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Annex - Palestinian Fatality Figures in the 2014 Gaza Conflict

A. Introduction

1. In the wake of the 2014 Gaza Conflict (also known as “Operation Protective Edge”), various claims have been made regarding Israel’s adherence to the principle of proportionality under international law. Some critics have claimed that the Israel Defense Forces (“IDF”) employed disproportionate force in the Gaza Strip, citing either an alleged disparity between the number of Palestinian and Israeli fatalities or an alleged disparity between the number of Palestinian-civilian and militant fatalities.

2. Such comparisons, however, have no bearing on the legality of IDF operations. Under the Law of Armed Conflict, proportionality must be assessed by weighing the *anticipated military advantage* of a given attack against the *expected collateral damage* from that attack. This inquiry is forward-looking and considers the information reasonably available to the military commander at the time of the relevant decision; it is not applied in hindsight based on the actual results of the attack. Nor does it involve a comparison between the impact of the hostilities on the different sides of a conflict, or a comparison between the total number of civilian versus militant fatalities.

3. Civilian fatalities are a tragic, though often unavoidable, part of warfare. In the 2014 Gaza Conflict, Israel was forced to take action against militants who embedded themselves and other military objectives within urban areas, and who deliberately exploited this urban terrain and the presence of civilians in order to shield their military objectives and impede IDF operations — thus significantly increasing the risk of harm to the civilian population in the Gaza Strip. Throughout the 2014 Gaza Conflict, the IDF made extensive efforts to mitigate the risk of harm towards the civilian population in the Gaza Strip. Indeed, of the over 6,000 aerial strikes conducted by the IDF during the Operation, the vast majority did not result in any fatalities.¹

4. The fatality figures that certain Palestinian sources have published regarding the 2014 Gaza Conflict are highly unreliable. Hamas has deliberately sought to inflate the number of Palestinian civilian fatalities for its own strategic advantage by hiding the identity of militants. Serious

¹ For more information on the IDF's efforts to minimise civilian harm during the 2014 Gaza Conflict, see The 2014 Gaza Conflict (7 July - 26 August): Factual and Legal Aspects Report, Chapter VI (IDF's Conduct of Operations during the 2014 Gaza Conflict), Section D.2.



deficiencies also exist in the lists of fatalities provided by the Hamas-controlled Gaza Ministry of Health and the Palestinian Authority.

5. The IDF's analysis of fatalities demonstrates that while the 2014 Gaza Conflict did unfortunately result in civilian fatalities, the number and percentage of Palestinian civilian fatalities is actually much lower than has been reported in many channels. As discussed below, the IDF's preliminary analysis has determined that 2,125 Palestinians were killed during the 2014 Gaza Conflict. Of these fatalities, the IDF estimates that at least 936 (44% of the total) were actually militants and that 761 (36% of the total) were civilians; efforts are still underway to classify the additional 428 (20% of the total), all males aged 16-50.

B. Assessing Proportionality Under the Law of Armed Conflict

6. Claims that the IDF used disproportionate force during the 2014 Gaza Conflict reflect a flawed understanding of the principle of proportionality under the Law of Armed Conflict. The principle of proportionality requires a party planning an individual attack on a specific target to assess whether the expected incidental harm (to civilians, civilian objects or a combination thereof) would be excessive in relation to the concrete and direct military advantage anticipated. The total fatality count for the entire length of the hostilities is not on its own indicative of whether individual attacks were proportional. Thus, for example, an attack against a low-value military objective that is expected to result in one hundred civilian fatalities would be considered disproportionate, whereas one hundred attacks against military objectives of the same value that are expected to each result in one fatality per strike is likely to be regarded as proportionate — even though in each scenario, a total of one hundred civilian fatalities are expected to occur. In some cases, even minor expected collateral damage will be disproportionate, while in others much greater expected collateral damage will be proportionate. Because the *excessiveness* of collateral damage is not measured using absolute numbers, the *extensiveness* of collateral damage cannot determine its lawfulness.

7. The assessment of proportionality is a forward-looking, or prospective, inquiry, which requires considering the information that a military commander knew (or reasonably should have known) at the time of an attack. Proportionality is not assessed retrospectively by counting the number of fatalities that actually occurred. This number may be compounded by factors that the attacker cannot expect, such as hidden weapons arsenals or booby-traps that cause secondary explosions, incomplete or faulty intelligence, or the unexpected presence and movements of civilians. Accordingly, the actual number of civilian fatalities resulting from an attack does not indicate whether the attacker violated the principle of proportionality.



8. For these reasons, neither the total number of Palestinian civilian fatalities, nor a disparity between the number of Israeli and Palestinian fatalities, has direct bearing on the proportionality and legality of IDF operations.²

C. The Number of Palestinian Civilian Fatalities in the 2014 Gaza Conflict

9. Some critics of Israel's conduct during the 2014 Gaza Conflict have pointed to certain estimates of civilian fatalities published by the United Nations ("U.N.") and several non-governmental organisations ("NGOs").³ However, these estimates are highly suspect, because they are primarily based on daily fatality lists issued by the Hamas-controlled Gaza Health Ministry — lists that, among many other significant deficiencies, do not identify whether the deceased was a militant. Both during and after the 2014 Gaza Conflict, Hamas employed a policy — which it has applied during past hostilities as well — of deliberately hiding the identities of militants and the news of their deaths.⁴ Meanwhile, other published statistics regarding Palestinian fatalities during the 2014 Gaza Conflict are primarily based on data from Palestinian Authority sources that were compiled after the Conflict, that fail to take into account material information, and that suffer from other methodological flaws, including the use of information falsified by Hamas.

² While neither the overall number of civilian fatalities nor a comparison between the civilian fatalities on each side of a conflict is dispositive in an analysis of a state's particular use of force during hostilities (*jus in bello*), these statistics are even less dispositive when conducting an analysis of the proportionality of a state's resort to the use of force (*jus ad bellum*). In the *jus ad bellum* context, the principle of proportionality concerns the amount of force used by one side of the conflict in order to repel an armed attack. While the harm to the civilian population or to civilian property may be a factor in such a proportionality assessment, it is not the only factor and does not, on its own, establish that a response to an armed attack was disproportionate. (Nevertheless, as discussed in *The 2014 Gaza Conflict (7 July - 26 August): Factual and Legal Aspects Report*, Chapter II (Background to the Conflict), the legal justification for Israel's use of force in the 2014 Gaza Conflict is not dependent on an analysis of the *jus ad bellum*, given the existence of an ongoing armed conflict between Israel and Hamas and other Palestinian terrorist organisations.)

³ For example, the U.N. Office for the Coordination of Humanitarian Affairs ("OCHA") has estimated that approximately 67% of Palestinians fatalities were civilians (see <http://www.ochaopt.org/content.aspx?id=1010361>). This number has come down slightly from OCHA's initial estimate of 69%.

⁴ For more on Hamas's obfuscation during past hostilities in the Gaza Strip, see Meir Amit Intelligence and Terrorism Information Center ("ITIC"), *Analysis of the Ratio between the Names of Terrorist Operatives Killed during Operation Pillar of Defense and Civilians Killed in Error* (Dec. 9, 2012), available at http://www.terrorism-info.org.il/Data/articles/Art_20444/E_253_12_498339933.pdf (hereinafter: *The Gaza Operation 2012 Fatality Count*); ITIC, *Examination of the number of Palestinians killed during Operation Cast Lead* (Apr. 7, 2009), available at http://www.terrorism-info.org.il/data/pdf/PDF_09_105_2.pdf.



10. In light of the above — as well as the inherent logistical difficulties in maintaining and verifying data that arise from combat operations — it is unclear on what basis the U.N. and NGOs calculated their published ratios of militant-to-civilian fatalities.

1. Hamas's Strategic Manipulation

11. During the 2014 Gaza Conflict, Hamas deliberately blurred the distinction between militants and civilians.⁵ Hamas enlisted the wider Gazan public in implementing its policy of distortion, which sought to conceal that individuals were killed as a result of their involvement in the hostilities and qualification as legitimate targets. For example, on August 5, 2014, the Hamas-controlled Ministry of Interior in the Gaza Strip posted the following notice through social media:

The Ministry of the Interior and National Security [in the Gaza Strip] calls on all our [Palestinian] people and the resistance factions to be wary of disseminating information and pictures of fatalities of the resistance, and [about] mentioning details about [the circumstances of] their deaths as martyrs and where they died.⁶

⁵ For more on the topic, including Hamas's war crimes, see The 2014 Gaza Conflict (7 July - 26 August): Factual and Legal Aspects Report, Chapter IV (Hamas's War Crimes).

⁶ ITIC, "War of the Casualties:" the Hamas-controlled ministry of the interior in the Gaza Strip issued a warning not to divulge information about terrorist operatives killed in Operation Protective Edge (Aug. 6, 2014), available at http://www.terrorism-info.org.il/Data/articles/Art_20698/E_140_14_976270999.pdf.



Above: Screenshot of the Notice Published by the Ministry of Interior, August 5, 2014.

12. In a similar vein, on July 11, 2014, the Ministry uploaded to its website, Facebook and Twitter pages guidelines for “social media activists” in the Gaza Strip. An excerpt from the guidelines states that:

Anyone killed or martyred is to be called a civilian from the Gaza Strip or Palestine, before we talk about his status in jihad or his military rank. Don't forget to always add “innocent civilian” or innocent citizen in your description of those killed in Israeli attacks on the Gaza Strip.... Do not publish photos of military commanders. Do not mention their names in public, and do not praise their achievements in conversations with foreign friends.⁷

⁷ For the full text of the Social Media Guidelines, see Middle East Media Research Institute (“MEMRI”), *Hamas Interior Ministry to Social Media Activists: Always Call the Dead ‘Innocent Civilians’; Don't Post Photos Of Rockets Being Fired From Civilian Population Centers* (July 17, 2014), available at <http://www.memri.org/report/en/0/0/0/0/0/8076.htm>. This social-media-driven campaign of distortion was familiar from the Gaza Operation 2008-2009, when Hamas prohibited users of its web-forum PALDF.net from posting pictures, names or information about militants killed or injured while hostilities were ongoing. See ITIC, *Examination of the names of Palestinians killed in Operation Protective Edge – Part Three*, at p. 7 (Aug. 17, 2014), available at http://www.terrorism-info.org.il/Data/articles/Art_20704/E_147_14_1542981406.pdf (hereinafter: Operation Protective Edge Fatality Count – Part 3).



Above Left: Message posted on the Ministry of Interior’s website referring to the Social Media Guidelines. Above Right: Excerpt from the Social Media Guidelines (see translation above).

13. Hamas and other terrorist organisations sought to obscure the identities of their militants during combat, as well as after any such militants were killed. During combat, for example, militants often donned civilian clothing in efforts to deceive IDF soldiers.⁸ This unlawful conduct made attempts to distinguish between militant and civilian fatalities extremely difficult, including for the Gazan authorities. In another example, at the end of December 2014, the names of 50 Hamas militants who were killed during the 2014 Gaza Conflict — and who were all members of Hamas’s military wing, the Izz al-Din al-Qassam Brigades — did not appear on any Hamas fatality list. Furthermore, pursuant to Hamas policy, the daily fatality lists published by the Gaza Health Ministry failed to categorize the deceased as a member of an organised armed group or a person directly participating in the hostilities, even where this information was known to the Ministry, in order to create the false perception that all Palestinians who had been killed were civilians not involved in the hostilities.

14. Hamas’s policy of concealing militant fatalities had a dual purpose: first, to increase morale among Palestinians by presenting (artificially) low numbers of militant fatalities and thereby fuelling

⁸ See The 2014 Gaza Conflict (7 July - 26 August): Factual and Legal Aspects Report, Chapter IV (Hamas’s War Crimes), Section D.



the perception of a Hamas “victory” against the IDF; and second, to inflate the number of perceived civilian fatalities in order to discredit and delegitimize Israel.⁹ According to a Hamas combat manual found by IDF ground troops during the 2014 Gaza Conflict, “civilian deaths ... have no impact on our morale. To the contrary, this strengthens our commitment, in the knowledge that an increase in the number of civilian fatalities is likely to have negative ramifications on the enemy [the IDF], and he [the IDF] will act to shorten the length of the fighting.”

15. If past experience is any guide, Hamas likely will eventually admit to a high number of militant fatalities. Immediately after the Gaza Operation 2008-2009 (also known as “Operation Cast Lead”), Hamas denied having suffered extensive military fatalities: Abu Obeida, spokesman for Hamas’s Izz al-Din al-Qassam Brigades, claimed that only 48 of its members had been killed. Ten months later, however, Fathi Hamad, a Hamas spokesman and former Minister of Interior, finally admitted that 200-300 members of the Brigades had been killed, along with another 400 members of the military-security forces of Hamas and other terrorist organisations in the Gaza Strip (representing approximately 60% of the fatalities in the Gaza Operation 2008-2009). The figures cited by Fathi Hamad were significantly closer to those calculated by the IDF than to those published by the U.N. Fact-Finding Mission on the Gaza Conflict established by the Human Rights Council in 2009 (the “Goldstone Report”).¹⁰ Not coincidentally, Hamad’s admission came only after the Goldstone Report was published.¹¹

2. Additional Deficiencies in the Statistics Published by Palestinian Sources

16. Over the course of the 2014 Gaza Conflict, it became increasingly difficult for observers to determine whether a deceased individual had been a militant or a civilian uninvolved in hostilities. During the early stages of the Conflict, in July 2014, the Gaza Health Ministry published daily tallies of fatalities, and (to a limited extent) the names, ages, and circumstances of death of the deceased. The Gaza Health Ministry also, for the first few weeks of the Conflict, regularly updated a list of total fatalities. However, by the beginning of August 2014, the Health Ministry stopped publishing

⁹ *See id.*

¹⁰ Since the Goldstone Report was published, Justice Richard Goldstone has acknowledged that “[i]f I had known then what I know now, the Goldstone Report would have been a different document.” Richard Goldstone, *Reconsidering the Goldstone Report on Israel and war crimes*, Washington Post (Apr. 1, 2010), available at http://www.washingtonpost.com/opinions/reconsidering-the-goldstone-report-on-israel-and-war-crimes/2011/04/01/AFg111JC_story.html.

¹¹ *See* ITIC, *The War of the Casualties: During Operation Cast Lead it was Hamas policy to hide the real number of its casualties* (Aug. 10, 2014), available at http://www.terrorism-info.org.il/Data/articles/Art_20700/E_143_14_1770358890.pdf.



lists that purported to show total fatalities and instead issued daily reports with regard to certain fatalities from specific incidents that occurred that day. Only retrospectively did the Ministry compile additional lists purporting to include total fatalities, and these lists often lacked names, identifying details, and circumstances of death.¹² Hamas's strategy of deliberately concealing its militants' identities made assessments even more difficult, as did the "dual identities" of certain deceased militants who also served governmental functions that were seemingly civilian in nature.¹³ As a result, some NGOs have mistakenly counted militants as civilians on their lists of fatalities from the 2014 Gaza Conflict.

17. Indeed, a review of the Gaza Health Ministry's fatality lists from the 2014 Gaza Conflict, as well as from past rounds of hostilities, reveals the inclusion of duplicate names, non-combat related deaths, combat-related deaths attributable not to the IDF but to Palestinian armed groups, and misrepresented ages. The lists also have omitted the deaths of certain individuals known to have been militants.¹⁴

18. A few weeks after the end of the 2014 Gaza Conflict, on September 14, 2014, the Palestinian Authority Health Ministry in Ramallah issued what it claimed was a comprehensive list of fatalities, including information about the identity of the deceased and the date and location of death. This retrospective list, however, was based primarily on the partial fatality lists issued by the Gaza Health Ministry and other Hamas-affiliated sources in the Gaza Strip. While the Palestinian Authority's

¹² Many actors present in the Gaza Strip (including Palestinians, NGOs, and the ICRC) testified to the impossibility of keeping track of circumstances of death in real time. See, e.g., Anthony Reuben, *Caution needed with Gaza casualty figures*, BBC (Aug. 11, 2014), available at <http://www.bbc.com/news/world-middle-east-28688179>.

¹³ See ITIC, *Preliminary, partial examination of the names of Palestinians killed in Operation Protective Edge and analysis of the ratio between terrorist operatives and non-involved civilians killed in error*, at pp. 4-6 (July 28, 2014), available at <http://www.terrorism-info.org.il/en/article/20687>. Fatalities involving "dual identity" militants were also prevalent during the Gaza Operation 2012 (also known as "Operation Pillar of Defense"): 23 of the 25 members of Hamas's Internal Security Service who were killed were identified as belonging to the Izz al-Din al-Qassam Brigades and the remaining two were identified as being a senior commander and a militant, respectively, in the Popular Resistance Committees. See *The Gaza Operation 2012 Fatality Count*, *supra* note 4, at pp. 2-3, 19-20.

¹⁴ For example, strong indications exist that 26-year-old militant Ibrahim Jamal Kamal Nasr was incorrectly listed in the Gaza Health Ministry's July 18th list as being 13-years-old. See ITIC, *The War of Casualties: During Operation Protective Edge children and teenagers were exploited by terrorists as auxiliaries and operatives* (Sept. 17, 2014), available at <http://www.terrorism-info.org.il/en/article/20713> (containing other examples as well). In another example, strong indications exist that the militant Abdallah Fadel Mortaja was listed as a journalist. See ITIC, *Examination of the Names of 17 Journalists and Media Personnel Whom the Palestinians Claim Were Killed in Operation Protective Edge* (Feb. 12, 2015), available at <http://www.terrorism-info.org.il/en/article/20771>. For further examples, see *Operation Protective Edge Fatality Count – Part 3*, *supra* note 7, at pp. 3-5; *Preliminary, partial examination of the names of Palestinians killed in Operation Protective Edge and analysis of the ratio between terrorist operatives and non-involved civilians killed in error*, *supra* note 13, at p. 27.



estimate of total Palestinian fatalities matches the IDF's estimate, the credibility of the Palestinian Authority's list is highly questionable in light of its hindsight reliance on Hamas-affiliated lists that fail to categorize the deceased as civilians or militants, that fail to provide a percentage of civilian deaths, and that contain inaccurate information.

D. IDF Analysis of Palestinian Fatalities

19. The IDF has been conducting an ongoing, independent analysis of Palestinian fatalities.

1. Methodology

20. Since the beginning of the 2014 Gaza Conflict, a special team within the IDF Intelligence Corps has closely tracked information relating to Palestinian fatalities. This team has prior experience with counting fatalities and analysing relevant sources of information from previous IDF operations in the Gaza Strip. It consults not only classified sources but also a diverse array of publicly available information, including lists published by the Palestinian Authority Health Ministry and the Hamas-controlled Health Ministry in the Gaza Strip; other official reports of Hamas-affiliated medical personnel in the Gaza Strip; media reports, including from the Palestinian media; and local Palestinian websites and Facebook pages. The credibility of these sources, of course, varies. As of the date of this report, the team is still conducting a careful analysis of the Palestinian fatalities, including an examination of any new information that becomes available (such as statements by official Hamas leaders to local news outlets in the Gaza Strip).

21. Israel does not presume to be able to produce a definitive account of all fatalities that occurred during the 2014 Gaza Conflict. The complex, destructive, and multi-faceted nature of combat inevitably creates challenges for all militaries conducting reviews of military operations. Because the 2014 Gaza Conflict involved multiple forces operating simultaneously against terrorist organisations, often in close combat, it is all the more difficult, if not impossible, to determine the exact nature of specific incidents and the number and identity of resulting fatalities. Access to detailed information has been limited, and Hamas, moreover, has endeavoured to distort statistics. Nevertheless, the IDF strives to analyze fatalities on a professional basis, using the most reliable information available.

22. To estimate the number and identities of fatalities, the IDF has, among other things, undertaken the following exercises in order to ensure the reliability of its data:



- Cross-checking the identities of men aged 16 to 50 in Israeli intelligence community databases to check for involvement in hostilities;
- Matching names of the deceased to information that documented operational events (in particular, incriminating evidence of rocket launching or preparation);
- Continually updating information regarding fatalities in accordance with information that corroborates or refutes the degree of affiliation with armed groups and involvement in hostilities.

23. In this manner, the IDF compiled a tentative aggregate list of fatalities, incorporating all the names that were mentioned in reliable source materials.

24. The information gathered since the end of the 2014 Gaza Conflict reveals that the percentage of militants among the deceased is actually much higher than stated by Palestinian sources. The IDF has found significant disparities between highly credible sources and official Palestinian lists. These disparities reflect attempts to conceal the identity of militants as well as falsify ages and circumstances of death.

2. Interim Findings

25. According to the data gathered by the IDF (as of April 30, 2015), 2,125 Palestinians in the Gaza Strip were killed in the course of the 2014 Gaza Conflict. Out of this number: **936** (44% of total fatalities) have been identified as militants. Out of the number of militants, 631 (67% of the militants killed) were affiliated with Hamas, 201 (22% of the militants killed) were affiliated with Palestinian Islamic Jihad, and 104 (11% of the militants killed) were affiliated with other terror organisations.¹⁵

26. The IDF has classified **761** (36% of the total) fatalities from the 2014 Gaza Conflict as uninvolved civilians, either because there was no indication that they were involved in the hostilities or because they were assumed to be uninvolved based upon their age and gender.¹⁶ This number

¹⁵ For example, terror organisations affiliated with Global Jihad and the Al-Aqsa Martyrs' Brigades.

¹⁶ In all but a few rare instances, the IDF has categorized women, children and the elderly as "uninvolved," even though the media and IDF intelligence have documented cases of such persons providing combat assistance. *See,*

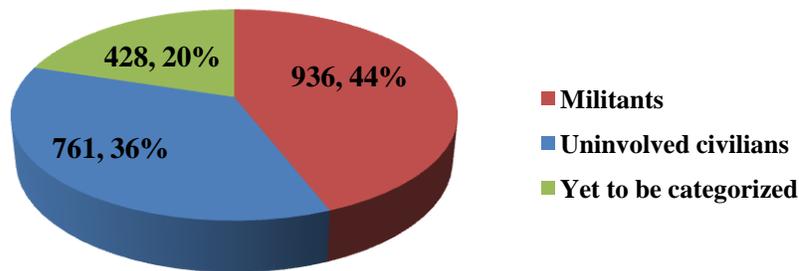
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regrettably includes 369 children under the age of 15 (16% of total fatalities), 284 women (13% of total fatalities), and 108 men (5% of total fatalities).

27. The IDF's identification process is ongoing. In particular, the IDF is still trying to make an accurate determination as to whether an additional **428** males between the ages of 16-50 (20% of total fatalities and almost all of the unclassified fatalities) were involved or uninvolved in the hostilities. Based on the IDF's past experience, it is highly probable that in the upcoming months, new information will surface demonstrating that some of these individuals were involved in combat against Israel in the 2014 Gaza Conflict.

Palestinian Fatality Figures in the 2014 Gaza Conflict



E. Conclusion

28. The number of fatalities in the course of the 2014 Gaza Conflict — though unfortunate — does not imply that IDF actions violated the principle of proportionality. Moreover, any estimation of the breakdown of civilian versus militant fatalities must be undertaken carefully, on the basis of reliable information and a rigorous methodology. The need for a careful examination of such statistics is especially important given Hamas's efforts to manipulate the number of civilian fatalities from hostilities with Israel.

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e.g., MEMRI, *Gazan Women Train in Military Wing of Popular Resistance Committees* (Feb. 20, 2015), available at <http://www.memritv.org/clip/en/4800.htm>.