



Rockets from Gaza

**Harm to Civilians from Palestinian Armed Groups'
Rocket Attacks**

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Summary

Since 2001, Hamas and other Palestinian armed groups in Gaza have fired thousands of rockets deliberately or indiscriminately at civilian areas in Israel. Such attacks virtually stopped during a ceasefire that began in June 2008 but escalated in November 2008 after an Israeli military incursion into Gaza. The rocket attacks continued during and since Israel's three-week-long military offensive in Gaza that began on December 27.

Palestinian rocket attacks – which have killed three Israeli civilians and wounded dozens of others since November – are an ongoing threat to the nearly 800,000 Israeli civilians who live and work in range of the rockets. Hamas and other Palestinian armed groups have sought to justify the attacks as appropriate reprisals for Israeli military operations and the ongoing blockade against Gaza, and as a lawful response to the Israeli occupation of Gaza. As noted below, international humanitarian law (the “laws of war”) does not support these asserted justifications.

While Hamas has at times significantly decreased the level of rocket fire from Gaza, including by pressuring other armed groups to stop unauthorized attacks, it has taken no apparent action to prosecute or otherwise hold accountable Hamas forces or other Palestinian armed groups for launching unlawful rocket attacks against Israeli civilian areas. The rockets fired by Hamas and other armed groups are primarily locally made “Qassam” rockets, with a range of 16 kilometers. A smaller number are Soviet-designed “Grad” rockets, with a 21-kilometer range. The rockets have hit Israeli cities and towns close to the 1949 armistice line between Gaza and Israel, primarily Sderot; in 2008, rockets also struck Ashkelon and Netivot. Since late December 2008, some longer-range rockets have struck as far as 40 kilometers inside Israel, including, for the first time, the cities of Beer Sheva and Ashdod.

None of these rockets can be reliably aimed. Under international humanitarian law applicable to the fighting between Palestinian armed groups and the Israel Defense Forces (IDF), such weapons are inherently indiscriminate when directed towards densely populated areas. The absence of Israeli military forces in the areas struck by the rockets, as well as statements from the leaders of Hamas and other armed groups, indicate that many of these attacks are deliberately intended to strike Israeli civilians and civilian structures. Individuals who willfully authorize or carry out deliberate or indiscriminate attacks against civilians are committing war crimes.

The rocket attacks have caused civilian casualties and property damage. Civilian structures damaged in recent attacks include a kindergarten, a synagogue and private homes. An Israeli early warning siren system, which gives civilians roughly 10 to 45 seconds to find cover in prepared shelters, depending on their distance from the launch site in Gaza, has undoubtedly limited the number of civilian casualties. However, the repeated attacks have, over months and even years, taken a psychological toll on the population in areas close to Gaza. The laws of war prohibit attacks the primary purpose of which is to spread terror among the civilian population. Because of the rocket attacks, thousands of people have moved away from frequently targeted areas such as Sderot municipality.

The rocket attacks have also placed civilians in Gaza at risk. The unpredictable nature of the crude rockets has meant that rockets have struck areas not only inside Israel but also inside Gaza; on December 26 a rocket hit a house in Beit Lahiya, killing two Palestinian girls, ages 5 and 12. In addition, Hamas and other Palestinian armed groups have frequently violated the laws of war by firing rockets from within populated areas. In doing so, they failed to take all feasible precautions to avoid placing military targets within densely populated areas, such as by removing civilians under their control from the vicinity of military targets, and protecting civilians from the danger resulting from military operations.

The Israeli government said the military offensive in Gaza that began on December 27, 2008, which it called “Operation Cast Lead,” was intended to destroy the ability of Palestinian armed groups in Gaza to fire rockets into Israel. The armed groups have fired thousands of rockets at Israel since 2001, killing 15 civilians inside Israel. At least 1,500 rockets were fired in 2008 alone. These attacks virtually stopped during a six-month ceasefire between Israel and Hamas that went into effect on June 19, 2008, but resumed after Israeli forces killed six Palestinian fighters during an incursion into Gaza on November 4, 2008. After major military operations ended on January 18, 2009, Palestinian armed groups in Gaza continued to fire rockets into Israel, although in gradually reduced numbers.

Palestinian armed groups in Gaza that have claimed responsibility for firing rockets into Israel include Hamas’s armed wing, the Izz al-Din al-Qassam Brigades, Islamic Jihad’s Al-Quds Brigades, the Fatah-aligned al-Aqsa Brigades, the Public Resistance Committee’s Salah al-Din Brigades, and the Ali Abu Mustafa Brigades of the Popular Front for the Liberation of Palestine (PFLP). Hamas and Islamic Jihad are responsible for the majority of rocket attacks, and claim to have fired 820 rockets from December 27, 2008 to January 18, 2009.

Statements by leaders of Hamas and other armed groups, media reports and independent analysis by nongovernmental organizations, and Human Rights Watch's interviews with residents of Gaza, suggest that Hamas can control the ability of other armed groups to fire rockets at Israel. Hamas has on several occasions effectively prevented other armed groups from firing rockets.

Leaders of Hamas and other armed groups have publicly expressed their intention to target Israeli civilians, seeking to justify their attacks as lawful reprisals for Israeli attacks against Palestinian civilians. For example, Abu Obeida, a spokesman for the Qassam Brigades, said in a pre-recorded video released on January 5 that “continuing the incursion will only make us increase our rocket range [...]. We will double the number of Israelis under fire.” Hamas leader Mahmoud Zahar, in a speech broadcast the same day, said, “The Israeli enemy ... shelled everyone in Gaza. They shelled children and hospitals and mosques, and in doing so, they gave us legitimacy to strike them in the same way.”

Hamas leaders have also claimed that rocket attacks against Israeli civilians are justified by the “right to resist” Israeli occupation.¹ In an interview on May 5, 2009, Hamas leader Khaled Meshal appeared to acknowledge that Hamas rocket attacks intentionally targeted Israeli civilians. In the course of describing why Hamas had decided to stop firing rockets for the time being, Meshal said:

Not targeting civilians is part of an evaluation of the movement to serve the people's interest. Firing these rockets is a method and not the goal. The right to resist the occupation is a legitimate right but practicing this right is decided by the leadership within the movement.

Hamas claimed responsibility for each of the three Israeli civilian deaths documented in this report.

Human Rights Watch has documented laws-of-war violations by Israeli forces in Gaza, including evidence of war crimes during Operation Cast Lead.² However, laws-of-war violations by one party to a conflict do not justify violations by another, and reprisal attacks

¹ In keeping with its position of neutrality in armed conflicts, Human Rights Watch neither endorses nor opposes the “right to resist” in Gaza or anywhere else in the world, but holds armed groups and states to their obligations under international humanitarian law.

² Human Rights Watch, “Rain of Fire: Israel’s Unlawful Use of White Phosphorus in Gaza,” March 2009, available at <http://www.hrw.org/en/reports/2009/03/25/rain-fire>, and “Letter to EU Foreign Ministers to Address Violations between Israel and Hamas,” March 16, 2009, available at <http://www.hrw.org/en/node/81557/>.

that target civilians are prohibited under any circumstances. Even assuming the rocket attacks were intended as reprisals for Israeli attacks that killed and injured civilians, they still are unlawful under the laws of war. The law governing reprisals—defined as otherwise unlawful actions that are considered lawful when used as an enforcement measure in reaction to an adversary’s unlawful acts—does not permit direct or indiscriminate attacks on civilians.

Moreover, a fundamental principle of the laws of war is that they apply to all parties to a conflict regardless of the justifications for going to war. Whether it is Hamas’ claims of “the right to resist occupation” or Israel’s of the right “to combat terror,” the reasons for engaging in armed conflict do not permit a party to ignore its legal obligations in the way it conducts hostilities.

Some critics of Human Rights Watch's work have argued that its coverage of the Israeli-Palestinian conflict fails to recognize the great disparity in the magnitude and extent of the attacks and losses caused during the recent fighting between Hamas and Israel and the vastly differing sophistication of the weaponry used by each side, thereby creating an artificial balance and softening criticism of Israeli abuses.

During the recent armed conflict in Gaza, IDF military operations caused far greater total harm to civilian lives and property than operations by Palestinian armed groups. The IDF killed more than 1,350 Palestinians, including a large number of civilians; Hamas and other Palestinian groups killed six Israeli soldiers and three civilians.

The conflict in Gaza was indeed characterized by great disparity in the military strength of the parties to the conflict. Palestinian armed groups primarily fought with small arms, whereas the IDF used highly advanced weaponry, including armor and aircraft. The tonnage and explosive power of weapons used by Israel in Gaza far outweighed those of Hamas. However, these discrepancies do not discount the need to examine violations of laws of war by all sides to a conflict, nor do they justify violations by Hamas.

The purpose of the laws of war is not to create parity between parties to a conflict, or to assess their violations in light of their relevant capacities, but to minimize the harm to the civilian population. Violations of the laws of war are not measured in the number of civilian casualties, but whether each side is taking all feasible precautions to minimize civilian loss. Using unsophisticated weapons does not justify failure to respect the laws of war, nor does an adversary’s use of sophisticated weapons provide a pass to its opponents to ignore those laws. Disparities in military capability, however measured, are irrelevant. The taking of

civilian life can be minimized only if both parties recognize their legal obligations to abide by the laws of war however sophisticated the weaponry at their disposal.

Human Rights Watch is committed to documenting the worst violations of the laws of war committed by all sides to conflict. It is to promote the principle that civilians may never be the object of attack, regardless of the relative strength of the attacker, that Human Rights Watch has published this report.

The laws of war require parties to a conflict to investigate and take appropriate punitive action against individuals within their control who are implicated in war crimes. Hamas authorities have failed to take any action against Hamas commanders and fighters responsible for unlawful rocket attacks against Israel. Hamas has reportedly taken violent steps to prevent other armed groups from firing rockets. On March 10, the London-based pan-Arab daily *Al-Sharq al-Awsat* reported the alleged torture by Hamas police of 10 members of Saraya al-Quds, the armed wing of Islamic Jihad.³ The paper reported that Hamas police detained the 10 men, from Khan Yunis, and tortured them to coerce them to sign pledges that they would not fire rockets at Israel.

Recommendations

To Hamas

- Cease all rocket attacks that target civilians or are fired into civilian areas with rockets that cannot discriminate between military objectives and civilians;
 - Prevent, as the governing authority in the Gaza Strip, other armed groups from launching such rocket attacks;
 - Publicly repudiate attacks on Israeli civilians or civilian objects, and the argument that such attacks are permissible when carried out in reprisal for Israeli attacks that harm Palestinian civilians;
 - Provide clear guidelines and training to all commanders and fighters to ensure compliance with international humanitarian law against attacks that target or indiscriminately harm civilians;
 - Cease conducting attacks from locations near populated areas in Gaza in violation of international humanitarian law requiring all feasible precautions to protect civilians

- from the effects of attacks, and avoid locating military objectives in densely populated areas;
- Conduct a prompt and impartial investigation into the alleged violations of international humanitarian law documented in this report, including by persons working for or affiliated with Hamas-run security forces or militia, make the investigation results public and prosecute those considered responsible for war crimes in trials respecting international standards; and
- Give full consideration to the findings and recommendations of the final report produced by the United Nations Human Rights Council's Gaza fact-finding mission.

To UN Member States

- Use all relevant UN fora, including the Human Rights Council, the General Assembly and the Security Council, to insist that Hamas and Israel conduct transparent and impartial investigations into allegations of serious laws-of-war violations during the recent hostilities in Gaza and Israel, make the results public and prosecute those considered responsible for war crimes in trials respecting international standards;
- Use all relevant UN fora, including the Human Rights Council, the General Assembly and the Security Council, to urge Hamas and Israel to duly consider the findings and recommendations of the Human Rights Council's Gaza fact-finding mission;
- Use the September session of the UN Human Rights Council to establish a dedicated UN mechanism that would monitor and report on efforts by all parties to transparently and impartially investigate allegations of serious laws-of-war violations committed during the recent hostilities in Gaza and Israel; and
- In the event the national authorities are unable or unwilling to investigate and prosecute through fair trials those considered responsible for war crimes committed during the recent hostilities in Gaza and Israel, press for the use of international prosecutions.

Methodology

This report concerns rocket attacks by Hamas and other Palestinian armed groups on civilian population centers in Israel since November 2008. Human Rights Watch researchers conducted 21 interviews for this report in Israel and in Gaza. Fifteen interviews were conducted with witnesses to rockets attacks, family members of victims, medical personnel, and municipal and other Israeli officials in Sderot, Ashkelon, Netivot, Ashdod, and Beer Sheva in Israel. We inspected the sites of five rocket attacks in Israel.

Human Rights Watch interviewed six Palestinian victims and witnesses to rocket attacks by armed groups that accidentally struck inside Gaza, as well as Palestinians who witnessed rocket launches.

Interviews were conducted in Arabic and Hebrew, with interpreters, and in English.

Rockets Used Against Israeli Targets

The rockets used by Palestinian armed groups in Gaza are unguided weapons that the groups fire mostly from northern Gaza. Each rocket has four stabilizing wings at one end, an engine in the middle, and a warhead. A rail elevated on two legs serves as the launching mechanism.

Armed groups in Gaza make “Qassam” rockets using basic materials.⁴ The fuel comes from a combination of potassium nitrate and sugar. The warhead consists of a metal shell containing an explosive made from urea nitrate, found in fertilizers, and TNT. The fuse comes from a small-arms cartridge.⁵ A journalist who was taken to an Islamic Jihad “rocket factory” in 2008 described the production process:

One of the team welds the rocket casings together from metal pipes, while another fills the warhead with up to three kilograms of TNT. Abdul's specialty is the last step: the rocket propulsion. He and his mates brew up the fuel out of a mixture of glucose, fertilizer and a few other chemicals, which is used to

⁴ Hamas referred to its rockets as “Qassams” for Sheikh Iss al-Din al-Qassam, a Syrian who in the 1930s worked among displaced and landless Palestinian peasants in what is now northern Israel, and whose death in a clash in 1935 with British troops helped to spark the 1936-39 Palestinian revolt.

⁵ Azriel Lorber, “The Growing Threat of the Kassam Unguided Rockets,” Middle East Missiles Monitor, <http://www.memonitor.com/files/The%20Growing%20Threat%20of%20the%20Kassam.htm>, accessed May 15, 2007.

fire the rockets at distances of up to nine kilometers. Right at the end, he inserts the detonator cap, which makes the missile explode on impact. They hide the finished rockets in depots, which the launch commandos can then freely avail themselves of.⁶

The locally made rockets have become increasingly powerful and able to reach deeper into Israeli territory. The earliest version carried a half-kilogram payload and had a maximum range of 4.5 kilometers. The second-generation rocket, developed in 2002, weighs 32 kilograms, and has a 5 to 9 kilogram payload and a range of 8 to 9.5 kilometers. The third generation “Qassam 3” is 2 meters long, 170 millimeters in diameter and weighs 90 kilograms. First produced in 2005, its maximum range is around 10 kilometers and it carries a payload of up to 20 kilograms.⁷

In 2008, Hamas began firing 122-millimeter-diameter, Grad-type rockets, manufactured abroad and apparently smuggled into the Gaza Strip.⁸ Most of these rockets had ranges of less than 20 kilometers, but some landed nearly 40 kilometers inside Israel. The deputy commander of Israel’s Home Front Command, Brig. Gen. Abraham Ben David, said that a rocket that struck Beer Sheba on December 31, 2008 was manufactured in China, and contained metal pellets.⁹ Based on photographs of rockets that landed in Israel near Gan Yavne and Bnei Darom on December 28, 2008, the US-based Global Security website tentatively concluded that Hamas evidently had fired Chinese-manufactured 122mm WeiShei-1E rockets.¹⁰ The WS-1E solid propellant rocket is 2.9 meters long and weighs up to 74 kilograms. The rocket comes in short-range (10 to 12 kilometer) and longer-range (20 to 40 kilometer) versions. The short-range rocket carries a modular warhead weighing 26 to 28 kilograms; the longer-range rocket warhead weighs 18 to 22 kilograms. The high explosive

⁶ Ulrike Putz, “Graveyard Shift for Islamic Jihad: A Visit to a Gaza Rocket Factory,” *Der Spiegel*, January 29, 2008, <http://www.spiegel.de/international/world/0,1518,531578,00.html>, accessed April 19, 2009.

⁷ Global Security.org, “Hamas Rockets” (no date), <http://www.globalsecurity.org/military/world/para/hamas-qassam.htm>, accessed April 20, 2009.

⁸ Human Rights Watch inspected dozens of spent rockets at the Sderot police station in December 2008, but did not attempt to identify foreign-made rockets. Numerous sources state that Hamas has fired smuggled, foreign-made Grad-type rockets at Israel. Id., and, e.g., Crisis Group, *Gaza’s Unfinished Business*, April 23, 2009, <http://www.crisisgroup.org/home/index.cfm?id=6071>, accessed May 10, 2009

⁹ Yael Barnovsky, “IDF: Rocket that hit Beersheba school made in China,” *YNET*, December 31, 2008, <http://www.ynetnews.com/articles/0,7340,L-3648122,00.html>, accessed April 28, 2009.

¹⁰ “Hamas Rockets,” Global Security.org, <http://www.globalsecurity.org/military/world/para/hamas-qassam.htm>, accessed April 20, 2009.

warhead can be augmented with a blast fragmentation warhead containing 4,000 steel balls, which can be lethal over a radius of about 100 meters.¹¹

¹¹ Other types of warheads are also available for the WS-E1 rocket. According to the Defense Update website, a 17 kilogram thermobaric warhead is also available, containing 6.2 kilograms of explosive and 1,500 steel balls. “Palestinians Use Extended-Range 122 mm Rockets from China for Long-Range Attacks,” Defense Update.com, http://www.defense-update.com/newscast/1208/analysis/311208_palestinians_use_chinese_wsze_extendedrange_rockets.html#more, accessed April 28, 2009.

Civilian Deaths and Injuries in Israel from Palestinian Rockets

Palestinian armed groups have fired more than 4,000 rockets at Israeli territory since 2001,¹² including nearly 2,700 rockets from September 2005 through May 2007,¹³ and more than 1750 rockets in 2008 alone.¹⁴ These attacks virtually stopped during the first four months of a six-month ceasefire between Israel and Hamas that went into effect on June 19, 2008, but resumed after Israeli forces killed six Palestinian fighters during an incursion into Gaza on November 4, 2008.¹⁵ From November 5 to the formal end of the six-month ceasefire on December 19, 2008, armed groups fired 203 rockets. From December 19 to December 26, the day before Israel began major military operations, armed groups fired 66 rockets.¹⁶

The Israel Defense Forces (IDF) told Human Rights Watch that Hamas, Islamic Jihad and other armed groups in the Gaza Strip fired approximately 650 rockets between December 27, 2008 and January 18, 2009, when major hostilities in Gaza ceased.¹⁷ The IDF Spokesman's Office also referred Human Rights Watch to the website of an Israeli organization, which recorded that 570 rockets had landed in Israel during the period.¹⁸ During this time, more than 90 rockets fell on the city of Sderot alone.¹⁹ Hamas's armed wing, the Izz al-Din al-Qassam Brigades, and Islamic Jihad's Al-Quds Brigades claim to have fired 820 rockets at Israel during this period.²⁰ According to the International Crisis Group, Hamas "coordinated the

¹² According to one Israel-based source, armed groups fired 4,048 rockets at Israel from 2001 to 2008. Israel Intelligence Heritage and Information Center (IICC), "Summary of rocket fire and mortar shelling in 2008," January 1, 2009, http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/ipc_e007.pdf, accessed April 27, 2009.

¹³ Human Rights Watch, *Indiscriminate Fire: Palestinian Rocket Attacks on Israel and Israeli Artillery Shelling in the Gaza Strip* (July 2007), p.4, citing statistics provided by the UN Office for the Coordination of Humanitarian Affairs (OCHA).

¹⁴ The US-based public policy group GlobalSecurity.Org gives a figure of 1,750 for 2008. See "Hamas rockets," <http://www.globalsecurity.org/military/world/para/hamas-qassam.htm>, accessed April 1, 2009. Israel's Ministry of Foreign Affairs gives the same figure ("The Hamas Terror War Against Israel," June 21, 2009, <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Palestinian+terror+since+2000/Missile+fire+from+Gaza+on+Israeli+civilian+targets+Aug+2007.htm>, accessed July 28, 2009).

¹⁵ "Rockets Fired after Gaza Clashes," BBC, November 5, 2008, http://news.bbc.co.uk/2/hi/middle_east/7709603.stm, accessed April 4, 2009.

¹⁶ Armed groups fired 125 rockets from November 5 to 31, and 78 rockets from December 1-26. IICC, "Summary of rocket fire and mortar shelling in 2008," January 1, 2009, see charts on pp. 8-9.

¹⁷ Human Rights Watch telephone interview with IDF Spokesperson's Office, March 19, 2009. Of the total during this period, according to the IDF, armed groups launched almost 500 locally made Qassam-type rockets and 150 Soviet-designed Grad rockets.

¹⁸ IICC, "Operation Cast Lead – Update No. 18," January 20, 2009, http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/html/hamas_e047.htm, accessed April 25, 2009; Human Rights Watch telephone interview with IDF Spokesperson's Office, April 15, 2009.

¹⁹ Fax to Human Rights Watch from the office of Yehuda Ben Maman, Sderot security officer, March 19, 2009.

²⁰ According to the website of the Izz al-Din al-Qassam Brigades, the group launched 345 Qassam rockets, 213 Grad rockets, 402 mortar rounds, and 82 rocket-propelled grenades and similar shells during the conflict. "Summary of al-Qassam

other militias who fought” during the three weeks of major military operations, including the military wings of Islamic Jihad and of the PFLP, and the Ayman Juda and Mujahidin Brigades, which are affiliated with the al-Aqsa Martyr’s Brigades.

Armed groups had fired 100 rockets between the end of major military operations on January 18 and April 27, 2009, according to one Israeli source, but only five of these rockets were launched since March 16.²¹ On March 12, the Hamas interior ministry stated that rockets were being “fired at the wrong time,” and that Hamas had “no relations” with them and was investigating who was responsible.²² On April 21, Hamas called a meeting of Islamic Jihad, PFLP, and the Democratic Front for the Liberation of Palestine. The purpose of the meeting, according to PFLP political bureau member Rabah Muhamma, was to create a “joint operations room for the military wings of the Palestinian factions.” On April 20, a Hamas lawmaker called on other armed groups to stop firing rockets in “the interest of the Palestinian people.”²³

From the first rocket launches from Gaza in 2001 to May 2009, rocket attacks have killed 15 civilians in Israel, according to Israel’s Ministry of Foreign Affairs; in addition, a rocket attack in 2005 killed a Chinese man and two Palestinian men working at an Israeli settlement in the Gaza Strip.²⁴ Israel installed an early warning siren system named “Color Red” (“Tzeva Adom”) that gives civilians roughly 10 to 45 seconds to find cover from the rockets, depending on the distance from the launch site in Gaza, by broadcasting a warning siren in southern Israeli communities when the system detects a rocket launch. The early-warning

²¹ Operations during the 23-day al-Forqan Battle,” document available at www.alqassam.ps, accessed April 8, 2009. On January 20, 2009, Al Jazeera reported that Islamic Jihad claimed responsibility for launching 262 rockets into Israel since December 27, 2008. Shane Bauer, “Palestinian factions united by war,” Al Jazeera English, January 20, 2009, http://english.aljazeera.net/focus/war_on_gaza/2009/01/200911915455957756.html, accessed March 16, 2009.

²² IIHC, “News of Terrorism and the Israeli-Palestinian Conflict,” April 21-27, 2009, http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/html/ipc_e026.htm, accessed April 29, 2008.

²³ Al Jazeera, “Hamas criticizes Gaza rocket fire,” March 13, 2009, <http://english.aljazeera.net/news/middleeast/2009/03/20093130140335534.html>, accessed May 10, 2009.

²⁴ “Hamas discusses resistance regulation with Gaza groups,” Xinhua, April 22, 2009, <http://english.sina.com/world/2009/0422/235766.html>, accessed April 28, 2009.

²⁵ Israel Ministry of Foreign Affairs, “Victims of Palestinian Violence and Terrorism since September 2000,” <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Palestinian+terror+since+2000/Victims+of+Palestinian+Violence+and+Terrorism+sinc.htm>, accessed May 24, 2009. The fatal rocket attacks occurred on June 28, 2004 (2 killed), September 29, 2004 (2 killed), January 15, 2005 (1 killed), June 7, 2005 (3 killed, in Gaza), July 14, 2005 (1 killed), November 15, 2006 (1 killed), November 21, 2006 (1 killed), May 21, 2007 (1 killed), May 27, 2007 (1 killed), February 27, 2008 (1 killed), May 12, 2008 (1 killed), December 27, 2008 (1 killed), December 29, 2008 (2 killed in separate incidents). Information clarifying that the attack on May 12, 2008 was a rocket strike may be found at “Woman killed by qassam in southern Israel,” YNET, May 13, 2008, <http://www.ynetnews.com/articles/0,7340,L-3542439,00.html>.

system, as well as the prepared shelters and reinforced schools that Israel has introduced in areas near Gaza, have undoubtedly limited the number of civilian casualties.

The Magen David Adom (MDA), the Israeli equivalent of the Red Cross, reported that between December 27, 2008 and January 19, 2009, its personnel treated a total of 770 civilians harmed by rocket attacks, including three fatalities, four severely wounded, 11 moderately wounded and 167 lightly wounded, and another 584 persons suffering from shock and “anxiety syndrome.”²⁵ An MDA spokesman said that another 10 people had been physically injured from January 19 to March 19.²⁶

Human Rights Watch interviewed witnesses to the three fatal rocket attacks on Israeli civilians since November 2008.

Beber Vaknin, 58, in Netivot

On December 27, 2008, the first day of Israel’s military offensive in Gaza, at around 1:45 p.m., shrapnel from a rocket fired from Gaza killed Beber Vaknin, a 58-year-old window installer, as he stood in the backyard of his apartment building in the town of Netivot. Netivot is about ten kilometers east of the 1949 Gaza-Israel armistice line.

Nofar Mor-Yossef, 20, a soldier, was on leave and staying in her family’s apartment in the same building where Vaknin lived when the rocket struck the building next door. She told Human Rights Watch,

Beber was standing outside in the yard [near the back entrance of the building], that’s why the shrapnel got him. It was around two in the afternoon. He dragged himself into the lobby of the building and died there, that’s where we found him. My brother was the one who called the ambulance. We’ve lived here our whole lives--we had known Beber the whole time.²⁷

²⁵ Magen David Adom, “MDA Statistics – Cast Lead Operation,” February 4, 2009, <http://mdais.com/316/4155.htm>, accessed March 15, 2009. The English-language site incorrectly states that the casualty total is for the period December 27, 2008 to January 26, 2009, according to MDA spokesperson Yonatan Yagudovsky.

²⁶ Human Rights Watch telephone interview with Yonatan Yagudovsky, Magen David Adom spokesperson, March 19, 2009.

²⁷ Human Rights Watch interview with Nofar Mor-Yossef, Netivot, March 3, 2009.

Mor-Yossef showed Human Rights Watch the damage that the blast had done to her family's apartment, including two shrapnel fragments that punctured the exterior wall of the apartment building and lodged in a bedroom closet.

Vaknin's sister, Etti Amir, a 50-year-old housecleaner who lives in Eilat, told Human Rights Watch that her brother had lived in Netivot "from the time he was 18." Amir said she was watching coverage of the attack on a television news program shortly after her brother was killed: "I saw a man on a gurney but I didn't know it was him. Then a friend of his called me and told me. When I go to Netivot now, I forget for a moment, I still think I'm going to see him."²⁸

The rocket that killed Vaknin also broke through the exterior wall of an apartment in a building next door. Sarah Alamo, 24, a kindergarten teacher, was in the apartment at the time with her three sisters, Yael, 21, Edna, 13, and Osnat Enverem, 5. "We heard the siren and waited behind the interior wall in the kitchen," she said, referring to the Israeli "Color Red," the early warning system that alerts residents of communities within range that a rocket has been fired in their direction. "There was a big boom, we saw the shrapnel flying, and the house filled up with dust. Then we went down to the shelter room in the basement. Only after did we realize that it had landed in our house."²⁹

Sarah's husband Moshe, a teacher and social worker, returned from synagogue to find the tail of the rocket sticking out of his bedroom floor. "There was a hole in the exterior wall of the bedroom, about three feet in diameter, and the rocket was sticking into the floor – the nose of the rocket was visible in the ceiling of the apartment beneath ours."³⁰ The Alamos had to relocate to another apartment for more than a month while theirs was repaired.

Tehila Nesimi, 26, a human resources worker, lives with her three-year-old daughter in an apartment overlooking the yard where Vaknin was killed. "Twenty seconds after the siren, it hit. My sister was in shock, she went to Kaplan hospital in Rehovot. I'm trying to forget it. My whole family was here."³¹ Nofar Mor-Yossef also said that her entire family was in her apartment when the rocket struck, and that her sister was also taken to hospital to be treated for shock.

²⁸ Human Rights Watch telephone interview with Etti Amir, Eilat, March 3, 2009.

²⁹ Human Rights Watch interview with Sarah Alamo, Netivot, March 3, 2009.

³⁰ Human Rights Watch interview with Moshe Alamo, Netivot, March 3, 2009.

³¹ Human Rights Watch interview with Tehila Nesimi, Netivot, March 3, 2009.

The Hamas Izz el-Din al-Qassam Brigades claimed responsibility for firing eight “Qassam” rockets at Netivot on December 27.³²

Hani al-Mahdi, 27, in Ashkelon

On December 29, a Grad-type rocket struck the city of Ashkelon, about 16 kilometers north of the armistice line, killing Hani al-Mahdi, 27, a construction worker from the Bedouin village of Aro’ar, in the Negev. The attack also wounded several other workers who were building a library. The rocket slammed into the top floor of the concrete structure, creating a hole roughly 1.5 meters in diameter. According to MDA, the rocket attack caused 12 casualties, including al-Mahdi, one worker who was severely wounded, and four moderately and five lightly wounded workers, who were evacuated to Barzilai Hospital in Ashkelon.³³

“Muhammad Mustafa” (a pseudonym), 34, a worker present at the time, said that four groups of workers were on different parts of the worksite when the rocket hit. After the warning siren went off, two of the groups managed to run to the shelter area, but members of one group, including al-Mahdi, were hit by shrapnel just before they reached the shelter door. Said Mustafa:

It was around 9:15 on Monday morning when the rocket hit. It hit just after the alarm started. Normally there is a bit more time, but we were all still running. I was on the ground level and made it to another shelter there, when I heard the explosion. I knew what it was. Then I heard screaming from the top floor and I called the police on my mobile as I ran up there. I saw Hani. He was shaking and he died there. At least seven were injured.³⁴

Mustafa said he collected some pieces of shrapnel from the blast, which “looked like torn-off pieces of metal, sharp, some big and some only an inch or two.”

Khalid Ayub, 39, the site engineer, was standing in the parking lot behind the construction site when the alarm sounded. “Within a few seconds I heard the hit, and there was debris flying around from the explosion,” he told Human Rights Watch. “There were around 24

كتاب القسام تنصيف مختصة لنتivot” الصهيونية بثمانية صواريخ قسام والعدو يعترف بمقتل صهيونية وإصابة آخرين³²

[Qassam Brigades shells Zionist Netivot with eight Qassam rockets and the enemy confesses the death of a Zionist and injuries to others]

<http://www.alqassam.ps/arabic/statments1.php?id=4066>, accessed April 29, 2009.

³³ Magen David Adom, “MDA Statistics – Cast Lead Operation,” February 4, 2009.

³⁴ Human Rights Watch interview with Muhammad Mustafa (not his real name), Ashkelon, March 16, 2009.

workers here on that day. Since then we closed the site until after the end of the war, it was a military order that if your site is hit, you shut down. We didn't re-open until January 28, and then many of the workers did not come back.”³⁵

Since returning to work, Ayub said, the rocket-alert sirens had sounded twice more while he was on the worksite. “It was very hard to come back to work here, and the sirens are terrible now, I’m always looking around for another rocket.”

Mustafa and Ayub said that many of the workers who were injured or were on the site at the time were from Kufr Manda, an Arab village in the Galilee, in the north of Israel; from Aro’ar, the Bedouin village in the Negev; or from Hebron, in the West Bank. Human Rights Watch was unable to contact any of the workers who were wounded during the attack; they were reluctant to speak due to ongoing legal proceedings.

At a special session of the Israeli parliament, the Knesset, on the day of the attack, December 29, Israeli Foreign Minister Tzipi Livni appeared to threaten Israeli reprisal attacks against Palestinian civilians, saying she had heard on the radio that “Hamas declared the man killed by a rocket in Ashkelon was ‘one of the Zionists’ despite being an Israeli Arab. They don’t make a distinction, and neither should we.”³⁶ Hamas’s website states that a “Grad” rocket it fired at Ashkelon killed “a Zionist” and caused other injuries.³⁷

Irit Sheetrit, 39, in Ashdod

At around 9 p.m. on December 29, 2008, a rocket hit the city of Ashdod, about 29 kilometers north of the armistice line, killing Irit Sheetrit, 39, a school secretary, as she was driving home from the gym with her sister, Ayelet Morduch. Sheetrit had heard a warning siren and pulled over near a bus stop, following instructions issued by the Home Front Command of the IDF.

³⁵ Human Rights Watch interview with Khalid Ayub, Ashkelon, March 16, 2009.

³⁶ Amnon Meranda, “Tibi: Politicians counting Palestinian bodies,” YNET News, December 29, 2008, <http://www.ynet.co.il/english/articles/0,7340,L-3646487,00.html>, accessed March 16, 2009.

³⁷ كتاب القسام تczęści مدينة ”المجد“ المحتلة بصاروخ غراد العدو يعترف بمقتل صهيوني وإصابة آخرين [Qassam Brigades hits al Majdal occupied city with Grad rocket, the enemy confesses the killing of a Zionist and injuries to others] <http://www.alqassam.ps/arabic/statments1.php?id=4088>, accessed April 29, 2009.

According to Herzl Sheetrit, Irit's husband,

I was talking on the phone with her when it happened. I heard the explosion, and then her sister screaming. I drove to the place as fast as I could but she was already in the ambulance on the way to the hospital. But the news was already on TV, they showed the car that was hit and said that one woman was seriously injured. I was afraid my kids were seeing the news and I wasn't there to stop them from watching it. So I called my kids and told them to go to the safe room because there is no TV there. Then I came home and told them she had been killed.³⁸

Sheetrit was the mother of four children, ages 10, 12, 17, and 19. Her sister Ayelet Morduch, 36, who works in newspaper advertising in Ashdod, was wounded in her hand and leg by shrapnel from the blast. She told Human Rights Watch, "I was a witness to the whole thing. I saw visions that keep coming back to me, it was a nightmare."³⁹

Hamas's military wing, the Izz al-Din al-Qassam Brigades, claimed responsibility for the attack.⁴⁰

Beer Sheva

At around 5 p.m. on January 15, 2009, shrapnel from a reported Grad rocket attack on the city of Beer Sheva, 37 kilometers east of Gaza, penetrated the skull of a seven-year-old child, severely wounding him, and critically wounded his mother, who had tried to cover him with her body after hearing the early warning alarm.⁴¹ A witness, Yoal Lavi, told news media that shortly after the attack he performed CPR on the mother, who had a "huge wound" and

³⁸ Human Rights Watch interview with Herzl Sheetrit, Ashdod, March 3, 2009.

³⁹ Human Rights Watch telephone interview with Ayelet Morduch, Ashdod, March 3, 2009.

⁴⁰ Shmulik Hadad, "South under fire; 2 Israelis killed," YNET News, December 30, 2008, http://www.ynet.co.il/english/articles/0_7340,L-3646829,00.html, accessed March 16, 2009. See also the Qassam Brigades website, stating that it fired one "Grad" rocket at Ashdod and another on Ashkelon, causing a "Zionist's" death, والعدو يعترف بمقتل صهيوني ووقوع عدد من الإصابات كثائب القسام تتصف مبنائه اسود ومدينة عسقلان المحالة بصاروخى "غراد" بعضهم في حال الخطر الشديد

[Qassam Brigades hits Ashdod Harbor and occupied Ashkelon with two Grads, the enemy confesses the killing of two Zionists and other serious injuries]

<http://www.alqassam.ps/arabic/statments1.php?id=4098>, accessed April 30, 2009.

⁴¹ Maayana Miskin, "Six wounded in Be'er Sheva rocket attack," Israel National News, January 15, 2009, <http://www.israelnationalnews.com/News/News.aspx/129456>, accessed April 2, 2009.

complained of “horrendous stomach pains” due to shrapnel.⁴² Hamas’s Qassam Brigades website claimed responsibility for causing two serious injuries in the attack on Beer Sheba.⁴³

The Psychological Toll

The psychological toll of years of rocket attacks has affected a far greater number of Israeli civilians than those who suffered physical wounds. The trauma can be severely debilitating, according to David Wolfson, who is in charge of sending crews to identify and assist trauma victims after rocket strikes in Ashkelon. “We’ve been under rocket fire now for so long that some people have been near rocket hits two times, and have been re-traumatized to the point where they cannot take care of themselves,” Wolfson told Human Rights Watch.⁴⁴

Wolfson said that in one case, several persons suffering from trauma due to a previous rocket attack had been in a bomb shelter that was directly hit by a Grad rocket, causing no injuries but “psychologically scarring” some of the people sheltering inside. Rockets had affected his own family, he said. On January 2, “at around 4:30 p.m., a rocket hit very close to my house. I deal with this all the time, but my wife was with me, and she was terrified. She still is.”

The director of the international department of the Magen David Adom, Yonatan Yagodovsky, told Human Rights Watch,

The problem for most people was not being hit, but the fear, uncertainty and stress. More than 800,000 Israelis were under threat because for the first time the missiles [*sic*] had a range of up to 35 kilometers. You had to plan your daily life by considering how long it would take you to get to a bomb shelter from every point on your route.⁴⁵

⁴² Avraham Zuroff, “Be’er Sheva resident saved rocket victim’s life,” Israel National News, January 16, 2009, <http://www.israelnationalnews.com/News/News.aspx/129456>, accessed April 2, 2009.

⁴³ ردًّا على المحرقة المتواصلة ... القسام يقصف مدينة “بئر السبع” المحاذية بصاروخين غراد .. مما أوقع أربع إصابات اثنتان ”معركة الفرقان“ في يومها العشرين [al Furqan battle in day 20: a payback to the continuous holocaust: Qassam hits occupied Beer Shiva city with two Grads, causing four injuries, two of which are very serious]
<http://www.alqassam.ps/arabic/statments1.php?id=4422>, accessed April 30, 2009.

⁴⁴ Human Rights Watch interview with David Wolfson, Ashkelon, January 3, 2009.

⁴⁵ Human Rights Watch telephone interview with Yonatan Yagodovsky, March 13, 2009.

Civilian Deaths and Injuries in Gaza from Palestinian Rockets

Sabbah Abu Khusa, 12, and Hanein `Ali Abu Khusa, 5, in Beit Lahiya

On December 26, at around 3 p.m., a Palestinian rocket struck a house in an area north of Beit Lahiya, Gaza, about 2.5 kilometers from the armistice line with Israel, killing two cousins, Sabbah Abu Khusa, 12, and Hanein `Ali Abu Khusa, 5. The rocket also wounded another cousin, one-and-a-half-year-old Ula.

Hassan Musa Abu Khusa, Sabbah's grandfather, told Human Rights Watch that he was sitting in a tent about 30 meters from the house. "I saw a ball of smoke and ran over. I saw the girls' bodies on the ground. [The rocket] destroyed the ceiling and the shrapnel went into the concrete walls."⁴⁶ Hassan Abu Khusa described the rocket as about one meter in length and roughly the same diameter as a steel pipe that was near the site of the rocket strike; Human Rights Watch examined the pipe and found it to be 120 mm. He said a Hamas policeman came the next day to take the remains of the rocket and said they were going to determine who was responsible for firing it. "After he left, the war started and we never heard from him again," Abu Khusa said. "We got the compensation given to all victims of the war."⁴⁷

Tel al-Hawa

On December 24, a rocket destroyed the bedroom of a family living in the Tel al-Hawa area in southern Gaza City. One man, a lawyer, was wounded critically. "Shrapnel hit me in the head, the right arm, and leg. Two small fragments are still in my skull," he told Human Rights Watch.⁴⁸ "My doctor told me I should start celebrating a new birthday – I was unconscious for two weeks." He said his wife and two-year-old child, who were with him, were badly traumatized though not harmed physically. He expressed anger that what he called "the factional media," referring to the Hamas-controlled Al-Aqsa radio and television stations, initially claimed it was "an internal explosion – as if I'd been playing with explosives. They

⁴⁶ Human Rights Watch interview with Hassan Musa Abu Khusa, 60, near Beit Lahiya, April 11, 2009.

⁴⁷ Based on Human Rights Watch interviews with numerous residents in Gaza, Hamas authorities apparently pay up to 1000 Euros to the families of people killed by Israeli forces during the attacks, as well as up to 4000 Euros to the owners of residential buildings (not individual apartments) that were completely destroyed in the fighting. Owners of partially destroyed buildings receive 2000 Euros.

⁴⁸ Human Rights Watch interview, name withheld on request, Gaza City, April 10, 2009. This man was transferred to a hospital in Israel and returned to Gaza after major hostilities ceased.

changed their story later after my friends and relatives pressed them. There are dozens of these cases. You face a taboo on directly criticizing these accidents.”

The brother of this victim told Human Rights Watch that after the incident no armed group came to apologize. “I was next door in my home when this all happened,” he said. “When one of those responsible tried to bargain for the shrapnel, I said that if no one took responsibility I will go to the courts, so Hamas came to me privately and admitted it.”⁴⁹

Shajai’ya

A doctor in the Shajai’ya area east of Gaza City, and near the armistice line with Israel, told Human Rights Watch that a rocket fell on his home at around 6 a.m. on March 4. “It was Saraya al-Quds,” he said, referring to the militia of the Islamic Jihad group. “The rocket had nothing on it but my neighbors saw the guy who launched it; they knew his name. He had driven into the area on a donkey cart with the rocket and launcher.”⁵⁰ The doctor said that the rocket damaged two bedrooms in his house and left him with an abrasion on his face. His wife and three children and several other persons in the house were unharmed. “There were eight of us in the house,” he said. “The house on one side of us has eight people, the house on the other side has 30.”

⁴⁹ Human Rights Watch interview, name withheld on request, Gaza City, April 10, 2009.

⁵⁰ Human Rights Watch interview, name withheld on request, Shajai’ya, April 11, 2009.

Displacement and Destruction of Property

Shalom Halevy, spokesperson for Sderot municipality, said that “over 8,000 rockets have fallen on Sderot and the surrounding area since 2001, killing 15 people. I’ve lost count of how many times they came close to getting me.”⁵¹ Rockets fired since December 27, 2008 hit civilian population centers over a larger area than ever before, including Ashdod, Beer Sheva and Gedera, a city 30 kilometers from Tel Aviv, placing roughly 800,000 people within rocket range.⁵² Damaged or destroyed civilian property since that date includes a synagogue,⁵³ a kindergarten,⁵⁴ a school,⁵⁵ as well as private homes and cars.⁵⁶ During the first days of the recent Israeli offensive, scores of rockets were launched each day. Israeli public schools and universities closed throughout southern Israel for weeks due to rocket fire during the conflict.

Yehuda Ben Maman, head security officer for Sderot municipality, provided Human Rights Watch with records showing that 90 rockets hit the city during the period of Israel’s recent offensive in Gaza. He said that approximately another 40 rockets had hit Sderot between January 18 and March 18. Two or three private homes were badly damaged, he said, adding that in total, “around 4,000 people out of our population of 24,000 people have left Sderot in the past 2 years, and this accelerated during the war.”⁵⁷

According to Eddy Ben-Hamo, the Ashdod municipal spokesman, 23 Grad rockets hit Ashdod during Israel’s military operation in Gaza, and none since the end of the fighting. Two kindergartens were among the structures damaged, Gan Arava and Gan Morasha, though

⁵¹ Human Rights Watch interview with Shalom Halevy, Sderot, January 11, 2009.

⁵² “Gaza rocket hits Gedera, 30 km from Tel Aviv; baby lightly hurt,” Haaretz, January 6, 2009, <http://www.haaretz.com/hasen/spages/1053139.html>, accessed May 1, 2009. The rough estimate of 800,000 people is based on Israeli statistics stating that 719,100 people live in the largest Israeli cities within rocket range, including Ashdod, Beer Sheva, Ashkelon, Kiryat Gat, Rahat, Yavne, Netivot, Ofakim, Kiryat Malachi, and Sderot. IIIC, “Summary of rocket fire and mortar shelling in 2008,” January 1, 2009, p. 12, citing Israeli Central Bureau of Statistics.

⁵³ Avi Issacharoff, Anshel Pfeffer and Yanir Yagana, “Rocket hits synagogue in Netivot; IAF destroys Gaza tunnels,” March 5, 2009, <http://www.haaretz.com/hasen/spages/1068638.html>, accessed March 29, 2009.

⁵⁴ Yaakov Lapin, “Rocket slams into Ashdod kindergarten,” Jerusalem Post, January 6, 2009, <http://www.jpost.com/servlet/Satellite?pagename=JPost%2FJPArticle%2FShowFull&cid=1231167267556>, accessed March 29, 2009.

⁵⁵ Shmulik Hadad, “4 troops hurt in mortar attack; Grad hits Ashkelon school,” January 8, 2009, <http://www.ynetnews.com/articles/0,7340,L-3652872,00.html>, accessed March 29, 2009.

⁵⁶ Yanir Yagana and Yossi Melman, “Boy, 7, seriously hurt as Gaza rockets slam into Be’er Sheva,” Haaretz, January 15, 2009, <http://www.haaretz.com/hasen/spages/1055759.html>, accessed March 29, 2009.

⁵⁷ Human Rights Watch telephone interview with Yehuda Ben Maman, Sderot, March 12, 2009; and fax received from Ben Maman’s office, March 19, 2009.

both were empty at the time. “Most people didn’t leave [Ashdod] but school was cancelled for two weeks, so the ultra-Orthodox [Jewish population] had to leave during the war, because they have an [religious] obligation to study.”⁵⁸

One rocket fired during the three-week conflict apparently fell short of its intended target and struck a humanitarian aid warehouse at the Karni border crossing.⁵⁹ The warehouse was storing oil, tuna, sugar, maize, wheat flour, and other food aid intended for Gazan residents.

Firing Rockets from Populated Areas

Numerous Palestinians in Gaza told Human Rights Watch that during the course of Israel’s aerial campaign and subsequent invasion of Gaza in late December and early January, members of Palestinian armed groups redeployed from more open and outlying regions – many of which were either controlled by Israeli ground forces or “covered” by armed aerial drones, helicopters, and fighter aircraft – into densely populated urban areas. The International Crisis Group quoted an Islamic Jihad fighter as saying, “the most important thing is achieving our military goals,” among which was to continue firing rockets in defiance of the stated Israeli aim to end the rocket attacks.⁶⁰ He told the Crisis Group, “We stay away from the houses if we can, but that’s often impossible.”

While fighting in urban areas is not prohibited under the laws of war, parties to a conflict are obligated to adopt measures to minimize the risk to the civilian population.⁶¹ During the recent fighting and at other times, Palestinian armed groups have placed fellow Palestinians at grave risk of Israeli counter-attacks by firing rockets from within or near populated areas. In doing so, they violate the laws of war by failing to take all feasible precautions to avoid placing military targets within or near densely populated areas, to remove civilians under their control from the vicinity of military targets, and to protect civilians from the danger resulting from military operations.⁶²

⁵⁸ Human Rights Watch interview with Eddy Ben-Hamo, Ashdod, March 12, 2009.

⁵⁹ A UN Board of Inquiry into damage to UN property during the fighting found that “a Qassam-type, not industrially manufactured, rocket” fell short of its intended target in Israel and caused \$29,000 in damage when it hit a UN World Food Program warehouse near the Karni crossing at some point during the conflict. Secretary General’s Summary of the Report of the UN Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December 2008 and 19 January 2009, May 4, 2009, paragraphs 82, 95.

⁶⁰ Crisis Group, *Gaza’s Unfinished Business*, April 23, 2009, p. 3, and Human Rights Watch telephone interview with Crisis Group researcher, Gaza, July 14, 2009.

⁶¹ See section on Legal Obligations, below.

⁶² Ibid.

In most of the following cases, Human Rights Watch researchers found that armed groups endangered civilians by firing rockets from populated areas.

In one case, a resident in northern Gaza City told Human Rights Watch that he and others had been on the roof of his building watching Israeli bombing raids on the first day of the Israeli assault. He said that around 5 p.m. “[w]e saw Hamas come and put up rocket launchers and fire. We could tell they were Grads by the sound, which is louder and deeper than that of Qassams.” According to the witness, the rockets were fired in a populated neighborhood near a well-known landmark, the al-Andalus tower. The witness specified, “they fired from between a medium-sized cow shed and some houses. There were maybe 60 meters between the cow shed and the houses.” It is not clear if the houses were inhabited at the time. In any case, ten minutes later, the witness said, “there was a retaliatory strike by an F-16 [fighter-bomber], a really big explosion.”⁶³

The witness also said that, in a second incident on January 1, residents of the area shouted at Hamas fighters to prevent them from entering a garden immediately next to the building he lived in, apparently with the intention to use it to fire rockets. “I had already left [the area] but my neighbor, the grocery store owner, was watching and he called me to come back,” the witness said. “The Hamas guys had already cut the wires of the gate to break in. All the people got together and shouted at them to leave, told them the rockets were going to backfire on us. After that we came back every day to the garden for a few hours to prevent them from firing from it.” Hamas did not return to the area, according to the witness.

Human Rights Watch researchers did not find any cases where Hamas or other armed groups forced civilians to remain in areas in close proximity to rocket launching sites.

Human Rights Watch was unable to determine the locations from which militants fired rockets in Tel el-Hawa, or if they fired from locations very close to civilians when other firing positions were available. The lawyer who was badly injured by a Palestinian rocket on December 24 (see above) said he was unsure where fighters fired rockets in his neighborhood: “Not from rooftops, but that doesn’t make much difference when the IDF responds with an F-16 or heavy artillery.”⁶⁴ In the months before the Israeli attack, he said, “we heard strange sounds coming just after the dawn prayers. We knew it was rockets being fired, but we never expected this [the rocket that fell on his home]. And this morning [April 10], we heard the same sounds again. We were all talking about it at lunch.” He added, “I do

⁶³ Human Rights Watch interview, name withheld on request, Gaza City, April 10, 2009.

⁶⁴ Human Rights Watch interview, name withheld on request, Gaza City, April 10, 2009.

not deny the right of occupied people to resist, but I think that the means should be reevaluated.”

Two residents of the Tel al-Hawa neighborhood in the southern part of Gaza City separately told Human Rights Watch that they could hear repeated rocket firings from the neighborhood during the Israeli operation, but could not identify the precise location of the launch sites. One said he heard “several” rockets being fired between December 27, when Israel launched its initial air strikes, and January 4, 2009, when he left the area for security reasons. The other resident remained in Tel al-Hawa throughout the period of heavy fighting and said he had heard “many” launches. The second man said neighbors had told him of a case in which fighters reportedly fired a rocket from within the courtyard of a building. Neither knew of rockets being launched from inhabited buildings or areas nearby, or whether Hamas made efforts to remove the buildings’ residents before firing rockets.⁶⁵

The doctor whose home in Shajai’ya had been damaged by a rocket (see above) said that neighbors told him they saw the rocket being launched from an open agricultural area about 250 meters southwest of his home. “It was fired by a timer. Right after that there was a[n IDF] drone over us for 10 minutes – I’m sure it saw the damage to my house.” In another case, the doctor said, militants had fired a rocket much closer to the row of houses along his street. He said that a week before Israel began major military operations, an IDF helicopter fired a missile in response to a rocket firing “just 50 meters from here, inside the compound of the Palestinian power authority.” He indicated a wall directly across the street from his home. The Palestinian fighters “fired from inside the walls of the compound. Then the helicopter fired back,” shooting a missile into the main building in the compound. By using the compound of the power authority for military purposes, the Palestinian forces were making the normally civilian structure a lawful military target and may have been placing the residents of nearby homes at unnecessary risk.

According to the doctor, residents of the area felt endangered and angered by the militants’ use of their area as a launching site. Two weeks before the rocket hit his home, he said, “another rocket fell short, but the people where the rocket landed didn’t know the name of the person responsible, and I think they were too afraid to ask.” He and his neighbors “went to the political leaders in the area and complained, and later they gave me money to repair the windows, though not the damage inside the house.”⁶⁶ The authorities made no promises to stop the rocket fire, he added.

⁶⁵ Human Rights Watch interviews, names withheld on request, Gaza City, April 13, 2009.

⁶⁶ Human Rights Watch interview, name withheld on request, Shajai’ya, April 11, 2009.

As noted, parties to a conflict violate the laws of war when they fail to take all feasible precautions to avoid placing forces, weapons, and ammunition within or near densely populated areas. Deliberately using civilians to deter attacks on military targets amounts to “human shielding,” which is a war crime⁶⁷ In the preceding cases, Human Rights Watch either could not determine or the evidence did not indicate that militants launched rockets from areas close to civilians with the intention of deterring Israeli forces from counter-attacking. The International Crisis Group interviewed three Hamas fighters in January who said they “often fired [rockets] in close proximity to homes and from alleys, hoping that nearby civilians would deter Israel from responding”⁶⁸ -- indicating the intent to use civilians as shields. The Crisis Group’s report and the staff who conducted the interviews did not provide further details or specific cases of shielding. The Crisis Group reported that after the conflict, some Gaza residents unsuccessfully “urged a government investigation of, and accountability for, fighters who endangered civilians” by firing from populated areas.

The IDF has publicized some aerial surveillance video footage of members of armed groups launching rockets from civilian areas, which it claims is evidence of shielding.⁶⁹ One video clip, which the IDF has published on the YouTube website, shows footage of a rocket being launched from an area between two nearby buildings whose construction is typical of elementary and secondary schools in the Gaza Strip.⁷⁰ However, the video does not appear to constitute evidence of shielding, given that no civilians are visible – the area appears deserted. Firing rockets near school buildings or other normally civilian structures makes those buildings valid military targets, but would constitute a laws of war violation if civilians remained present, and shielding if the fighters deliberately used them to deter attacks. Human Rights Watch could not identify the location of the rocket launch sites shown in these videos.

⁶⁷ See “Legal Obligations,” below. Israeli officials also stated that Hamas fighters and other armed groups deliberately fired rockets from populated areas in order to prevent Israeli counter-strikes. For example, see the statement by Israeli President Shimon Peres, “Israel says it won’t apologize for Gaza war,” Associated Press, May 6, 2009, <http://www.guardian.co.uk/world/feedarticle/8492987>, accessed May 28, 2009.

⁶⁸ Crisis Group, *Gaza’s Unfinished Business*, April 23, 2009, p. 3, and Human Rights Watch telephone interview with Crisis Group researcher, Gaza, July 14, 2009.

⁶⁹ See, e.g., “Precision airstrikes on Hamas Terror Targets 7 Jan. 2009,” <http://www.youtube.com/watch?v=bHNk6eBw3ME&feature=related>, accessed July 12, 2009. The description of the video, written by “IDFnadesk,” states, “The Israel Air Force launches a precision strike against various Hamas-linked terror targets in Gaza on 7 Jan.09. Hamas uses its citizens as human shields and exploits religion in its brutal campaign against innocent civilians.”

⁷⁰ IDFnadesk-posted video clip, “Hamas Uses Schools and Ceasefire to Shoot Rockets at Israel, January 18, 2009,” <http://www.youtube.com/watch?v=8LGubwghyEw&feature=channel> accessed July 12, 2009.

Legal Obligations

The conduct of hostilities between Israel and Hamas in the Gaza Strip is regulated by international humanitarian law (the laws of war). The rules on the methods and means of armed conflict are found in the First Additional Protocol of 1977 to the Geneva Conventions (Protocol I) and the 1907 Hague Regulations.⁷¹ Most of the relevant provisions of both treaties are considered reflective of customary international humanitarian law, legal rules based on established state practice that are binding on all parties to an armed conflict, whether states or non-state armed groups.

The fundamental tenets of the laws of war are "civilian immunity" and the principle of "distinction."⁷² While humanitarian law recognizes that some civilian casualties are inevitable, it imposes a duty on warring parties at all times to distinguish between combatants and civilians, and to target only combatants and other military objectives. Deliberate attacks against civilians are prohibited.⁷³ Civilians lose their immunity from attack when and only for such time that they are directly participating in hostilities.⁷⁴

International humanitarian law also protects civilian objects, which are defined as anything not considered a military objective.⁷⁵ Prohibited are direct attacks against civilian objects, such as homes, apartments, places of worship, schools, and hospitals—unless they are being used for military purposes.⁷⁶

Parties to a conflict must not make threats or commit acts of violence "the primary purpose of which is to spread terror among the civilian population."⁷⁷ Reprisals that involve attacks against the civilian population are also prohibited.⁷⁸

⁷¹ See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 U.N.T.S. 3, entered into force Dec. 7, 1978; Hague Convention IV - Laws and Customs of War on Land: 18 October 1907, 36 Stat. 2277, 1 Bevans 631, 205 Consol. T.S. 277, 3 Martens Nouveau Recueil (ser. 3) 461, entered into force Jan. 26, 1910.

⁷² See Protocol I, arts. 48, 51(2), and 52(2).

⁷³ Protocol I, article 48, states, "Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."

⁷⁴ Protocol I, art. 51(3).

⁷⁵ Ibid., article 52(1). Military objectives are combatants and those objects that "by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage." Ibid., art. 52(2).

⁷⁶ Protocol I, art. 52(2).

⁷⁷ Protocol I, art. 51(2).

The laws of war also prohibit indiscriminate attacks. Indiscriminate attacks are of a nature to strike military objectives and civilians or civilian objects without distinction. Examples of indiscriminate attacks are those that are not directed at a specific military objective or that use weapons that cannot be directed at a specific military objective. Thus, if a party launches an attack without attempting to aim properly at a military target, or in such a way as to hit civilians without regard to the likely extent of death or injury, it would amount to an indiscriminate attack.⁷⁹

International humanitarian law requires that the parties to a conflict take constant care during military operations to spare the civilian population and to take all feasible precautions to avoid or minimize the incidental loss of civilian life, as well as injury to civilians and damage to civilian objects.⁸⁰ Feasible precautions are "those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations."⁸¹ In its authoritative *Commentary* on Protocol I, the International Committee of the Red Cross explains that the requirement to take all "feasible" precautions means, among other things, that the person launching an attack is required to take the steps needed to identify the target as a legitimate military objective "in good time to spare the population as far as possible."⁸²

International humanitarian law does not prohibit fighting in urban areas, although the presence of civilians places greater obligations on warring parties to take steps to minimize harm to civilians. Forces deployed in populated areas must avoid locating military objectives near densely populated areas,⁸³ and endeavor to remove civilians from the vicinity of military objectives.⁸⁴ Belligerents are prohibited from using civilians to shield military objectives or operations from attack. "Shielding" refers to purposefully using the presence of civilians to render military forces or areas immune from attack.⁸⁵ However, even if one party considers

⁷⁸ Protocol I, art. 51(6). Reprisals have been defined as an otherwise unlawful action "that in exceptional cases is considered lawful under international law when used as an enforcement measure in reaction to unlawful acts of an adversary." See ICRC, *Customary International Humanitarian Law*, p. 513.

⁷⁹ Articles 51(4) and 51(5) of Protocol I enumerate five kinds of indiscriminate attacks: those that 1) are not directed at a "specific military objective," 2) cannot be directed at "a specific military objective," 3) have effects that violate the Protocol, 4) treat separate urban military objectives as one (carpet bombing), or 5) violate the principle of proportionality.

⁸⁰ Protocol I, art. 57.

⁸¹ See Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), 1342 U.N.T.S. 171, 19 I.L.M. 1534, entered into force Dec. 2, 1983, art. 1(5).

⁸² ICRC, *Commentary on the Additional Protocols*, pp. 681-82.

⁸³ Protocol I, art. 58(b).

⁸⁴ Ibid., art. 58(a).

⁸⁵ Ibid., art. 51(7).

opposing forces responsible for having located legitimate military targets within or near populated areas, it is not relieved from the obligation to take into account the risk to civilians when conducting attacks.

Rocket Attacks on Populated Areas and Individual Criminal Responsibility

Serious violations of international humanitarian law committed willfully, that is, deliberately or recklessly, are war crimes, and give rise to individual criminal responsibility.⁸⁶ War crimes include intentional or indiscriminate attacks on civilians, as well as attacks in which the expected civilian loss is disproportionate compared to the anticipated military gain. Individuals may also be held criminally liable for attempting to commit a war crime, as well as planning, instigating, assisting in, facilitating, aiding or abetting a war crime.⁸⁷ Commanders and civilian leaders may be prosecuted for war crimes as a matter of command responsibility when they knew or should have known about the commission of war crimes and took insufficient measures to prevent them or punish those responsible.⁸⁸

As noted, Hamas and other armed groups have publicly taken responsibility for a large number of rocket attacks on civilians in Israel, including the three fatal attacks on Israeli civilians documented in this report. Leaders of Hamas and other armed groups have publicly expressed their intention to target Israeli civilians, seeking to justify their attacks as lawful reprisals for Israeli attacks against Palestinian civilians.⁸⁹ Hamas leaders have also claimed that rocket attacks against Israeli civilians are justified by the “right to resist” Israeli occupation.⁹⁰ Such statements, in the context of deliberate or indiscriminate rocket attacks on Israeli civilians documented in this report, are evidence of war crimes. Hamas authorities have not, to the knowledge of Human Rights Watch, held to account any members of Hamas or other armed groups in Gaza for unlawful rocket attacks against population centers in Israel.

⁸⁶ See ICRC, *Customary International Humanitarian Law*, pp. 568-74.

⁸⁷ See International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law* (Cambridge: Cambridge University Press, 2005), p. 554.

⁸⁸ See ICRC, *Customary International Humanitarian Law*, rule 153.

⁸⁹ See “Summary,” above, quoting statements by Abu Obeida and Mahmoud Zahar. The former was reported by Hanan Awarekeh, “Hamas Ready for Battle; Victory’s coming, ‘God willing,’” Al-Manar, January 5, 2009, <http://www.almanar.com.lb/NewsSite/NewsDetails.aspx?id=69218&language=en>, accessed April 29, 2009. Zahar’s statement was reported by Ethan Bronner, “Israelis push deep into Gaza City,” International Herald Tribune, January 5, 2009, <http://www.iht.com/articles/2009/01/05/mideast/mideast.php?page=1U.S>, accessed March 16, 2009.

⁹⁰ See “Summary,” above, quoting an interview with Khaled Meshal, “Transcript: Interview with Khaled Meshal of Hamas,” May 5, 2009, New York Times, <http://www.nytimes.com/2009/05/05/world/middleeast/05Meshal-transcript.html>.

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