinian civilians must not be targeted with a view of saving an Israeli soldier or preventing his/her abduction. Indeed, international humanitarian law protects civilians rather than combatants from the dangers of war.

### 2.2.4 Police Officers' Civilian Status

During an international armed conflict, police officers do not form part of the armed forces of the State and are accorded civilian status on this basis.<sup>116</sup> While members of the police force may, like other civilians lose their civilian immunity should they take a direct part in hostilities, this is considered on an individual case-by-case basis.<sup>117</sup> Previously, during

<sup>113</sup> Melzer N., *Interpretative Guidance on the Notion of Direct Participation in Hostilities*, (ICRC, 2009), pp 56-57.

<sup>114</sup> Melzer N., *Interpretative Guidance on the Notion of Direct Participation in Hostilities*, (ICRC, 2009), p 57.

<sup>115</sup> Additional Protocol I, article 51(5)(b).

<sup>116</sup> Additional Protocol I, article 43(1); ICRC Customary IHL, Rule 4.

<sup>117</sup> Additional Protocol I, article 51(3).

'Operation Cast Lead', Israel categorized the police force in the Gaza Strip as a legitimate military target fulfilling "combat functions", arguing that some individual members of the Gaza police force were also members of the al-Qassam Brigades.<sup>118</sup>

However, there is no justification in international law for stripping the entire police force of their civilian immunity from attack on the grounds that it is affiliated with the civil organization of Hamas, even where some individual members hold dual membership of organizations such as the al-Qassam Brigades. In accordance with Article 4 of the Third Geneva Convention, the police force will only lose its civilians status if it is incorporated into the states armed force in.<sup>119</sup> It is worth noting that the 2009 United Nations Fact Finding Commission on the Gaza Conflict found the civil police force did not meet the threshold of that article.<sup>120</sup> As such, the targeting and killing of civilian policemen and the targeting of police stations as civilian objects are prohibited under international humanitarian law.<sup>121</sup>

<sup>118</sup> Israel Ministry of Foreign Affairs, 'The Operation in Gaza Factual and Legal Aspects' (29 July 2009), para. 246, available at: [http://www.mfa.gov.il/mfa/foreignpolicy/terrorism/pages/operation\\_gaza\\_factual\\_and\\_legal\\_aspects\\_use\\_of\\_force\\_idf\\_conduct\\_5\\_aug\\_2009.aspx](http://www.mfa.gov.il/mfa/foreignpolicy/terrorism/pages/operation_gaza_factual_and_legal_aspects_use_of_force_idf_conduct_5_aug_2009.aspx) (last accessed 20 January 2015).

<sup>119</sup> ICRC Customary IHL, Rule 4, Definition of Armed Forces.

<sup>120</sup> Additional Protocol I, article 43(3); UN General Assembly, 'Report of the United Nations Fact Finding Commission on the Gaza Conflict', (25 September 2009) UN Doc A/HRC/12/48, para 433.

<sup>121</sup> ICRC Customary IHL, Rule 7.



Funeral of journalist Halid Ahmed killed during Israeli attack. 20 July 2014. (c) Gettys.

### 3

## ATTACKS AGAINST JOURNALISTS AND MEDIA BUILDINGS

### 3.1 ATTACKS AGAINST JOURNALISTS AND THE DESTRUCTION OF MEDIA PROPERTY

The Office of the High Commissioner for Human Rights (OHCHR) concluded that Israeli forces attacked several media offices and journalists in the context of the 2012 one-week military operation “Pillar of Defense”. As a result, two cameramen travelling in a press-

marked car were killed and at least eight journalists were injured during the offensive.<sup>122</sup> In a very similar yet more extensive manner, the Palestinian Center for Development and Media Freedoms (MADA) report that 17 journalists were killed and 27 journalists were injured during ‘Operation Protective Edge’.<sup>123</sup> Whereas, the Palestinian human rights coalition documented the Israeli attacks against 5 media *offices*, MADA reports that 20 media *outlets* and 37 houses belonging to journalists were shelled during the offensive.<sup>124</sup>

On 20 July 2014, Al-Haq documented an Israeli airstrike that hit a press car, killing 25-year old Khaled Hamad. Khaled, a photographer with the Continue Agency, was on his way to al-Shuja’iyya neighbourhood for work.<sup>125</sup> Khaled Hamad was reportedly travelling in a press-marked car when it was hit. On Wednesday, 30 July, Al-Haq documented the killing of three journalists during the time of a four-hour ceasefire announced by Israel. The three journalists were killed at approximately 4:30 p.m. when Israeli tanks situated at the eastern buffer zone fired artillery shells at the al-Bastat market in Shuja’iyya. During the shelling another thirty civilians were killed.<sup>126</sup> Notably, the three journalists were identifying press insignia on their clothes. The identifying press

<sup>122</sup> Humane Rights Council, ‘Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council Resolutions’, para 23, available at: [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.35.Add.1\\_AV.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.35.Add.1_AV.pdf) (last accessed 20 January 2015).

<sup>123</sup> Bani Odeh, G., ‘The Media in Gaza, Caught in the crossfire’, (Palestinian Center for Development and Media Freedoms, 2008), p 8, available at: [http://www.madacenter.org/images/text\\_editor/Gazaspecialrep1.pdf](http://www.madacenter.org/images/text_editor/Gazaspecialrep1.pdf) (last accessed 20 January 2015).

<sup>124</sup> Bani Odeh, G., ‘The Media in Gaza, Caught in the crossfire’, (Palestinian Center for Development and Media Freedoms, 2008), page 8, available at: [http://www.madacenter.org/images/text\\_editor/Gazaspecialrep1.pdf](http://www.madacenter.org/images/text_editor/Gazaspecialrep1.pdf) (last accessed 20 January 2015).

<sup>125</sup> Al-Haq, ‘Field Updates from the Gaza Strip’ (Al-Haq, 10 July 2014), Friday 18 July, available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015).

<sup>126</sup> Al-Haq, ‘Field Updates from the Gaza Strip’ (Al-Haq, 10 July 2014), Friday 18 July, available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015).



insignia was evident from a video recording of one of the deaths.<sup>127</sup>

Indiscriminate attacks on media buildings were a significant feature of 'Operation Protective Edge'. On Friday 18 July 2014, Al-Haq documented an airstrike that hit an office in the al-Jawhara building in which several media and press offices were located. One journalist was injured during the attack.<sup>128</sup> On 22 July 2014, Al Jazeera staff members were forced to evacuate their premises after two shells were fired into their offices on the eleventh floor of a commercial center.<sup>129</sup> Israel further bombed the al-Wattan Voice TV headquarters in Gaza on four separate occasions.<sup>130</sup> On 27 July 2014, the offices of Al-Aqsa TV station in Burj Al-Shrouq were hit by Israeli rocket fire. Two days later Al-Aqsa TV headquarters in Nasser were bombed and partially destroyed.<sup>131</sup> According to Jim Boumelha, President of the International Federation of Journalists, the Israeli army had been made aware of the location of the media outlets and the coordinates of the media buildings identifying their location in the Gaza Strip.<sup>132</sup>

127 Fung, K., 'Journalist Rami Rayan Killed in Gaza Attack', *Huffington Post* 30 July 2014. available at: [http://www.huffingtonpost.com/2014/07/30/rami-rayan-killed-dead-gaza-attack\\_n\\_5634548.html](http://www.huffingtonpost.com/2014/07/30/rami-rayan-killed-dead-gaza-attack_n_5634548.html) (last accessed 20 January 2015); 'Israel Bombs Gaza Radio Station', *Ma'an News Agency* 16 July 2014, available at: <http://www.maannews.net/eng/ViewDetails.aspx?ID=713640> (last accessed 20 January 2015); Cullen, C., 'YouTube video shows young journalist killed in missile strike in Gaza' *Independent.ie*, (01 August 2014), available at: <http://www.independent.ie/world-news/middle-east/youtube-video-shows-young-journalist-killed-in-missile-strike-in-gaza-30477011.html> (last accessed 20 January 2015).

128 Al-Haq, 'Field Updates from the Gaza Strip', (Al-Haq, 10 July 2014), Friday 18 July, available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015).

129 The Foreign Press Association, 'Statements 2014' (The Foreign Press Association 23 July 2014), available at: <http://www.fpa.org.il/?categoryid=73840> (last accessed 20 January 2015).

130 Carlson, C., '9 Palestinian Journalists Killed Since July 7', International Middle East Media Center (01 August 2014), available at: <http://www.imemc.org/article/68706> (last accessed 20 January 2015); 'Three Journalists Killed During Wednesday's Shujayea Massacre in Gaza', *Wafa, Palestinian News and Info Agency* (31 July 2014) available at: <http://english.wafa.ps/index.php?action=detail&id=26080> (last accessed 20 January 2015).

131 'Reporters Without Borders: Israeli Occupation Army Targets Palestinian Reports', *Wafa Palestinian News and Info Agency*, (30 July 2014) available at: <http://english.wafa.ps/index.php?action=detail&id=26058> (last accessed 20 January 2015).

132 Boumelha, J., 'IFJ President Details Attacks on Journalists in Gaza', (AUSPalestine, 22 July 2014), available at: <http://auspalestine.org/2014/07/23/ifj-president-details-attacks-on-journalists-in-gaza/>. (last accessed 20 January 2015).

Attacks against journalists and media buildings have been accompanied by a wave of anti-press sentiment by Israeli politicians who have publicly branded certain news agencies as anti-Israeli and as 'enemy' broadcasters.<sup>133</sup> The Israeli Minister of Communications recommended to the Cable and Satellite Broadcasting Council that Al Jazeera broadcasts not be aired while 'Operation Protective Edge' was ongoing, arguing that the broadcasts were biased.<sup>134</sup> Similarly, the Israeli Minister for Foreign Affairs reportedly encouraged closing down Al Jazeera media operations in Israel, suggesting that the news organization's broadcasts were an "encouragement to terrorists".<sup>135</sup> The Israeli army has reportedly justified attacks against the Al-Aqsa television and radio stations on the basis that they had "propaganda dissemination capabilities" used to incite hatred against Israelis, and deliver messages to Hamas operatives.<sup>136</sup>

### 3.2 LEGAL ANALYSIS

The ability of journalists to continue reporting during armed conflict is a necessary component of the right of freedom of expression enshrined in Article 19 of the International Covenant on Civil and Political Rights and Article 19 of the Universal Declaration of Human Rights. According to international customary law, journalists engaged in dangerous professional missions of armed conflict are considered civilians and must be protected as such, provided that they take no action adversely affecting their status.<sup>137</sup> Additionally, the ICRC considers that there is a

133 Black, I., 'Al-Jazeera Gaza offices evacuated after direct hit by Israeli fire', *The Guardian*, (22 July 2014), available at: <http://www.theguardian.com/world/2014/jul/22/al-jazeera-gaza-offices-hit-israeli-fire> (last accessed 20 January 2015).

134 Yonah, J., 'IDF Denies any direct attack on Al Jazeera or other press offices in Gaza', *The Jerusalem Post* (22 July 2014) available at: <http://www.jpost.com/Operation-Protective-Edge/IDF-denies-any-direct-attack-on-Al-Jazeera-or-other-press-offices-in-Gaza-368432> (last accessed 20 January 2015).

135 'Gunshots Fired at Al Jazeera bureau in Gaza', *Al Jazeera*, (22 July 2014), available at: <http://www.aljazeera.com/news/middleeast/2014/07/gunshots-fired-at-al-jazeera-bureau-gaza-2014722829152765.html> (last accessed 20 January 2015).

136 'Israeli Airstrikes target Palestinian TV Station in Gaza', *Ma'an News Agency* (30 July 2014), available at: <http://www.maannews.net/eng/viewdetails.aspx?id=716837> (last accessed 20 January 2015).

137 ICRC Customary IHL, Rule 34.

practice “which indicates that journalists exercising their professional activities in relation to armed conflict must be protected”.<sup>138</sup> This places an onus on Israel to refrain from targeting civilian journalists, but also indicates that there is an obligation to protect journalists while they are carrying out their professional activities. Israel’s deliberate targeting of journalists travelling in distinctive press-marked cars and wearing press-marked clothes highlights Israel’s failure to do either. A direct attack on civilian journalists may amount to a war crime under Article 8(2)(b)(i) of the Rome Statute of the International Criminal Court, and constitutes a grave breach of the Geneva Conventions and Additional Protocol I.

Similarly, media property, such as television and radio station buildings, are protected as civilian objects that can only be the target of an attack if they are considered a military objective. A military objective is limited to objects, which by their nature, location, purpose or use, would make an effective contribution to military action.<sup>139</sup> As such, the targeting of such property is only permissible on the narrow grounds that the total or partial destruction of the property offers a definite military advantage.<sup>140</sup> Furthermore, attacks on legitimate military objectives will be limited by the principles of proportionality and precaution. The former prohibits the launching of an “attack which 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”.<sup>141</sup> The latter obligates Israel to take all feasible precautions to protect civilians and civilian property against attacks.<sup>142</sup>

Given that the coordinates of media buildings were supplied to Israel in order to ensure their protection as well as that of the civilians present,

138 ICRC Customary IHL, Rule 34.

139 Additional Protocol I, Article 52(2).

140 Additional Protocol I, Article 52(2); ICRC Customary IHL, Rule 8.

141 ICRC Customary IHL, Rule 14.

142 ICRC Customary IHL, Rule 15 and 22.

any direct attack carried out against such buildings constitutes an unjustifiable breach of humanitarian law. Accordingly, the bombing and destruction of media property such as al-Jawhara building, the al-Wattan Voice TV headquarters, the Al-Aqsa TV station in Burj Al-Shurouq, and the Al-Aqsa TV station in Nasser, not rendered absolutely necessary by military operations may amount to a breach of Article 53 of the Fourth Geneva Convention and Article 23(g) of the Hague Regulations, and may constitute a grave breach of the Geneva Conventions.

The ‘propaganda argument’ leveled at Al-Jazeera and Al-Aqsa TV and radio is reminiscent of the type of arguments employed by NATO to justify the bombing of RTS (Serbian TV and radio station) in Serbia in 1999.<sup>143</sup> In that instance, the ICTY Committee Established to Review the NATO Bombing Campaign against the Federal Republic of Yugoslavia considered that there was a distinct difference between television and radio stations being biased as opposed to being used as military communication networks.<sup>144</sup> The former does not meet the criteria of “effective contribution to military action” and “definite military advantage” necessary to elevate the property to a military objective under Article 52(2) of Additional Protocol I. Furthermore, according to the ICRC Commentary on Article 52(2), any military advantage must be ‘concrete and direct’. The use of media stations for propaganda purposes alone would not fulfill this requirement. Accordingly, the argument that the Al Aqsa television and radio broadcasters contained ‘propaganda dissemination capabilities’ does not justify the targeting of television and radio stations.<sup>145</sup>

143 Amnesty International, ‘NATO/Federal Republic of Yugoslavia: Violations of the Laws of War by NATO during Operation Allied Force’, (Amnesty International, 05 June 2000), p 42 available at: <http://www.amnesty.org/es/library/asset/EUR70/018/2000/en/e7037dbb-df56-11dd-89a6-e712e728ac9e/eur700182000en.pdf> (last accessed 20 January 2015).

144 ‘Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign against the Federal Republic of Yugoslavia’, paras 75-76, available at: <http://www.icty.org/x/file/Press/nato061300.pdf> (last accessed 20 January 2015).

145 ‘Israeli Airstrikes target Palestinian TV Station in Gaza’, *Ma’an News Agency* (30 July 2014), available at: <http://www.maannnews.net/eng/viewdetails.aspx?id=716837> (last accessed 20 January 2015).



The protection of journalists during hostilities is particularly significant given that international tribunals may compel journalists to give evidence at international trials.<sup>146</sup> In a conflict situation, journalists may have evidence of war crimes that cannot reasonably be obtained elsewhere and are of important value in determining a core issue of an international criminal case.<sup>147</sup> Therefore, it is imperative that there is no impunity for crimes committed against civilian journalists. Furthermore, the General Assembly Resolution on the Safety of Journalists and the Issue of Impunity underscores the need for States to ensure accountability for crimes against journalists falling within their jurisdiction.<sup>148</sup>



Ambulance destroyed by Israel. Shuja'iyya, 20 July 2014. (c) AP

## 4

# ATTACKS AGAINST PARAMEDICS AND AMBULANCES AND DELAYS IN THE DELIVERY OF AID

## 4.1 ATTACKS AND INTERFERENCE WITH AMBULANCES

During the recent hostilities numerous ambulances tending to the needs of the occupied population were either damaged or destroyed. Furthermore, Israel directly targeted paramedics trying to evacuate the

<sup>146</sup> *Prosecutor v Radoslav Brdjanin, Momir Talic*, (decision on Interlocutory Appeal), ICTY, IT-99-36-AR73.9 11 December 2002, paras 48-49.

<sup>147</sup> *Prosecutor v Radoslav Brdjanin, Momir Talic*, (decision on Interlocutory Appeal), ICTY, IT-99-36-AR73.9 11 December 2002, para 50.

<sup>148</sup> UN General Assembly, *The safety of journalists and the issue of impunity : resolution / adopted by the General Assembly* (21 February 2014), A/RES/68/163.

wounded and the sick. As a result, emergency workers were themselves killed or injured.<sup>149</sup> Israel also hindered paramedics from delivering medical aid resulting in the death of Palestinians in urgent need of medical attention.

Ambulances damaged per governate between 7 July and 26 August 2014 *	
Governate	Number
North Gaza	11
Gaza	5
Deir al-Balah/Middle Area	4
Khan Younes	3
Rafah	1
<b>Total</b>	<b>24</b>

\*This is the Palestinian human rights coalition's final data as of 6 February 2015.

### 4.1.1 Delays in the Delivery of Medical Aid

During 'Operation Protective Edge', Israel significantly disrupted the delivery of aid and the evacuation of casualties. According to the Palestinian human rights coalition, 407 Palestinians died as a result of delays in the delivery of aid. For example, Israeli forces delayed two Red Crescent ambulances carrying 10 paramedics, along with two other Red Cross ambulances carrying two people, for two hours from entering Khuza'a for the purpose of evacuating casualties. The ambulances had

149 ICRC, 'Gaza: ICRC Appalled by Damage to Premises and Property of Palestinian Red Crescent' (ICRC, 1 August 2014) available at: <http://www.icrc.org/eng/resources/documents/news-release/2014/08-01-gaza-prcs-property.htm> (last accessed 20 January 2015).

secured coordination ahead of time.<sup>150</sup> Meanwhile, on 22 July 2014, Al-Haq field researchers documented an incident in al-Shawka where Israeli forces refused to coordinate ambulances for a period of six hours, leaving four injured civilians to bleed to death. Similarly, on 25 July 2014, Al-Haq documented two separate incidents in Khan Younes Governorate where Israeli forces prevented ambulances from reaching two wounded men resulting in their deaths.<sup>151</sup>

### 4.1.2 Attacks on Ambulances and the Killing of Paramedics

In addition to delaying the work of paramedics, Israel directly targeted ambulances and paramedics during its offensive on the Gaza Strip. According to the Palestinian human rights coalition, 9 paramedics were killed during the offensive, as well as 41 Palestinians that were killed whilst providing medical aid and assistance. And according to the ICRC, in July alone, more than 40 on-duty emergency workers were injured. Furthermore, at least 26 ambulances belonging to the Palestine Red Crescent Society were damaged.<sup>152</sup>

On 20 July, at approximately 10.00 a.m., an ambulance entered the Shuja'iyya neighbourhood to evacuate the injured and dead during a lull in hostilities, and was targeted in an airstrike, killing 27-year old paramedic Fu'ad Jaber. On 23 July, artillery shells hit two ambulances that were travelling to Beit Hanoun Crossing to recover bodies, injuring the paramedics.<sup>153</sup> On the same day, Israeli forces situated southeast of Khuza'a fired artillery shells at hundreds of people fleeing their homes,

150 Al-Haq, 'Field Updates from the Gaza Strip', (Al-Haq, 10 July 2014), 24 July, Khan Younis Governorate, available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015).

151 Al-Haq, 'Field Updates from the Gaza Strip', (Al-Haq, 10 July 2014), 24 July, Khan Younis Governorate, available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015).

152 ICRC, 'Gaza: ICRC Appalled by Damage to Premises and Property of Palestinian Red Crescent', (ICRC, 01 August 2014), available at: <http://www.icrc.org/eng/resources/documents/news-release/2014/08-01-gaza-prcs-property.htm> (last accessed 20 January 2015).

153 Al-Haq, 'Field Updates from the Gaza Strip', (Al-Haq, 10 July 2014) Thursday 24 July North Gaza Governorate, available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015).



also hitting ambulances there.<sup>154</sup>

Furthermore, Al-Haq's field researchers documented a grave series of attacks on ambulances in the North Gaza Governorate. On 25 July, at approximately 4:30 p.m., an artillery shell struck a Red Crescent ambulance on its way to recover the wounded in al-Masriyin Street in Beit Hanoun. One paramedic was killed, and another two were injured. Following coordination through the Red Cross, another ambulance was sent to recover the paramedic's body. That ambulance was shot at, injuring another paramedic and damaging the ambulance.<sup>155</sup> Later that night, Israeli forces opened fire at a Red Crescent ambulance in al-Qarara, injuring a paramedic. In that instance the Red Cross had coordinated for the ambulance to enter the area.<sup>156</sup>

Israel also damaged ambulances as a result of its attacks on nearby objectives. On 9 July, Al-Haq's field researchers documented an air strike on agricultural land near the Palestinian Red Cross, damaging three ambulances and injuring paramedics.<sup>157</sup> Meanwhile, on 24 July, three ambulances were damaged when a missile struck and destroyed a house in Jabaliya refugee camp.<sup>158</sup> On 2 August, an ambulance was struck in the midst of heavy shelling and airstrikes in the Misbeh neighbourhood

<sup>154</sup> Al-Haq, 'Field Updates from the Gaza Strip', (Al-Haq, 10 July 2014) Wednesday 23 July, Khan Younis Governorate, available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015).

<sup>155</sup> Al-Haq, 'Field Updates from the Gaza Strip', (Al-Haq, 10 July 2014), Friday 25 July North Gaza Governorate available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015).

<sup>156</sup> Al-Haq, 'Field Updates from the Gaza Strip', (Al-Haq, 10 July 2014) Friday 25 July Khan Younis Governorate available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015).

<sup>157</sup> Al-Haq, 'Field Updates from the Gaza Strip', (Al-Haq, 10 July 2014), Wednesday 9 July North Gaza Governorate, available from: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015); ICRC, 'Israel/Occupied Territory: Civilians and medical workers pay price of conflict' (ICRC, 10 July 2014) available at: <http://www.icrc.org/eng/resources/documents/news-release/2014/israel-palestine-gaza-civilian-medical.htm> (last accessed 20 January 2014).

<sup>158</sup> Al-Haq, 'Field Updates from the Gaza Strip', (Al-Haq, 10 July 2014), Thursday 24 July North Gaza Governorate, available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015).

of Rafah, killing three paramedics; 'Atef al-Zamali, Yousef al-Zamali, and Yousef Drabih.<sup>159</sup>

## 4.2 LEGAL ANALYSIS

### 4.2.1 Delays and the Inviolability of the Wounded and Sick

Article 12 of the First Geneva Convention provides the general principle on the inviolability of the wounded and sick who are to be respected and protected in all circumstances.<sup>160</sup> Article 12 applies to combatants as well as non-combatants and civilians.<sup>161</sup> Furthermore, Article 16 of the Fourth Geneva Convention establishes that the "wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect".<sup>162</sup> As such, international humanitarian law obliges Israel to ensure that wounded combatants, non-combatants, and civilians, including civilian paramedics, are respected and protected in all circumstances. IHL further prohibits the intentional killing of civilians and non-combatants with reckless disregard for human life.<sup>163</sup> In particular, wilful killing is listed as a war crime under the Rome Statute and amounts to a grave breach of the Geneva Conventions.<sup>164</sup>

Delays in the delivery of aid to the wounded and the sick during 'Operation Protective Edge' resulted in Palestinians dying from their injuries. Although delays may be warranted in situations of suspicion

<sup>159</sup> Al-Haq, 'Field Updates from the Gaza Strip', (Al-Haq, 10 July 2014) Friday 01 August Rafah Governorate 2014 available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015).

<sup>160</sup> ICRC, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, 75 UNTS 31(1949) (henceforth first Geneva Convention), Article 12.

<sup>161</sup> Pictet, J., *Commentary: I Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (ICRC, Geneva, 1952): 25, article 12.

<sup>162</sup> Fourth Geneva Convention, article 16.

<sup>163</sup> ICTY, Celebici Case, Trial Judgment, 16<sup>th</sup> November 1998, IT-96-21-T, para 439, available here: [http://www.icty.org/x/cases/mucic/tjug/en/981116\\_judg\\_en.pdf](http://www.icty.org/x/cases/mucic/tjug/en/981116_judg_en.pdf) (last accessed 10 January 2015); ICRC, Customary IHL, Rule 89.

<sup>164</sup> UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998 (henceforth Rome Statute), Article 8(2)(a)(i).

of perfidy or for legitimate security concerns,<sup>165</sup> there was no legitimate justification for Israeli forces to hinder ambulances from reaching injured Palestinians in the cases cited above. The lack of legitimate justification for delaying the delivery of aid is particularly evident when prior security coordination has taken place.

In killing wounded and sick Palestinians by denying them the aid that could have saved them, Israel has committed wilful killing, a grave breach of the Geneva Conventions and crime of the Rome Statute.<sup>166</sup>



Paramedics recovering body during offensive. Tal Al Hawa. (c) Al-Haq

## 4.2.2 Unlawful Attacks on Ambulances

### *Direct Attacks against Ambulances and Paramedics*

Israel is absolutely prohibited from targeting ambulances and paramedics engaged in medical duties. Article 19 of the First Geneva

<sup>165</sup> Any attempt to use an ambulance in an attempt to kill, injure or capture the enemy amounts to perfidy and is prohibited under customary international law and Article 37 of Additional Protocol II(1977); ICRC Customary IHL Rules, 65; ICRC, 'Ambulance and Pre-Hospital Services in Risk Situations' (ICRC, November 2013) paras 4.2 and 4.4, available form: <http://www.icrc.org/eng/assets/files/publications/icrc-002-4173.pdf> (last accessed 20 January 2015).

<sup>166</sup> Pictet, J., *Commentary: I Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, (ICRC, Geneva 1952): 25, article 50.

Convention emphasizes that fixed establishments and mobile units “may in no circumstances be attacked” and that they shall be “respected”, the latter meaning they shall not be harmed or attacked in any way.<sup>167</sup> Article 22(5) of the First Geneva Convention, extends the humanitarian activities of medical units and establishments to the care of civilian wounded and sick.<sup>168</sup> While Article 12 of the First Additional Protocol protects all civilian medical units from attack.<sup>169</sup>

Paramedics that fall within the definition of medical personnel belonging to “National Red Cross or Red Crescent Societies and other voluntary aid societies duly recognized and authorized by a party to the conflict, including the ICRC” must be protected in all instances.<sup>170</sup> Such paramedics, that are not members of the armed forces or assigned by a party to the conflict as medical personnel, are considered civilians unless they are actively participating in hostilities.<sup>171</sup> In accordance with the principle of distinction, Israel must not direct its attacks against civilians.<sup>172</sup>

By targeting ambulances carrying paramedics tending to the medical needs of the wounded and the sick and as a result killing paramedics, Israel has violated its obligation to protect medical personnel and civilians. Israel’s attacks against paramedics in the cases described above arguably amount to wilful killing as a grave breach of the Geneva Conventions. Moreover, there is some evidence from the nature of the targeted areas, that ambulances and paramedics were subjected to ‘follow-up’ attacks, where they were hit more than once. These attacks are of grave concern as they are designed to delay the treatment and evacuation of wounded victims in the area and form part of military

<sup>167</sup> First Geneva Convention, Article 19 ; Pictet, J., *Commentary: I Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, (ICRC, Geneva 1952): 25, article 19.

<sup>168</sup> First Geneva Convention, Article 22(5).

<sup>169</sup> Additional Protocol I, Article 12.

<sup>170</sup> ICRC Customary IHL, Rule 25; First Geneva Convention, Article 24 and 26.

<sup>171</sup> ICRC Customary IHL, Rules 25, 3, 6.

<sup>172</sup> ICRC Customary IHL, Rule 1.

strategy.<sup>173</sup>

### *The Destruction of Ambulances and Collateral Damage*

Article 19 of the First Geneva Convention provides the general rule that “fixed establishments and mobile medical units of the Medical Service may in no circumstances be attacked, but shall at all times be respected and protected by the Parties to the conflict”.<sup>174</sup> Furthermore, the core international humanitarian law principle of distinction, proportionality and precaution, require that Israel distinguish between legitimate civilian objects and military objectives.<sup>175</sup>

Nevertheless, IHL does recognize incidental damage to civilian objects and injury to civilians that is not excessive in relation to the concrete and direct military advantage anticipated. In the case of the airstrike on agricultural land located near the Palestinian Red Cross on 9 July 2014, the incidental damage caused to three nearby ambulances and the civilian injury to tens of paramedics,<sup>176</sup> cannot be considered proportional. Furthermore, Israel does not appear to have complied with the principle of precaution in relation to the damage and injury caused; the location of the Palestinian Red Cross is well established and there is no evidence that Israel issued a warning for the purpose of safeguarding ambulances and paramedics prior to the attack. As such, Israel did not undertake the requisite precautionary measures in planning the attack with a view “to avoid, and in any event to minimize [...] damage to civilian objects”.<sup>177</sup>

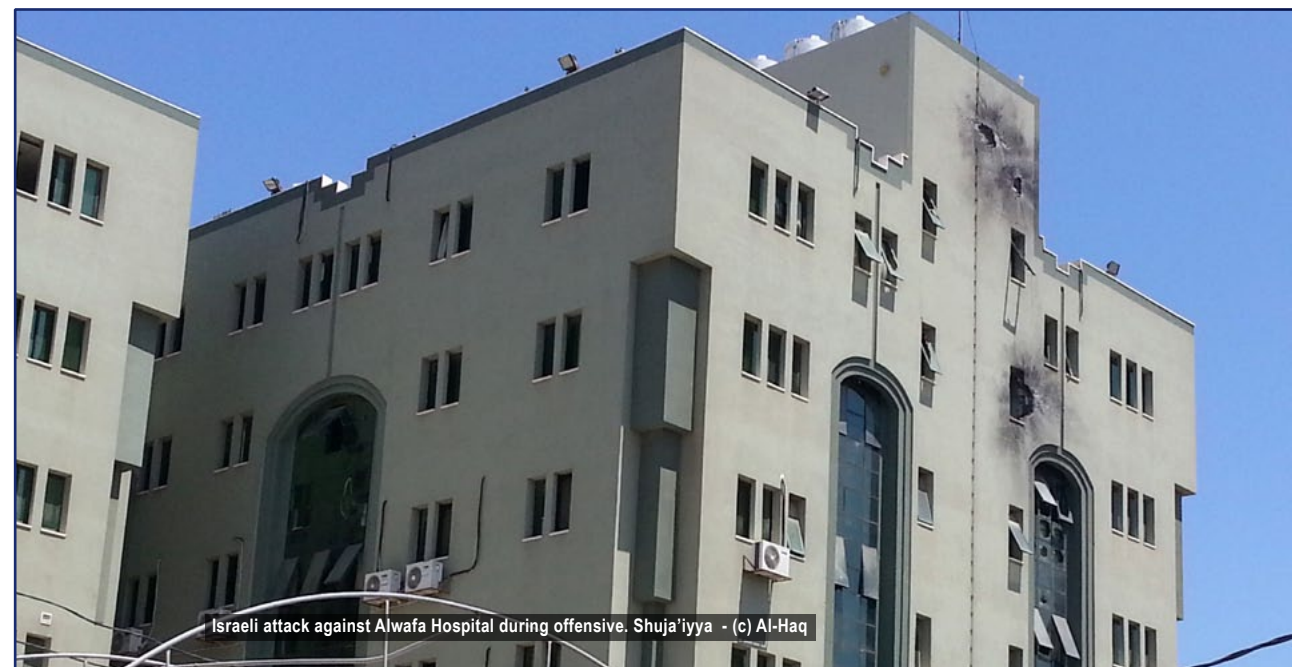
<sup>173</sup> ICRC, ‘Ambulance and Pre-Hospital Services in Risk Situations’ (ICRC November 2013), para 4.3, available at: <http://www.icrc.org/eng/assets/files/publications/icrc-002-4173.pdf> (last accessed 20 January 2015).

<sup>174</sup> First Geneva Convention, article 19.

<sup>175</sup> ICRC Customary IHL, Rule 1.

<sup>176</sup> ICRC, ‘Israel/Occupied Territory: Civilians and medical workers pay price of conflict’, (ICRC 10 July 2014), available at: <http://www.icrc.org/eng/resources/documents/news-release/2014/israel-palestine-gaza-civilian-medical.htm> (last accessed 20 January 2015).

<sup>177</sup> ICRC Customary IHL, Rule 15.



5

## ATTACKS AGAINST HEALTH FACILITIES

### 5.1 DAMAGE TO HEALTH FACILITIES

According to the World Health Organisation and the Palestinian Ministry of Health, Israel damaged at least 17 out of 32 hospitals during ‘Operation Protective Edge’. Israel also damaged 45 primary health centers.<sup>178</sup> Due to the damage caused, 6 hospitals and 17 primary health centers were closed down during the offensive. “Consequently, patients had to be discharged prematurely or were deprived of appropriate care

<sup>178</sup> OCHA oPt, ‘Gaza Initial Rapid Assessment’, (OCHA, 27 August 2014) p 14, available at: [http://www.ochaopt.org/documents/gaza\\_mira\\_report\\_9september.pdf](http://www.ochaopt.org/documents/gaza_mira_report_9september.pdf) (last accessed 20 January 2015).



for their condition, with potential long-term negative consequences”.<sup>179</sup> Furthermore, an increasing number of Palestinians had to be referred to facilities outside of the Gaza Strip.<sup>180</sup>

Health facilities also had to deal with disruptions to water supplies, sanitation, and electricity and fuel. A month after hostilities came to an end, on 22 September 2014, OCHA reported that there was not enough fuel to power the Gaza Power Plant leading to 18 hour electricity outages, impacting directly on the pumping of water, treatment of sewage and the running of hospitals.<sup>181</sup>

### 5.1.1 Attacks against Health Facilities

During the 2014 offensive on the Gaza Strip, health facilities caring for Palestinians in need of medical attention were often attacked. On 12 July 2014, the Al-Rahma Association for the Disabled was struck by a missile, resulting in the killing of two disabled persons and injuring others.<sup>182</sup> The following week, Al-Shifa Hospital in Rafah was struck in an aerial attack and Beit Hanoun Governmental Hospital was hit by a missile, causing damage to the building. On Monday 21 July, Israeli tanks situated in the eastern buffer zone fired at least four artillery shells at Shuhada’ Al-Aqsa Hospital in Deir al-Balah, causing extensive damage to the building and two ambulances outside. The attack against Shuhada’ Al-Aqsa Hospital resulted in the killing of three civilians, including one child. Approximately another 40 people were injured, most were

patients.<sup>183</sup> According to Al-Haq’s field researchers, the shelling took place without prior warning.<sup>184</sup>

Following heavy artillery shelling of hospitals and health facilities located in the North Gaza Governorate, the Palestinian Ministry of Health decided to evacuate and close Beit Hanoun Governmental Hospital. The hospital was shelled on five separate occasions.<sup>185</sup> For example, on 25 July at approximately 11:00 p.m., dozens of artillery shells struck Beit Hanoun Hospital for several hours, damaging the upper floor including the surgical and women’s units. Three workers were injured during the shelling.<sup>186</sup>

Similarly, on 24 July at 3:10 p.m., two artillery shells struck the second floor of Balsam Hospital in Beit Hanoun, causing damage to the surgical unit.<sup>187</sup> Later that day, at around 7:30 p.m., dozens of artillery shells struck and damaged the premises of al-Durra Hospital in al-Tuffah. During this attack, two-year old Ibrahim Omar was killed and another 30 people were injured. Ibrahim was receiving medical treatment in the

<sup>179</sup> OCHA oPt, ‘Gaza Initial Rapid Assessment’, (OCHA, 27 August 2014), p 13, available at: [http://www.ochaopt.org/documents/gaza\\_mira\\_report\\_9september.pdf](http://www.ochaopt.org/documents/gaza_mira_report_9september.pdf) (last accessed 20 January 2015).

<sup>180</sup> OCHA oPt, ‘Gaza Initial Rapid Assessment’, (OCHA, 27 August 2014), p 13, available at: [http://www.ochaopt.org/documents/gaza\\_mira\\_report\\_9september.pdf](http://www.ochaopt.org/documents/gaza_mira_report_9september.pdf) (last accessed 20 January 2015).

<sup>181</sup> OCHA oPt, ‘Protection of Civilians, Reporting Period: 16-22 September 2014’ (OCHA, 27 September 2014), available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_protection\\_of\\_civilians\\_weekly\\_report\\_2014\\_9\\_27\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_9_27_english.pdf) (last accessed 20 January 2015).

<sup>182</sup> Al-Haq, ‘Targeting of Health Facilities in the Gaza Strip May Amount to War Crimes’ (Al-Haq, 25 July 2014) available at: <http://www.alhaq.org/advocacy/topics/gaza/831-targeting-of-health-facilities-in-the-gaza-strip-may-amount-to-war-crimes> (last accessed 20 January 2015).

<sup>183</sup> Al-Haq, ‘Targeting of Health Facilities in the Gaza Strip May Amount to War Crimes’ (Al-Haq, 25 July 2014) available at: <http://www.alhaq.org/advocacy/topics/gaza/831-targeting-of-health-facilities-in-the-gaza-strip-may-amount-to-war-crimes> (last accessed 20 January 2015).

<sup>184</sup> Al-Haq, ‘Targeting of Health Facilities in the Gaza Strip May Amount to War Crimes’ (Al-Haq, 25 July 2014) available at: <http://www.alhaq.org/advocacy/topics/gaza/831-targeting-of-health-facilities-in-the-gaza-strip-may-amount-to-war-crimes> (last accessed 20 January 2015).

<sup>185</sup> Al-Haq, ‘Field Updates from the Gaza Strip,’ (Al-Haq, 10 July 2014), Sunday 27 July North Gaza Governorate, Tuesday 22 July North Gaza Governorate, Thursday 24 July Gaza Governorate, available from: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015).

<sup>186</sup> Al-Haq, ‘Field Updates from the Gaza Strip,’ (Al-Haq, 10 July 2014) 25 July North Gaza Governorate, available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015); Ministry of Health, ‘Emergency Operation Room Sitrep on Gaza’ (July, 27<sup>th</sup> 2014) available at: <http://www.moh.ps/attach/685.pdf> (last accessed 20 January 2015); PCHR, ‘Weekly Report on Israeli Human Rights Violations in the Occupied Palestinian Territory (24 July – 03 August 2014)’ (PCHR, August 2014) available at: [http://www.pchrgaza.org/portal/en/index.php?option=com\\_content&view=article&id=10645:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory-24-july-03-august-2014-&catid=84:weekly-2009&Itemid=183](http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10645:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory-24-july-03-august-2014-&catid=84:weekly-2009&Itemid=183) (last accessed 20 January 2015).

<sup>187</sup> Al-Haq, ‘Field Updates from the Gaza Strip,’ (Al-Haq, 10 July 2014), Thursday 24 July Gaza Governorate, available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015).

intensive care unit.<sup>188</sup> On 1 August, Abu Yusuf al-Najjar Hospital was shelled in Rafah. A number of civilians were injured despite evacuation orders by Israeli forces.<sup>189</sup> The Palestine Red Crescent Society reported that Al Quds Hospital in Tal Al Hawa and Khalil Al Wazir Clinic in Sheikh Ajleen in Gaza city had been targeted in an Israeli strike on August 2, resulting in damage to and destruction of hospital equipment. Al Quds hospital and clinic clearly displayed the Red Crescent emblem at the time of the attack.<sup>190</sup>

## 5.2 LEGAL ANALYSIS

### 5.2.1 Targeting of Civilian Health Facilities

The deliberate targeting of health facilities in the Gaza Strip is a serious violation of international humanitarian law. Article 27 of the Hague Regulations, which is reflective of customary international law, provides that during sieges and bombardments all necessary steps must be taken to spare, as far as possible, “hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes”.<sup>191</sup> In addition, Article 18 of the Fourth Geneva Convention provides that civilian hospitals sheltering the wounded, sick, infirm and maternity cases, may not be the object of attack and must be protected and respected under all circumstances.<sup>192</sup> Similarly,

Article 25 of the Rules of Aerial Warfare,<sup>193</sup> and Article 5 of the 1907 Hague Convention IX Concerning Bombardment by Navel Forces in Time of War,<sup>194</sup> require that all necessary steps are taken to spare, as far as possible, hospitals and other places where the sick and wounded are collected.

In considering the obligation “to spare as far as possible, hospitals and other places”, a distinction may be drawn between the use of hospitals to house troops and military offices, which would serve a legitimate military purpose, and the use of hospitals to treat wounded combatants and civilians, which by contrast serve a humanitarian purpose.<sup>195</sup> “The fact that sick or wounded members of the armed forces are nursed in these hospitals, or the presence of small arms and ammunition taken from such combatants and not yet handed to the proper service, shall not be considered to be acts harmful to the enemy” and thus such a hospital may not be the subject of attack.<sup>196</sup> Combatants wounded in hospitals must be respected and protected within the context of Article 12 of the First Geneva Convention.<sup>197</sup> Significantly, there is a customary international law prohibition on attacks against persons who are *hors de combat* and defenseless due to unconsciousness, wounds or sickness.<sup>198</sup> In any case, the protection afforded to hospitals may not cease unless “due warning has been given, naming, in all appropriate cases, a reasonable time limit, and

188 Al-Haq, ‘Field Updates from the Gaza Strip’, (Al-Haq, 10 July 2014), Thursday 24 July Gaza Governorate, available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015).

189 PCHR, ‘Heinous Crimes against Humanity, On the 26th Day of the Israeli Offensive: Massacre in Rafah, Most Violent Since the Beginning of the Offensive: Rafah Isolated and Unprecedented War Crimes Committed’ (PCHR, 2 August 2014) available at: [http://www.pchrgaza.org/portal/en/index.php?option=com\\_content&id=10558:heinous-crimes-against-humanity-on-the-26th-day-of-the-israeli-offensive-massacre-in-rafah-most-violent-since-the-beginning-of-the-offensive-rafah-isolated-and-unprecedented-war-crimes-committed&Itemid=194](http://www.pchrgaza.org/portal/en/index.php?option=com_content&id=10558:heinous-crimes-against-humanity-on-the-26th-day-of-the-israeli-offensive-massacre-in-rafah-most-violent-since-the-beginning-of-the-offensive-rafah-isolated-and-unprecedented-war-crimes-committed&Itemid=194) (last accessed 20 January 2015).

190 Palestine Red Crescent Society, ‘Al Quds Hospital and Khalil Al Wazeer Clinic in Gaza City Targeted in an Israeli Strike’ (Ammado, 2 August 2014). available at: <https://www.ammado.com/nonprofit/145912/articles/104891> (last accessed 20 January 2015).

191 Hague Regulations, article 27.

192 Fourth Geneva Convention, article 18.

193 Rules concerning the control of Wireless Telegraphy in Times of War and Air Warfare, the Hague (December 1922- February 1923), Article 25.

194 Convention (IX) Concerning Bombardment by Navel Forces in Time of War, The Hague (18 October 1907), Article 5.

195 Greenspan, M., *The Modern Law of Land Warfare* (University of California Press, 1959), p 341.

196 Fourth Geneva Convention, article 19,

197 First Geneva Convention, article 12; There is an obligation on the party to the conflict to treat the wounded and sick humanely. Accordingly, Pictet suggests that the obligation to respect and protect, derive from the authoritative French version ‘*respecter*’ or “to spare, not to attack” and ‘*protéger*’ which translates “to come to someone’s defence, to lend help and support”. Pictet, J., *Commentary: I Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (ICRC, Geneva 1952): 25, article 12.

198 ICRC Customary IHL, Rule 47.

after such warning has remained unheeded.”<sup>199</sup>

Israeli attacks against hospitals in the Gaza Strip are not justifiable under international humanitarian law. Furthermore, many hospitals, such as Al Aqsa hospital in Deir al-Balah, were shelled without prior warning resulting in massive civilian casualties. Moreover, while doctors at Abu Yousef al-Najjar hospital did receive prior warning, there was not sufficient time to evacuate the hospital fully and as a result numerous civilians were killed. In general, the excessive number of civilian casualties, including approximately 40 civilians injured in the shelling of Al-Aqsa hospital and 30 civilians injured at al-Durra hospital, indicates that Israel did not comply with the principle of proportionality.<sup>200</sup> That being said, a hospital will not lose its protective status on the basis that it has received prior warning – a hospital will only lose its protective status when used to commit ‘acts harmful to the enemy’.<sup>201</sup>

While civilian hospitals are generally protected under Article 18 of the Fourth Geneva Convention, Israel has additional obligations to ensure the safety of persons with disabilities during armed conflict. In particular, Article 11 of the Convention on the Rights of Persons with Disabilities requires that Israel takes “all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict”.<sup>202</sup> Notably, the unjustified shelling of the Al-Rahma Association for the Disabled, demonstrates that Israel did not have taken all necessary measures to protect persons with disabilities from attack.

199 Fourth Geneva Convention, Article 19.

200 Al-Haq, ‘Targeting of Health Facilities in the Gaza Strip May Amount to War Crimes’ (Al-Haq, 25 July 2014) available at: <http://www.alhaq.org/advocacy/topics/gaza/831-targeting-of-health-facilities-in-the-gaza-strip-may-amount-to-war-crimes> (last accessed 20 January 2015); Al-Haq, ‘Field Updates from the Gaza Strip’ (Al-Haq, 10 July 2014), Thursday 24 July North Gaza Governorate available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 20 January 2015).

201 Pictet, *Commentary IV Geneva Convention* (ICRC, 1958) 154.

202 UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly* (24 January 2007), UN Doc A/RES/61/106, Article 11.

Hospitals featuring distinctive emblems have been targeted during ‘Operation Protective Edge’. The property of civilian hospitals marked by the Red Crescent emblem, governed by Article 38 of the First Geneva Convention, or black and white triangles, according to Article 5(2) of Hague Convention IX,<sup>203</sup> may in no circumstances be the object of an attack.<sup>204</sup> For example, reports that the Al Quds Hospital in Tal Al Hawa was targeted despite having displayed the prominent Red Crescent emblem indicates that Israel may have violated the principle of distinction and as such may have unlawfully attacked it.<sup>205</sup>

Israeli attacks against hospitals and health facilities have resulted in unlawful damage to and destruction of property, including equipment. “[E]xtensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” is considered a war crime and a grave breach of the Geneva Conventions. A single act of destruction of a hospital is sufficient for such a characterization.<sup>206</sup> Accordingly, the shelling of Al-Shifa Hospital in Rafah, the repeated attacks on Beit Hanoun Governmental Hospital, the destruction of property at Shuhada’ Al-Aqsa Hospital in Deir al-Balah, damage to the premises of al-Durra Hospital in al-Tuffah, and structural damage to Al Quds Hospital in Tal Al Hawa and Khalil Al Wazir Clinic, individually amount to grave breaches of the Geneva Conventions.

203 Convention (IX) Concerning Bombardment by Naval Forces in Time of War, The Hague (18 October 1907), Article 5.

204 Fourth Geneva Convention, article 18; First Geneva Convention, article 39.

205 ICRC Customary IHL, Rule 8.

206 ICRC Customary IHL, Rule 50; *Prosecutor v. Tihomir Blaskic*, (Trial Judgment), IT-95-14-T ICTY, 3 March 2000, para 239.



## 5.2.2 Provision of Medical Supplies

Israel, as an Occupying Power, is obligated “to the fullest extent of the means available to it” to supply the necessary minimum amounts of food and medical supplies for the maintenance of public health facilities and hospitals.<sup>207</sup> Moreover, Article 14(1) of Additional Protocol I establishes that the belligerent occupant has a “duty to ensure that the medical needs of the civilian population in occupied territory continue to be satisfied”.<sup>208</sup> The occupant must ensure the continuation of medical needs without qualification.<sup>209</sup> As such, Israel must permit the free and rapid passage of all consignments of medical and hospital stores into the Gaza Strip necessary for the civilian population.<sup>210</sup>

<sup>207</sup> Fourth Geneva Convention, articles 55 and 56.

<sup>208</sup> Additional Protocol I, article 14(1).

<sup>209</sup> Dinstein, Y., *The International Law of Belligerent Occupation* (Cambridge University Press, 2009), at 188.

<sup>210</sup> Fourth Geneva Convention, article 23.



## 6

# DESTRUCTION OF ELECTRICITY, WATER AND SEWAGE INFRASTRUCTURE

## 6.1 DESTRUCTION OF VITAL INFRASTRUCTURE

In the context of past Israeli offensives on the Gaza Strip, Israel has deliberately destroyed and damaged structures facilitating the provision of vital resources to the occupied Palestinian population in

the Gaza Strip.<sup>211</sup> According to the Emergency Water, Sanitation and Hygiene Group (EWASH), Israel damaged or destroyed 30 kilometers of water networks and 11 wells operated by the Gaza water authorities during the 2008-09 offensive on the Gaza Strip.<sup>212</sup> Much of the damage and destruction caused during that offensive was not repaired when 'Operation Protective Edge' took place.<sup>213</sup> Moreover, Israel caused extensive damage and destruction to then functioning electricity, water and sewage infrastructure during its 2014 offensive.

### 6.1.1 Attacks on the Gaza Power Plant

Water pumps and wastewater treatment plants depend on electricity to function. The Gaza Power Plant is responsible for supplying one third of the energy needs in the Gaza Strip.<sup>214</sup> However, Israel intentionally fired eight missiles at the Gaza Power Plant's transformers in 2006 and since then has restricted the import of fuel as well as spare parts and equipment necessary to fully repair the damage incurred.<sup>215</sup> As a result, in March 2014, electricity supplied by the Gaza Power Plant and purchased from Israel and Egypt, met approximately 46 per cent of the

estimated demand in the Gaza Strip.<sup>216</sup>

To make matters worse, the Palestinian human rights coalition documented four separate attacks against the Gaza Power Plant during the offensive. On 29 July 2014, the Gaza Power Plant was forced to shut down following one attack. On 4 September 2014, the OCHA reported that the shutdown of the Gaza Power Plant resulted in power outages of 18 hours a day.<sup>217</sup> The shutdown of the Gaza Power Plant "had a devastating effect on the water, sanitation and hygiene (WASH) and health sectors and has left Gaza on the brink of a public health crisis".<sup>218</sup>

### 6.1.2 Attacks on water and sewage infrastructure

On 14 September 2014, the Palestinian Water Authority (PWA) announced that 11 water wells were completely destroyed and 15 were partially destroyed during Israel's 2014 offensive. In addition, 17 kilometres of water supply networks were completely destroyed and another 29 were partially destroyed. PWA also stated that 5 water containers were completely destroyed and 11 were partially or severely damaged, while two desalination units were completely destroyed and 4 were partially damaged during the same offensive. Furthermore, more than 7 kilometres of sewage networks were completely destroyed and 10 kilometres were partially destroyed. Another 12 pumping stations were severely damaged and 4 wastewater treatment stations were partially destroyed.<sup>219</sup>

211 UN General Assembly, 'Report of the United Nations Fact Finding Commission on the Gaza Conflict', (25 September 2009) UN Doc A/HRC/12/48, paras 50-54 and paras 962-968, available at: <http://unispal.un.org/UNISPAL.NSF/0/25184E52D3E5CDBA8525763200532E73> (last accessed 20 January 2015); Li, D., and Lein, Y, 'Act of vengeance - Israel's Bombing of the Gaza Power Plant and its Effects' (B'tselem, September 2006), available at: [http://www.btselem.org/download/200609\\_act\\_of\\_vengeance\\_eng.pdf](http://www.btselem.org/download/200609_act_of_vengeance_eng.pdf) (last accessed 20 January 2015); OHCHR, 'Report of the United Nations High Commissioner for Human Rights on the Implementation of Human Rights Council resolutions' UN Doc S-9/1 and S-12/1, paras 30 at: [http://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session22/a.hrc.22.35.add.1\\_av.pdf](http://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session22/a.hrc.22.35.add.1_av.pdf) (last accessed at 20 January 2015).

212 Wash Emergency Water Sanitation Hygiene In The Opt (henceforth EWASH), 'Gaza Strip', available at: <http://www.ewash.org/en/?view=79Y0cy0nNs3D76djujAnkDDT> (last accessed at 20 January 2015).

213 EWASH, 'Gaza Strip', available at: <http://www.ewash.org/en/?view=79Y0cy0nNs3D76djujAnkDDT> (last accessed at 20 January 2015).

214 EWASH, 'Gaza Strip', available at: <http://www.ewash.org/en/?view=79Y0cy0nNs3D76djujAnkDDT> (last accessed at 20 January 2015).

215 OCHA oPt, 'The Humanitarian Impact of Gaza's Electricity and Fuel Shortages' (OCHA, March 2014), available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_electricity\\_factsheet\\_march\\_2014\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_electricity_factsheet_march_2014_english.pdf) (last accessed 20 January 2015).

216 OCHA oPt, 'The Humanitarian Impact of Gaza's Electricity and Fuel Shortages' (OCHA, March 2014), available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_electricity\\_factsheet\\_march\\_2014\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_electricity_factsheet_march_2014_english.pdf) (last accessed 20 January 2015).

217 OCHA oPt, 'Occupied Palestinian Territory: Gaza Emergency Situation Report (as of 4 September 2014, 08:00 hrs)' (OCHA, September 2014), p 2, [http://www.ochaopt.org/documents/ocha\\_opt\\_sitrep\\_04\\_09\\_2014.pdf](http://www.ochaopt.org/documents/ocha_opt_sitrep_04_09_2014.pdf) (last accessed 20 January 2015).

218 OCHA oPt, 'Gaza Crisis Appeal' (OCHA, 05 August 2014), available at: <http://www.unocha.org/cap/appeals/gaza-crisis-appeal-august-2014> (last accessed 20 January 2015); HRW, 'Gaza: Widespread Impact of Power Plant attack' (HRW, 10 August 2014), available at: <http://www.hrw.org/news/2014/08/10/gaza-widespread-impact-power-plant-attack> (last accessed 20 January 2015).

219 'Authority: \$34.4 million worth of damages to Gaza water sector', *Ma'an News Agency* (14 August 2014), available at: <http://www.maannnews.net/eng/ViewDetails.aspx?ID=720672> (last accessed 20 January 2015).

As a result, on 27 August 2014, OCHA stated that “[a]pproximately half a million people were directly affected by damage to water facilities, and one million were affected due to damage to the wastewater plant and wastewater pumping stations”<sup>220</sup> caused during “Operation Protective Edge.



Destroyed drinking water tank during offensive. Al-Mintar. (c) Al-Haq

The PWA has announced that the water distribution network in the Gaza Strip suffered 34.4 million dollars’ worth of damage during ‘Operation Protective Edge’.

## 6.2 LEGAL ANALYSIS

Article 43 of the Hague Regulations requires that the Occupying Power restores and ensures, as far as possible, public order and civil life in the occupied territory. As such, Israel must ensure the welfare of the occupied population. This obligation requires that Israel ensures that Palestinians enjoy water, sanitation and electricity services. In addition, Article 53 of the Fourth Geneva Convention prohibits the destruction of real or personal

<sup>220</sup> OCHA oPt, ‘Gaza Initial rapid Assessment’ (OCHA, 27 August 2014), page 4, available at: [http://www.ochaopt.org/documents/gaza\\_mira\\_report\\_9september.pdf](http://www.ochaopt.org/documents/gaza_mira_report_9september.pdf) (last accessed 20 January 2015).

property belonging individually or collectively to private persons or to the State or other public authorities except where such destruction is rendered absolutely necessary by military operations whilst taking into consideration the welfare of the occupied population.<sup>221</sup> In this regard, while military necessity may in some instances justify intervention, the striking of this careful balance “should never result in total disregard for the interests and needs of the population.”<sup>222</sup>

Israel’s destruction of and damage to water and sewage infrastructure cannot reasonably meet the criteria of military necessity and is not in line with the principles of distinction and proportionality. Israel is required to distinguish between civilian and military objects.<sup>223</sup> Accordingly, Israel must limit its attacks to military objectives, which make an effective contribution to military action and offer a definite military advantage by their nature, location, purpose or use.<sup>224</sup> Israel must also take into consideration any “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” and take all feasible measures to ensure that civilian objects are not subject to attack.<sup>225</sup>

The specific obligation to take constant care to spare the civilian population and civilian objects, and minimize incidental loss and damage is a rule of customary international law.<sup>226</sup> In particular, Article 54(2) of Additional Protocol I establishes a narrower proportionality test prohibiting attacks during hostilities that “destroy, remove or render useless objects indispensable to the survival of the civilian population”

<sup>221</sup> Arai, Y., *The Law of occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law* (Martinus Nijhoff Publishers, 2009), p 170.

<sup>222</sup> Cassese, A., *The Human Dimension of International Law: Selected Papers of Antonio Cassese* (Oxford University Press, 2008), p 251.

<sup>223</sup> Additional protocol I, article 48.

<sup>224</sup> Additional Protocol I, article 52(2); ICRC Customary IHL, Rule 8.

<sup>225</sup> Additional Protocol I, article 57 (2) (iii).

<sup>226</sup> ICRC customary IHL, rule 15.



such as water installations, supplies and irrigation works “whatever the motive”.<sup>227</sup> Indeed, as held by the UN Bureau of Committee on Exercise of Inalienable rights of Palestinian People, Israel’s destruction of ‘critical civilian infrastructure’ is in violation of Israel’s obligations as an Occupying Power under the Fourth Geneva Convention.<sup>228</sup>

The extensive destruction of property in this manner, not justified by military necessity and carried out unlawfully and wantonly, constitutes a grave breach of the Geneva Conventions and is subject to universal jurisdiction as a war crime. While Israel is not a party to Additional Protocol I of 1977 the rule is considered declaratory of customary international law and it is featured in Israel’s military manual.<sup>229</sup> Additionally, intentionally directing attacks against civilian objects, which do not constitute military objectives is a war crime under Article 8(2)(b)(ii) of the Rome Statute.<sup>230</sup>

Furthermore, the deliberate targeting of civilian infrastructure to purposefully inflict hardship on the civilian population may amount to collective penalty in violation of Article 33 of the Fourth Geneva Convention of 1949 and customary international law and also amounts to a war crime.<sup>231</sup>

Finally, Article 23 of the Fourth Geneva Convention and Article 70 of Additional Protocol I, requires the rapid and free passage, of essential foodstuffs, medical and hospital stores, which Israel has violated since the beginning of the closure on the Gaza Strip.

<sup>227</sup> Additional Protocol I, article 54 (2).

<sup>228</sup> ‘Statement by Bureau of Committee on Exercise of Inalienable Rights of Palestinian People on Situation in Gaza Strip’ (UN, 11 July 2014) UN Doc GA/PAL/1310, available at: <http://www.un.org/News/Press/docs/2014/gapal1310.doc.htm> (last accessed 20 January 2015).

<sup>229</sup> Israel, *Rules of Warfare on the Battlefield*, Military Advocate General Corp’s Command, IDF School of Military Law, (Second Edition, 2006) para 364.

<sup>230</sup> Rome Statute, article 8(2)(b)(ii).

<sup>231</sup> ICRC Customary IHL, rule 103.



## 7

# FORCIBLE TRANSFER AND EVACUATION OF PALESTINIANS

## 7.1 DISPLACEMENT OF PALESTINIANS

OCHA estimated that at its peak, 485,000 Palestinians were displaced during ‘Operation Protective Edge’ and that 270,000 of the displaced Palestinians were hosted in shelters belonging to the United Nations Relief and Works Agency for Palestinian Refugees in the Near East

(UNRWA).<sup>232</sup> During the first five days of Israel's ground invasion, 120,000 Palestinians fled their homes.<sup>233</sup> According to OCHA, approximately 108,000 Palestinians remain homeless following the end of hostilities due to severe damage or destruction of their homes.<sup>234</sup>

The overwhelming number of displaced Palestinians fled their homes due to the expansion of the Israeli-imposed buffer zone during the offensive, advance IOF-warnings, and the devastating destruction of civilian objects and infrastructure. In fact, according to the Palestinian human rights coalition, 43,503 Palestinian families were affected by destruction of residential houses.

### 7.1.1 Expansion of Buffer Zone

Prior to Israel's ground invasion on 17 July 2014, Israel announced the expansion of the buffer zone from 300 metres to 3 kilometres.<sup>235</sup> In total, the Israeli extended buffer zone covered an area of 162 square kilometers, further restricting civilian access to 44 per cent of the Gaza Strip where approximately 250,000 people reside.<sup>236</sup> Israel maintained the expanded buffer zone for the duration of its ground invasion, which came to an end on 5 August 2014.<sup>237</sup>

As part of the expansion of the buffer zone, Israel forced the evacuation

232 OCHA oPt, 'Gaza Emergency Situation Report' (OCHA, 3 August 2014) available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_sitrep\\_04\\_08\\_2014.pdf](http://www.ochaopt.org/documents/ocha_opt_sitrep_04_08_2014.pdf) (last accessed 20 January 2015).

233 OCHA, 'Gaza Emergency Situation Report' (OCHA, 23 July), page 1 available at : [http://www.ochaopt.org/documents/ocha\\_opt\\_sitrep\\_23\\_07\\_2014.pdf](http://www.ochaopt.org/documents/ocha_opt_sitrep_23_07_2014.pdf) (last accessed 20 January 2015).

234 OCHA, 'Occupied Palestinian Territory: Gaza Emergency Situation Report' (as of 28 August 2014, 08:00 hrs) (OCHA, Augsut 2014), available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_sitrep\\_28\\_08\\_2014.pdf](http://www.ochaopt.org/documents/ocha_opt_sitrep_28_08_2014.pdf) (last accessed 20 January 2015).

235 OCHA, 'Occupied Palestinian Territory: Gaza Emergency Situation Report (as of 18 July 2014, 1500 hrs)' (OCHA July 2014), p 2 [http://www.ochaopt.org/documents/ocha\\_opt\\_sitrep\\_18\\_07\\_2014.pdf](http://www.ochaopt.org/documents/ocha_opt_sitrep_18_07_2014.pdf) (last accessed 20 January 2015).

236 OCHA, 'Occupied Palestinian Territory: Gaza Emergency Situation Report (as of 30 July 2014, 1500 hrs)' (OCHA, 30 July 2014), available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_sitrep\\_31\\_07\\_2014.pdf](http://www.ochaopt.org/documents/ocha_opt_sitrep_31_07_2014.pdf) (last accessed 20 January 2015).

237 OCHA oPt, 'Occupied Palestinian Territory: Gaza Emergency Situation Report (as of 5 August 2014, 0800 hrs)' (OCHA, August 2014), available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_sitrep\\_05\\_08\\_2014.pdf](http://www.ochaopt.org/documents/ocha_opt_sitrep_05_08_2014.pdf) (last accessed 20 January 2015).

of large portions of the Palestinian population residing in the occupied Gaza Strip. Most notably, Palestinians in the northern Gaza Strip - in Shuja'iyya, Zaitoun, Jabaliya, Beit Hanoun, and Beit Lahiya - received notices to evacuate to areas east of the then newly expanded three-kilometer buffer zone.<sup>238</sup> To the south of the Gaza Strip, residents in East Khan Younis were advised to evacuate to the city center, and to Rafah in the South.<sup>239</sup> The districts of Shuja'iyya, Zeitoun,<sup>240</sup>Beit Hanoun,<sup>241</sup>Jabaliya,<sup>242</sup>and Beit Lahia<sup>243</sup> have a combined population of 298,137 residents.

Given the large number of civilians, United Nations Secretary-General warned that the evacuation of northern Gaza would have a "devastating humanitarian impact on the beleaguered citizens of those areas".<sup>244</sup>

238 OCHA oPt, 'Occupied Palestinian Territory: Gaza Emergency Situation Report (as of 28 July 2014, 1500 hrs)' (PCHA, July 2014), available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_sitrep\\_29\\_07\\_2014.pdf](http://www.ochaopt.org/documents/ocha_opt_sitrep_29_07_2014.pdf) (last accessed 20 January 2015); 'Israel Army tells all North Gaza Residents to flee their homes', *Ma'an News Agency* (29 July 2014) available at: <http://www.maannews.net/eng/ViewDetails.aspx?ID=716715> (last accessed 20 January 2015); 'IAF delays strikes in Northern Gaza to allow residents time for evacuation', *The Jerusalem Post* (16 July 2014), available at: <http://www.jpost.com/Operation-Protective-Edge/IDF-alerts-northern-Gaza-residents-to-evacuate-homes-362956> (last accessed 20 January 2015).

239 , Zitun, Y., 'IDF calls South Gaza Strip residents to evacuate to central Khan Younis', *ynet News* (29 July 2014), available at: <http://www.ynetnews.com/articles/0,7340,L-4551719,00.html> (last accessed 20 January 2015); OCHA oPt, 'Gaza Crisis Humanitarian Snapshot' (OCHA, 10 July 2014) available at: [http://www.ochaopt.org/documents/humanitarian\\_Snapshot\\_11July2014\\_oPt\\_V1.pdf](http://www.ochaopt.org/documents/humanitarian_Snapshot_11July2014_oPt_V1.pdf) (last accessed 20 January 2015).

240 The districts of Shuja'iyya, Zaitoun, have a combined population of 100,000 residents; Reuters, 'Israel Sends out Evacuation Warnings Ahead of Potential Incursion after Truce Collapses' *Newsweek* ( 16 July 2014) available at: <http://www.newsweek.com/israel-send-out-evacuation-warnings-ahead-potential-incursion-after-truce-259134> (last accessed 20 January 2015).

241 BeitHanoun has a population of 32,597, OCHA oPt, 'Beit Hanoun: Northeast Gaza Strip Satellite Image Analysis of Vegetation Loss 2001- 2004' (OCHA, 23 August 2005) available at: [http://www.ochaopt.org/documents/OCHAoPtBeitHanoun0805\\_HiRes.pdf](http://www.ochaopt.org/documents/OCHAoPtBeitHanoun0805_HiRes.pdf) (last accessed 20 January 2015).

242 Jabaliya has a population of 106,0000. Badil, 'This is Disengagement? - Israeli Military Operations in Jabalyia Refugee Camp and North GazaStrip' (Badil, 4 October 2004), available at: <http://www.badil.org/en/press-releases/57-press-releases-2004/1567-press-364-04> (last accessed 20 January 2015).

243 Beit Lahia has a population of 59,540. Palestinian Central Bureau of Statistics 2006, available at: [http://www.zobbel.de/stamp/pna\\_18.htm](http://www.zobbel.de/stamp/pna_18.htm) (last accessed 20 January 2015).

244 UNSG Ban Ki-Moon, 'Statements' (UN, 28 July 2014), available at: <http://www.un.org/sg/statements/index.asp?nid=7892> (last accessed 20 January 2015).

## 7.1.2 Advance Warnings

One of the main triggers for the displacement of hundreds of thousands of Palestinians was IOF-issued warnings informing Palestinian residents of entire neighbourhoods or individual homes of future Israeli assaults.<sup>245</sup>

During the offensive, Israel issued warnings in the form of text messages, phone calls, and so called 'knock-on-the-roof missiles' or 'fake' warnings. 'Knock-on-the roof' warning is a procedure in which Israel fires a small missile at the roof of a building to warn its occupants that a fully armed larger missile attack is imminent. 'Fake' warnings relate to instances where Israel informs families that their homes will be bombarded without actually carrying out the attack. For example, residents of Shuja'iyya, Zeitoun, Jabaliya, Beit Hanoun, and Beit Lahia neighbourhoods were issued with evacuation warnings via text message and telephone by the Israel forces.<sup>246</sup>

During the offensive, knock-on-the-roof missiles resulted in the death of numerous Palestinians and the intentional damage and destruction of civilian homes.<sup>247</sup> For example, on 9 July 2014, Israeli air forces struck the house of Sa'id Ghafour in Khan Younes with a non-explosive missile meant to warn its residents of an upcoming attack. Such an attack followed within five minutes, leaving almost no time for the inhabitants of the house and their neighbors to escape. Sa'id Ghafour's relatives, including Amal Yousef 'Abd-al-Ghafour who was six months pregnant, as well as her 1-year-old daughter Ranin Jawdat Abd-al-Ghafour were

<sup>245</sup> UNSG Ban Ki-Moon, 'Statements' (UN, 28 July 2014), available at: <http://www.un.org/sg/statements/index.asp?nid=7892> (last accessed 20 January 2015).

<sup>246</sup> 'Israel Army tells all North Gaza Residents to Flee their Homes', *Ma'an News Agency* (29 July 2014), available at: <http://www.maannews.net/eng/ViewDetails.aspx?ID=716715> (last accessed 20 January 2015).

<sup>247</sup> Al Mezan, 'Gaza Diaries 4: When the Protection of Home is Lost: IOF Attacks Kill Women in Their Homes', (Al Mezan, 14 July 2014), available at: [http://www.mezan.org/en/details.php?id=19228&ddname=&id\\_dept=22&p=center](http://www.mezan.org/en/details.php?id=19228&ddname=&id_dept=22&p=center) (last access 20 January 2015); PHROC, 'Open Letter to UN Secretary-General on Hostilities in the Gaza Strip', (July 2014) available at: <http://unispal.un.org/UNISPAL.NSF/0/68DC087B23E8E68485257D1C005DD0F4> (last access 20 January 2015).

killed in the attack.<sup>248</sup> They lived across the street from Sa'id. Two homes next to, and one house across from Sa'id's house were severely damaged.<sup>249</sup>

## 7.1.3 Destruction of Civilian Objects

Israel targeted civilian objects throughout its 2014 military offensive on the Gaza Strip. In particular, Israel attacked UN facilities, such as UNRWA shelters hosting displaced Palestinians, were also attacked by Israel. On 3 August, Israel attacked a UNRWA Boys' Prep School in Rafah, killing nine persons and injuring an additional 27 persons.<sup>250</sup> On 24 July, Israel shelled a UNRWA shelter in Beit Hanoun, killing at least 13 people and injuring an additional 200. Meanwhile, the al-Maghazi refugee camp, a United Nations designated shelter, was shelled on two occasions.<sup>251</sup> UNRWA had formally conveyed the coordinates of the shelter's location to Israel on twelve separate occasions.<sup>252</sup>

The wide scale destruction of and damage to civilian objects is illustrative of Israel's non-compliance with the principle of distinction and its policy of collective punishment. The indiscriminate destruction of and damage to civilian objects significantly contributed to the displacement of hundreds of thousands of Palestinian civilians, many

<sup>248</sup> Al-Haq, 'Field Updates from the Gaza Strip', (Al-Haq, 10 July 2014), Wednesday 9 July Khan Younis Governorate, available at: <http://www.alhaq.org/documentation/weekly-focuses/821-al-haq-field-updates-from-the-gaza-strip> (last accessed 10 January 2015).

<sup>249</sup> HRW, 'Israel/Palestine, Unlawful Israeli Airstrikes Kill Civilians' (HRW, 16 July 2014), available at: <http://www.hrw.org/news/2014/07/15/israelpalestine-unlawful-israeli-airstrikes-kill-civilians> (last accessed 20 January 2015).

<sup>250</sup> UNRWA, 'UNRWA Condemns Israeli Strike next to UNRWA School killing Civilians' (UNRWA, 03 August 2014) available at: <http://www.unrwa.org/newsroom/official-statements/unrwa-condemns-israeli-strike-next-unrwa-school-killing-civilians> (last accessed 20 January 2015).

<sup>251</sup> Al-Haq, 'UNRWA Emergency Shelter Bombed: 13 Civilians Killed and 200 Injured' (Al-Haq, 26 July 2014), available at: <http://www.alhaq.org/advocacy/topics/gaza/834-unrwa-emergency-shelter-bombed-13-civilians-killed-and-200-injured> (last accessed 20 January 2015); Amnesty International, 'Israel/Gaza Conflict: Questions and Answers' (Amnesty International, 25 July 2014), available at: <http://www.amnesty.org/en/news/israelgaza-conflict-questions-and-answers-2014-07-25> (last accessed 20 January 2015).

<sup>252</sup> UNRWA, 'Statement by the UNRWA Commissioner-General Pierre Krähenbühl' (UNRWA, 24 July 2014), available at: <http://www.unrwa.org/newsroom/official-statements/statement-unrwa-commissioner-general-pierre-krähenbühl> (last accessed 20 January 2015).



of whom sought shelter in UNRWA designated shelters and schools. On 29 September 2014, UNRWA documented that a remaining 57,006 displaced persons were being sheltered in 19 schools that cannot now be used for schooling.<sup>253</sup> In the aftermath of the hostilities, schools in Gaza opened three weeks late, with UNRWA conducting classes in shifts to accommodate numbers.<sup>254</sup>

## 7.2 LEGAL ANALYSIS

### 7.2.1 Evacuation of Protected Persons

During 'Operation Protective Edge', the buffer zone was widened to three kilometers around the entirety of the Gaza Strip and Palestinians residing within this area were advised to leave their homes.

Article 49(1) of the Fourth Geneva Convention prohibits the forcible transfer and deportation from occupied territory. However, Israel "may undertake total or partial evacuation of a given area" during conflict.<sup>255</sup> Such evacuation must however be of a temporary nature and is only permitted "if the security of the population or imperative military reasons so demand".<sup>256</sup> For example, the military commander may evacuate the population if there is danger due to "military operations",<sup>257</sup> where "intense bombing" is necessary or for humanitarian reasons, such as the outbreak of epidemics or natural disasters.<sup>258</sup> Nevertheless,

253 OCHA oPt, 'Protection of Civilians, Reporting Period 23-29 September 2014' (OCHA, 03 October 2014), available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_protection\\_of\\_civilians\\_weekly\\_report\\_2014\\_10\\_03\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2014_10_03_english.pdf) (last accessed 20 January 2015).

254 Gisha, 'The School Year Began This Morning in Gaza Three Weeks Late' (Geisha, 14 September 2014), available at: <http://gisha.org/updates/3477> (last accessed 20 January 2015).

255 Fourth Geneva Convention, article 49; Additional Protocol II, article 17.

256 Fourth Geneva Convention, article 49; Additional Protocol II, article 17.

257 Hague Regulations, article 23(g).

258 *Prosecutor v Blagojevic*, Judgment, IT-02-60-T, 17 T. International Criminal Tribunal for the former Yugoslavia (henceforth ICTY) 17 January 2005, para 598; For example, the hostile army may legitimately displace the civilian population, for humanitarian reasons such as the outbreak of epidemics or natural disasters, or for the security of the civilian population. *Prosecutor v Blagojevic*, (Judgment, Trial Chamber) ICTY-02-60-T (17 January 2005) para 600; *Prosecutor v Milutinovic*, (Judgment, Trial Chamber) ICTY-05-87-T (26 February 2009), para 166.

the evacuation of protected persons is always considered an extreme measure.<sup>259</sup> In such cases, there must be an overriding, imperative reason for the evacuation.<sup>260</sup> Furthermore, Article 49 of the Fourth Geneva Convention requires that "persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased."<sup>261</sup>

Israel claimed that the incursion of ground troops into Gaza was aimed at destroying tunnels in the Gaza Strip, and necessitated the evacuation of those areas.<sup>262</sup> Based on the narrow criteria set forth above, it is unlikely that the discovery and destruction of tunnels would reach the threshold of an 'overriding imperative reason' allowing Israel to evacuate hundreds of thousands of Palestinian civilians. While the IOF orchestrated a mass evacuation through warnings and military bombardment causing massive destruction with the stated objective of locating tunnels, as of 20 July 2014, only ten tunnel openings were reportedly found.<sup>263</sup> Furthermore, the existence of the tunnels was already known to the IOF and Netanyahu prior to the military operation and was not considered a serious threat.<sup>264</sup> The transfer of Palestinians was therefore grossly disproportionate to any

259 *Prosecutor v Blagojevic*, Judgment, IT-02-60-T, 17 T. International Criminal Tribunal for the former Yugoslavia (henceforth ICTY) 17 January 2005, para 598; For example, the hostile army may legitimately displace the civilian population, for humanitarian reasons such as the outbreak of epidemics or natural disasters, or for the security of the civilian population. *Prosecutor v Blagojevic*, (Judgment, Trial Chamber) ICTY-02-60-T (17 January 2005) para 600; *Prosecutor v Milutinovic*, (Judgment, Trial Chamber) ICTY-05-87-T (26 February 2009), para 166.

260 *Prosecutor v Blagojevic*, (Judgment, Trial Chamber) ICTY-02-60-T (17 January 2005) para 598.

261 Fourth Geneva Convention, article 49.

262 Zion et al., 'IDF Tackles Tunnels on First Full Day of Ground Op; Livni: "All Options Open" to Fight Hamas', *The Times of Israel* 18 July 2014, available at: <http://www.timesofisrael.com/as-conflict-with-hamas-goes-into-day-11-israel-launches-gaza-ground-offensive/> (last accessed 20 January 2015); Al-Mughrabi et al., 'Netanyahu vows to complete Gaza tunnels destruction', *Reuters* 31 July 2014, available at: <http://in.reuters.com/article/2014/07/31/mideast-gaza-idINKBN0G008520140731> (last accessed 20 January 2015).

263 Israel Defense Forces, "'Shuj'iya: Hamas' Terror Fortress in Gaza' (IDF, 20 July 2014), available at: <http://www.idfblog.com/blog/2014/07/20/shujaiya-hamas-terror-fortress-gaza/> (last accessed 20 January 2015).

264 Sharon, I. et al., 'Government Resolves to Intensify Gaza Offensive, after 3 Soldiers Killed', *The Times of Israel* (30 July 2014); Harel, A., 'The Israeli Army and Intelligence's Costly Battle over who gets Credit' *Haaretz* (13 November 2014), available at: <http://www.haaretz.com/news/diplomacy-defense/premium-1.626322> (last accessed 20 January 2015).

direct military advantage gained,<sup>265</sup> and therefore cannot be justified as an evacuation undertaken for the protection of the Palestinian population but as a form of collective punishment.

In any case, Israel must ensure, as far as practicable, that the evacuation of Palestinians does not result in the separation of families. Moreover, Israel is obligated to ensure the accommodation, health, hygiene, safety and nutrition of the civilian population in case of evacuation.<sup>266</sup> These obligations follow from Article 27 of the Fourth Geneva Convention, including the obligation on Israel to respect family rights. In light of shortages of safe water and electricity, the lack of a functioning sewage system, coupled with Israeli attacks on UN shelters for displaced persons and the closing of the borders, there is compelling evidence that Israel failed to safeguard minimum humanitarian rights.

The evacuation of Palestinians for the purpose of attacking civilian objects must further be viewed against the prohibition of the destruction of real or personal property belonging individually or collectively to private persons, the State, or other public authorities. Such destruction is only permissible when rendered absolutely necessary by military operations whilst taking into consideration the welfare of the occupied population.<sup>267</sup> In this regard, while military necessity may in some instances justify intervention, the striking of this careful balance “should never result in total disregard for the interests and needs of the population.”<sup>268</sup> The targeting of schools, mosques, hospitals, cemeteries, industrial facilities, offices of welfare organisations, banks, and other civilian infrastructure in the absence of military necessity may constitute

<sup>265</sup> ICRC Customary IHL, rule 14, available at: [http://www.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter4\\_rule14](http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter4_rule14) (last accessed 20 January 15).

<sup>266</sup> Fourth Geneva Convention, articles, 27 and 49(3); Pictet, J., *Commentary: I Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (ICRC, Geneva 1952): 25, article 49(3); J. Pictet et al., *Commentary on the Additional Protocols* of 8 June 1977 to the Geneva Conventions of 12 August 1949, 1987, pp 694-1473; Additional Protocol I, article 58.

<sup>267</sup> Arai, Y., *The Law of occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law* (Martinus Nijhoff Publishers, 2009), p 170.

<sup>268</sup> Cassese, A., *The Human Dimension of International Law: Selected Papers of Antonio Cassese* (Oxford University Press, 2008), p 251; Prosecutor vKrstic. Judgment, IT-98-3R-T, ICTY, 2 August 2001, para 526.

war crimes and grave breaches of the Fourth Geneva Convention.<sup>269</sup>

## 7.2.2 Forcible Transfer

Forcible transfer may be distinguished from deportation, in that deportation requires the displacement of protected persons across a border,<sup>270</sup> while forcible transfer relates to displacement within a State.<sup>271</sup> Additionally, forcible transfer may constitute a grave breach of Geneva Conventions,<sup>272</sup> and could be considered a war crime or a crime against humanity.<sup>273</sup> *The Final Report of the Special Rapporteur on the Freedom of Movement, Human Rights and Population Transfer to the Sub-Commission on Prevention of Discrimination and Protection of Minorities* further indicated that the right not to be forcibly displaced

<sup>269</sup> Al-Haq, ‘UNRWA Emergency Shelter Bombed: 13 Civilians Killed and 200 Injured’, (Al-Haq, 26 July 2014), available at: <http://www.alhaq.org/advocacy/topics/gaza/834-unrwa-emergency-shelter-bombed-13-civilians-killed-and-200-injured> (last accessed 20 January 15).

<sup>270</sup> The crime of deportation was held by the Trial Chamber of the ICTY in the *Stakic* judgment to include transfer over *de facto* boundaries, which are not internationally recognized, but this was later reversed on Appeal. *Prosecutor v Stackic* (Judgment, Appeals Chamber) ICTY-97-24-A (22 March 2006), paras 300-303, 321; However the point is not quite settled. For example, in *Cyprus v Turkey*, the European Commission of Human Rights described the forcible displacement of Greek Cypriots from Turkish Cypriot controlled territory, “across the demarcation line” (effectively a front line), as deportation. *European Human Rights Reports*, Vol. 4 (1982), 428 at 520.

<sup>271</sup> *Prosecutor v Krstic* (Judgment, Trial Chamber), ICTY-98-3R-T (2 August 2001), para 521. Deportation was recognized as a crime against humanity in the Nuremberg Charter, the Charter of the International Military Tribunal for the Far East, the Allied Control Council Law No. 10, and the Rome Statute.

<sup>272</sup> Furthermore, Article 85(4)(a) of Additional Protocol I prohibits and considers a grave breach the ‘deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Art. 49 of the Geneva Convention’.

<sup>273</sup> *Prosecutor v Stackic* (Judgment, Appeals Chamber) ICTY-97-24-A (22 March 2006), para 317; *Prosecutor v. Kupreskić* (Judgment, Trial Chamber) ICTY-95-16-T (14 January 2000) para 621. For the war crime of unlawful deportation and transfer, there must be a nexus with an armed conflict, while crimes against humanity must take place within the context of a widespread and systematic attack against the civilian population. Article 8(2)(a) (vii)-1, Elements of Crimes <http://www.icc-cpi.int/nr/rdonlyres/336923d8-a6ad-40ec-ad7b-45bf9de73d56/0/elementsofcrimeseng.pdf> (last accessed 20 January 2015); Wemmers, J., *Reparation for Victims of Crimes Against Humanity: The Healing Role of Reparation* (Routledge, 2014), at 22; *Prosecutor v. Blaškić*, (Judgment, Appeals Chamber) ICTY-95-14-A, (29 July 2004), paras 103-116 and 135-139; Deportation and forcible transfer are acts comprising a crime against humanity under Article 7(2)(d) of the Rome Statute and also have the status of customary international law.

is a fundamental human right.<sup>274</sup> During armed conflict, international human rights law is applicable concurrently with international humanitarian law.<sup>275</sup> However the ICJ has indicated that “some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law”.<sup>276</sup>

Forcible transfer exceeds the parameters of permitted evacuation by permanently removing protected persons to other locations against their will. This is characterized by a measure of ‘involuntariness’ described in the *Krnojelac* case of the International Tribunal for the Former Yugoslavia (ICTY) as the “absence of a genuine choice that makes the displacement unlawful”.<sup>277</sup> The main factors in establishing involuntariness are physical force, the threat of force, or coercion.<sup>278</sup> Pre-Trial Chamber II of the International Criminal Court (ICC) has considered the acts of burning and destroying civilian houses and businesses, and killing as acts triggering the forcible displacement of civilians.<sup>279</sup> Likewise, orders to attack and destroy property, to expel civilians from one municipality to another, or preventing a person from exercising their right to stay in their home or community, may amount to forcible transfer.<sup>280</sup> This may take the form of shelling and burning of

<sup>274</sup> Final Report of the Special Rapporteur on the Freedom of Movement, Human Rights and Population Transfer to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub/1997/23, section 12, available at: <http://unispal.un.org/UNISPAL.NSF/0/480844B6EC1F52A905256500004CCF31> (last accessed 20 January 2015).

<sup>275</sup> *Legality of the Threat or Use of Nuclear Weapons*, para. 25, and *Legal Consequences of the Construction of a Wall*, para. 106; General comment No. 31 (2004), para. 11.

<sup>276</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para 106.

<sup>277</sup> *Prosecutor v Milorad Krnojelac*, Appeals Judgment, IT-97-25-A, ICTY, 17 September 2003, para 229.

<sup>278</sup> *Prosecutor v Milorad Krnojelac*, Trial Judgment, IT-97-25-T ICTY, 15 March 2002, para 475; *Prosecutor v Ruto et al.*, Decision on the Confirmation of Charges pursuant to Article 61(7)(a) and (b) of the Rome Statute, Pre-Trial Chamber II) ICC-01/09-01/11, 23 January 2012, (henceforth *Prosecutor v Ruto*) para 245.

<sup>279</sup> ICC, *Prosecutor v Ruto*, paras 248-267.

<sup>280</sup> *Prosecutor v Naletilic*, (Judgment, Trial Chamber) ICTY-98-34-T (31 March 2003), para 672; *Prosecutor v Naletilic*, (Amended Indictment) ICTY-98-34-PT, para 25; *Prosecutor v Simic* (Judgment, Trial Chamber II) ICTY-95-9-T (17 October 2003) para 130.

civilian property.<sup>281</sup>

The disproportionate targeting of civilian homes in the Gaza Strip, combined with the targeting of civilians attempting to return to their homes, indicates that Israel forcibly transferred Palestinians.<sup>282</sup> In particular, the destruction of entire neighbourhoods in the Gaza Strip prevents the repatriation of persons to their homes thus lending the displacement a permanency indicative of forcible transfer. Moreover, the extensive destruction of civilian property, not justified by military necessity and carried out unlawfully and wantonly, constitutes a grave breach of the Fourth Geneva Convention.

### 7.2.3 Precautionary measures

With the view of sparing the civilian population, civilian lives and objects, international humanitarian law provides that parties to a conflict must take precautions in attacks. Article 57 of Additional Protocol I, reflective of customary international law,<sup>283</sup> provides a list of precautionary measures that those who plan or decide upon an attack must undertake. In particular, this rule of international customary law provides that Israel must verify that the objectives of attack are not civilian. Israel must also “take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss or civilian life, injury to civilians and damage to civilian objects [and] refrain from deciding to launch any attack which 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”.<sup>284</sup>

Rules of customary international law, Article 26 of the Hague Regulations,

<sup>281</sup> *Prosecutor v Simic* (Judgment, Trial Chamber II) ICTY-95-9-T (17 October 2003) para 126.

<sup>282</sup> OCHA oPt, ‘Gaza Emergency Situation Report’ (OCHA, 18 July 2014), available at: [http://www.ochaopt.org/documents/ocha\\_opt\\_sitrep\\_19\\_07\\_2014.pdf](http://www.ochaopt.org/documents/ocha_opt_sitrep_19_07_2014.pdf) (last accessed 20 January 2015).

<sup>283</sup> ICRC Customary IHL, Rule 15.

<sup>284</sup> Additional Protocol I, article 57(2)(a)(ii).



and Article 57(2)(c) of Additional Protocol I further oblige Israel to issue effective advance warning of attacks which may affect the civilian population, unless circumstances do not permit.<sup>285</sup>

Israel's 'knock-on-the roof' procedure must be considered unlawful in and of itself. The practice of dropping bombs on civilian homes as a warning for larger bombs yet to come, amounts to an attack on civilian persons and property as distinct from an actual precautionary warning. The procedure is in stark contradiction with Israel's obligation not to directly target civilians and civilian objects as well as its obligation to take precautionary measures. Furthermore, there is no obligation on civilians to leave their homes even where a warning has been issued and Israel is obligated to apply the requisite proportionality assessments in relation to anticipated military advantage as warranted under Article 51(5)(b) of Additional Protocol 1. Furthermore, Article 57(2)(b) requires that an attack be cancelled or suspended where the "attack 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".<sup>286</sup>

In this manner, Israel is intentionally causing unnecessary damage to civilian objects as well as posing an unjustified threat to civilian lives by firing missiles at the homes of Palestinians. Furthermore, Israel willfully killed Palestinians when 'knock-on-the-roof' missiles resulted in the loss of Palestinian civilian life. It must be underscored that precautionary measures do not absolve Israel from fully abiding by its obligation to comply with the principles of distinction and proportionality.<sup>287</sup>

<sup>285</sup> ICRC Customary IHL, rule 20.

<sup>286</sup> Additional Protocol I, article 57(2)(b).

<sup>287</sup> Additional Protocol I, article 57(2)(b).



## CONCLUDING REMARKS

International customary law provides that Israel must provide reparation for its violations of international law.<sup>288</sup> Reparation may take the form of restitution, compensation or satisfaction.<sup>289</sup> Moreover, international law has put in place mechanisms that will hold to account perpetrators of grave breaches of the Geneva Conventions and international crimes.

<sup>288</sup> ICRC Customary IHL, Rule 150.

<sup>289</sup> Draft Articles on State Responsibilities, Article 34.

Article 146 of the Fourth Geneva Convention establishes that “[e]ach High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.” Furthermore, following Palestine’s accession to the Rome Statute of the ICC and its submission of an Article 12(3) Declaration, the ICC is capable of prosecuting and punishing Israelis that committed war crimes, crimes against humanity and the crime of genocide during Israel’s 2014 offensive.

Simultaneously, on 23 July 2014, the United Nations Human Rights Council established an international Commission of Inquiry mandated to investigate:

all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military operations conducted since 13 June 2014, whether before, during or after, to establish the facts and circumstances of such violations and of the crimes perpetrated and to identify those responsible, to make recommendations, in particular on accountability measures, all with a view to avoiding and ending impunity and ensuring that those responsible are held accountable, and on ways and means to protect civilians against any further assaults.<sup>290</sup>

This Commission of Inquiry follows in the footsteps of previous bodies mandated by the United Nations (UN) to address various aspects of Israel’s occupation of the Palestinian territory. Such bodies include the 2013 International Fact-finding mission on Israeli settlements in the OPT, the 2009 UN Fact-finding mission on the Gaza Conflict, and the

<sup>290</sup> Human Rights Council, A/HRC/RES/S-21/1, 23 July 2014, at 13.

2006 High-level Fact-finding mission to Beit Hanoun.<sup>291</sup>

Unlike its predecessors, the current Commission of Inquiry has an unprecedented accountability-oriented mandate. Whereas the report of the 2009 Fact-finding Mission on the Gaza Conflict repeatedly noted that the Commissioners did not attempt to identify individuals suspected of having committed offences,<sup>292</sup> the current Commission of Inquiry is explicitly mandated “to identify those responsible [...] all with a view to avoiding and ending impunity and ensuring that those responsible are held accountable”.

<sup>291</sup> See, in particular, Report of the high-level fact-finding mission to Beit Hanoun established under the Human Rights Council’s resolution S-3/1, A/HRC/9/26, 1 September 2008; Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48, 25 September 2009; Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, 31 January 2013.

<sup>292</sup> Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48, 23 September 2009, at 25.





## ABBREVIATIONS

<b>EWASH</b>	The Emergency Water, Sanitation and Hygiene Group
<b>ICC</b>	International Criminal Court
<b>ICRC</b>	International Committee for the Red Cross
<b>ICTY</b>	International Criminal Tribunal for the former Yugoslavia
<b>IDF</b>	Israeli Defense Forces
<b>IHL</b>	International Humanitarian Law
<b>IOF</b>	Israeli Occupation Forces
<b>MADA</b>	Palestinian Center for Development and Media Freedoms

## ABBREVIATIONS

<b>OCHA</b>	United Nations Office for the Coordination of Humanitarian Affairs
<b>OHCHR</b>	Office of the High Commissioner for Human Rights
<b>OPT</b>	Occupied Palestinian Territory
<b>UN</b>	United Nations
<b>UNRWA</b>	United Nations Relief and Works Agency for Palestinian Refugees in the Near East
<b>PA</b>	Palestinian Authority
<b>PWA</b>	Palestinian Water Authority



## GLOSSARY

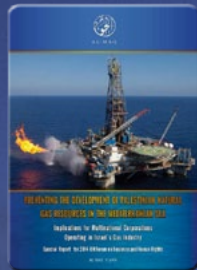
<b>Bertini Commitment</b>	Commitments made by the Government of Israeli to the Ms. Catherine Bertini, Personal Humanitarian Envoy to the Middle East for the Secretary General. These commitments were reconfirmed to Ms. Bertini in August 2002
<b>Buffer Zone</b>	An imprecise military no-go area that runs inside and along the Gaza Strip's borders, both at land and at sea.
<b>EWASH</b>	A coalition of 28 agencies, including national and international NGOs, UN agencies, academic and research institutions, and Palestinian institutions, working in the water and sanitation sector in the OPT.
<b>Interim Agreement</b>	The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip that was agreed upon on 28 September 1995.

## GLOSSARY

<b>Operation Protective Edge</b>	The Israeli military offensive against the Gaza Strip lasting from 8 July until 26 August 2014.
<b>Operation Brother's Keeper</b>	The Israeli military operation in the West Bank in response to the abduction of three Israeli settlers on 12 June 2014.
<b>Operation Cast Lead</b>	The Israeli military offensive against the Gaza Strip lasting from 27 December 2008 until 18 January 2009.
<b>Palestinian Human Rights Coalition</b>	A coalition of four Palestinian human rights organisations – Al-Haq, Aldameer, Palestinian Center for Human Rights and Al Mezan - that collectively monitored and documented violations of international law committed during 'Operation Protective Edge'



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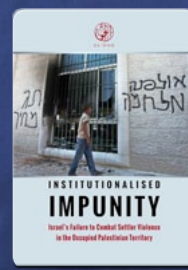
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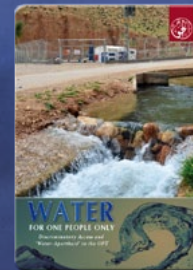
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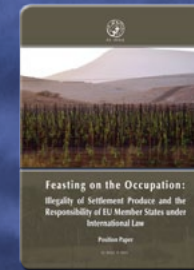
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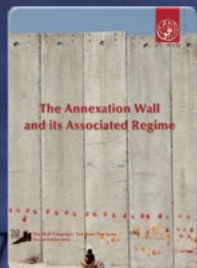
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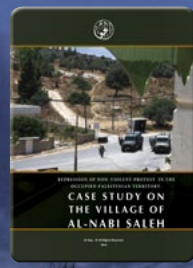
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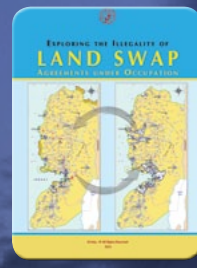
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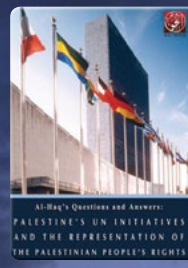
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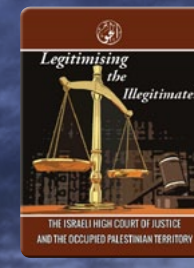
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## NOTES



## NOTES







## NOTES



## NOTES







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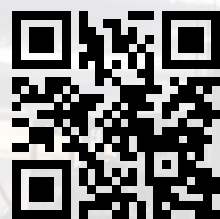


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## AL - HAQ

### About AL-HAQ

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah, West Bank. Established in 1979 to protect and promote human rights and the rule of law in the Occupied Palestinian Territory (OPT), the organisation has special consultative status with the UN Economic and Social Council.

Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, regardless of the identity of the perpetrator, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable. The organisation conducts research; prepares reports, studies and interventions on the breaches of international human rights and humanitarian law in the OPT; and undertakes advocacy before local, regional and international bodies. Al-Haq also cooperates with Palestinian civil society organisations and governmental institutions in order to ensure that international human rights standards are reflected in Palestinian law and policies. The organisation has a specialised international law library for the use of its staff and the local community.

Al-Haq is also committed to facilitating the transfer and exchange of knowledge and experience in IHL and human rights on the local, regional and international levels through its Al-Haq Center for Applied International Law. The Center conducts training courses, workshops, seminars and conferences on international humanitarian law and human rights for students, lawyers, journalists and NGO staff. The Center also hosts regional and international researchers to conduct field research and analysis of aspects of human rights and IHL as they apply in the OPT. The Center focuses on building sustainable, professional relationships with local, regional and international institutions associated with international humanitarian law and human rights law in order to exchange experiences and develop mutual capacity.

Al-Haq is the West Bank affiliate of the International Commission of Jurists - Geneva, and is a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), and the Palestinian NGO Network (PNGO).

