



High Level Military Group

**Submission by Col. (Retd) Richard Kemp CBE
on behalf of The High Level Military Group
to
The United Nations Commission of Inquiry on
the 2018 Protests in the Occupied Palestinian
Territory**



HIGH LEVEL MILITARY GROUP

Cover Photo: Members of the High Level Military Group on the
Gaza border, November 2018

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PART 1 – UN HUMAN RIGHTS COUNCIL COMMISSION OF INQUIRY

MANDATE

UN Human Rights Council (UNHRC) Resolution S-28/1 on 18 May 2018 established a COI with the mandate:

“to investigate all alleged violations and abuses of international humanitarian law and international human rights law in the Occupied Palestinian Territory (OPT), including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military assaults on the large-scale civilian protests that began on 30 March 2018, whether before, during or after;

to establish the facts and circumstances, with assistance from relevant experts and special procedure mandate holders, of the alleged violations and abuses, including those that may amount to war crimes;

to identify those responsible;

to make recommendations, in particular on accountability measures, all with a view to avoiding and ending impunity and ensuring legal accountability, including individual criminal and command responsibility, for such violations and abuses, and on protecting civilians against any further assaults;

and to present an oral update thereon to the Council at its thirty-ninth session (September 2018) and a final, written report at its fortieth session (March 2019).”

BIAS AND LACK OF EXPERTISE

The terms of this mandate are self-evidently biased against the State of Israel and the IDF. The context cited: ‘the military assaults on the large-scale civilian protests’ make clear that the UNHRC either failed to understand what was happening on the ground or deliberately misrepresented the reality. In addition, the Commission’s mandate terms the Gaza Strip ‘Occupied Palestinian Territories’, which it is not. This gives us cause for concern that the COI which has accepted this biased mandate will fail to produce a fair and objective report into these events. This concern is reinforced by the history of anti-Israel bias by the UNHRC and previous COIs into violence in Gaza.

As we will show in this submission, the so-called ‘civilian protests’ in reality were (and continue to be) a deliberate military operation, orchestrated and controlled by Hamas, the internationally proscribed terrorist group, which has been waging an armed conflict against Israel for many years. Their intention was and remains to kill and wound IDF soldiers; to break through the border fence; to murder and maim innocent civilians; to destroy property and to compel the IDF to take defensive action resulting in the death of Gaza civilians for exploitation in the international arena. As we will also show, the ‘military assaults’ were not what was implied by this prejudicial mandate. They were in fact lawful, proportionate and restrained defensive actions, necessary to secure Israel’s border with the Gaza Strip and to protect civilians, soldiers and property from harm.

A further concern is the absence of relevant expertise among the members of the COI. The events under investigation involve terrorism, military operations, and the laws of armed conflict, yet it appears that none of the commissioners have the requisite expertise or experience in any of these areas, which must surely be a major shortcoming for such a commission. It should be noted that the Commission has not publicized information regarding the expertise or experience of any military adviser to the COI, nor on what issues it is relying on the expertise of any adviser, which seriously detracts from the COI's credibility.

Finally, the COI was established and provided its mandate in May, whereas the events in question are ongoing until today. Their nature, extent, context and circumstances have developed extensively, which raises questions about how an external commission can possibly examine incidents that are constantly changing and evolving during the period of examination. It also raises serious questions regarding the propriety of an external commission endeavouring to gather facts, interview persons and visit areas, all while Israel is in the midst of contending with these continuous attacks on its borders.

In addition to the fact that these events are still ongoing, Israel has stated that it is currently examining individual incidents occurring during the events – and thus it is unclear how the commission could possibly draw conclusions without having access to the findings and materials of such examinations. Indeed, from a military perspective, it would be unprofessional to claim to be able to understand the events without waiting for such examinations to conclude. As a retired military commander of a military belonging to a democratic country committed to the rule of law, I can attest to the fact that where errors or misconduct occurs, the military system is capable of dealing with them. This is true in the British armed forces and equally true in the IDF, whose procedures and integrity in these matters I am fully acquainted with. The suggestion that an external entity should check these same events simultaneously is to fail to comprehend the IDF, the State of Israel and indeed the values of the international community.

PART 2 – BACKGROUND

BACKGROUND TO THE GAZA CONFLICT

Since before Israel's withdrawal from Gaza in 2005, the Gaza Strip has been used as a base for attack against Israel. The Gaza Strip is controlled by Hamas, proscribed as a terrorist group by Israel and countries around the world, including the US, EU and European countries. The declared charter of this terrorist group includes the annihilation of the State of Israel. Other terrorist groups also operate within Gaza against Israel, including Palestinian Islamic Jihad (PIJ) and the Popular Front for the Liberation of Palestine (PFLP). Much of the funding and direction of these groups comes from the Islamic Republic of Iran, which is also sworn to the destruction of the State of Israel.

Attacks against Israel from Gaza have included rockets, mortars, anti-tank missiles and other projectiles fired into Israel, primarily targeted against the Israeli civilian population but also against soldiers; digging and utilizing attack tunnels under the boundary between Gaza and Israel in order to attack and kill Israeli soldiers and civilians; over-ground penetration of the boundary fence to kill Israeli soldiers and civilians by shooting, throwing grenades, stabbing and planting improvised explosive devices and mines; amphibious attacks into Israeli territory using boats and frogmen to kill Israeli soldiers and civilians; flying unmanned aerial vehicles into Israeli territory; and flying flaming and explosive kites and balloons into Israeli territory to kill and maim, as well as to destroy military infrastructure, burn crops, forested areas, designated nature reserves, houses and other buildings.

Israel has not been in effective control of Gaza since the 2005 withdrawal, and has no military or other presence in any part of Gaza. Nevertheless, Hamas's continuous war against Israel, waged before and since it seized control of Gaza in 2007, involves all of the territory of the Gaza Strip – making the entire area an effective war zone. This means that the IDF legitimately applies the Laws of Armed Conflict to the hostilities against Israel emanating from Gaza, and operationally means that activities concerning the Gaza Strip are conducted in consideration of, and subject to, this conflict. A stark example is the land crossings between Gaza and Israel – despite being intended for humanitarian and civilian usage, they are required to be heavily protected physically, and security measures accompany all activities. This is for good reason, as the land crossings have been attacked both by mortar fire and anti-tank fire, have had cross-border tunnels dug underneath, have had persons try to conduct attacks at the crossings (including by placing explosives in ambulances) and have been attacked by masses of people in the context of the current events.

This reality places Israel in a situation that is almost unique with regards to other Western democracies – that is, multiple non-state armed groups backed by nation states waging ongoing hostilities from across the border and from within Israel's territory. While most Western militaries are engaged today in conflicts far away from the homefront, and are almost entirely limited to aerial operations (or an advisory or supporting role in ground operations), the IDF is constantly engaged in hostilities that directly target and endanger Israel's civilian population, and take place either within Israel's territory or right across the border. This context is important when considering the events that took place on the border between Israel and Gaza – essentially the focal point of the hostilities between the two entities.

As a part of its defences against this hostility from Gaza, Israel has implemented a number of security measures. With regard to the border area, Israel has restricted the entrance of certain goods and persons across the Gaza-Israel border, and maintained a naval blockade, all in order to reduce the importation of arms and warlike materiel into the territory and to prevent attacks against Israel emanating from the Gaza Strip. Exceptions from these restrictions include medical and humanitarian goods and personnel, which have been brought into Gaza continuously throughout these years. Nevertheless, Hamas has succeeded in smuggling weapons and other war-related items through the land crossings, and some of the supplies have been diverted to military use. Further, Hamas exploits the border it shares with Egypt (land and sea) for smuggling, and credible reports point to cooperation between groups in Gaza and ISIS-related groups in the Sinai Peninsula. This re-supply enabled Hamas and the Palestinian Islamic Jihad to launch, in November 2018, the most concentrated barrage of rockets against Israel they have achieved so far.

In order to reduce infiltrations into Israel and attacks on IDF patrols, Israel requires that the fulfilment of certain criteria for persons to be present in the area by the border. These criteria are known by the population of Gaza and have in the past been successfully and continuously enforced by Hamas to prevent the danger of conflict with Israel at times when they did not seek escalation.

The High Level Military Group has conducted prior assessments of the Gaza Conflict, which may serve to provide the Commission with further factual understanding of this context. The relevant report may be found at <http://www.high-level-military-group.org/pdf/hlmg-assessment-2014-gaza-conflict.pdf>.

BACKGROUND TO 2018 GAZA BORDER VIOLENCE

Since 30th March 2018, Hamas and the internationally-proscribed terror groups Palestinian Islamic Jihad and Popular Front for the Liberation of Palestine, have been orchestrating large-scale violence along the border between Gaza and Israel under the guise of the 'Great March of Return' (initially promoted by the 'Return Committee', which has representation from Hamas and the other groups).

The stated intention of the 'Great March of Return' was not just to demonstrate, but to actually break through the border fence en masse and physically march in their thousands through the State of Israel, so that Palestinians may exercise what they view as their 'right of return' to the claimed homes that are in present day Israel (suggestions that these demonstrations have been against Israeli policy towards the Gaza Strip are demonstrably false and easily refuted by cursory viewing of Hamas and other public statements made at the time of the events).

The major flare-ups have generally occurred on Fridays, following mosque prayers, and have continued throughout the day. Violence and aggressive actions, including specific acts of terrorism involving explosives and firearms, as well as grenades, petrol bombs, catapulting rocks and marbles, burning tyres, and the launching of incendiary and explosive airborne devices have been integral and inextricable parts of these events, and have occurred all along the border. Over the months the nature of these events have developed and changed – and have come to include large-scale violence during the week and at nighttime, smaller scale operational activity in the border area, violence in the maritime area, the adoption of the use of incendiary and explosive airborne devices in order to kill and cause extensive damage, and more.



Colonel Kemp visiting the neighbourhoods affected by direct Hamas strikes in southern Israel



Damage from Hamas projectiles

The events have also occurred at different places (that are determined and organized in advance) along the approximately 60 kilometer (37 mile) border with Gaza, as well as in the maritime area. Concerted action involving crowds of up to 45,000 people have repeatedly occurred in a number of separate areas along the border.

Also relevant for a consideration of these events from an operational perspective is the fact that during the period of these events, there has also been the launching of hundreds of rockets and mortars into Israel, the uncovering and neutralization of a number of cross-border tunnels running under the area where these events are taking place, machine gun fire at Israeli communities bordering Gaza (e.g. <https://www.haaretz.com/israel-news/israeli-army-hits-hamas-target-in-gaza-strip-sirens-blare-near-border-1.5992643>), ground-to-ground missile fire from Gaza into Israel, and more.

PART 3 – OPERATIONAL ASSESSMENT OF HAMAS CONDUCT

The following section presents an operational assessment of Hamas's objectives for the border events, an understanding of the extent of Hamas's control over the events, and an assessment of the military nature of the tactics used by Hamas in attempting to achieve its objectives.

OBJECTIVES

Having witnessed some of the events, ensured a familiarity with publicly available materials relating to the events, and held discussions with IDF officials, it is my professional opinion that these events clearly constituted a further attempt by Hamas to conduct large-scale attacks against Israeli civilian communities and IDF security forces protecting them. This was to be achieved by promoting a large-scale breach of the border security infrastructure, providing opportunity for Hamas and other operatives to break into Israel and reach nearby communities quickly, or alternatively to kill and/or kidnap Israeli security forces, as well as allowing massed mobs to conduct lynchings against the same targets. Thus, the violent riots and associated terrorist attacks along the Gaza security fence since March 2018 have been a continuation by other means of the rocket firing, attack tunnels and other forms of violent aggression.

Further, it is clear that Hamas intended this violence to continue the long-standing strategy of creating and intensifying international outrage, vilification, isolation and criminalisation of the State of Israel and its officials and to encourage boycott, divestment and sanctions, as well as to create political leverage for their own purposes. This strategy is clear from the language of human rights adopted by Hamas when speaking to an international audience regarding the events (as opposed to the incitement to violence when speaking to its own population) as well as the exploitation of women and children in the midst of the violence in order to create situations which compel the IDF to act with force so that they are seen to kill and wound such persons. It is also clear from the public support that Hamas has shown for the present COI that such procedures serve them as a channel for harming Israel in the international arena.

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It is also clear that Hamas has used these events for additional purposes:

- Hamas has used the cover of the border events to carry out attacks on Israeli security forces, some of which have resulted in death and injury of IDF soldiers, and others which have failed to do so due to IDF protective measures (such as bullet-proof plastic covering of forces'

- positions) as well as the use of intelligence to thwart attacks (such as <https://www.ynetnews.com/articles/0,7340,L-5261606,00.html>).
- Hamas is apparently trying to sabotage Israel's current project of installing underground sensors to locate cross-border tunnels from Gaza into Israel. The breaches of the border security infrastructure provide opportunity to reach this infrastructure – which is being installed mostly by civilian contractors, and which reportedly costs billions of dollars and is clearly of strategic importance to Israel (see for e.g. <https://www.ynetnews.com/articles/0,7340,L-5277971,00.html>).
 - Hamas has used violence to place pressure on Israel and other parties involved in the negotiations for their own specific purposes. As noted below, the level of violence has risen and declined depending on what Hamas has been trying to achieve in reported negotiations with Israel, whether directly or via third parties. Recent statements by Hamas officials make this clear (<https://www.terrorism-info.org.il/en/senior-hamas-figure-presents-hamas-concept-arrangement-implemented-recent-round-escalation/>).
 - Hamas has used these events in order to conduct attrition operations against IDF forces, as well as to test IDF capabilities and defense systems on the border. For example, the establishment of different units such as the 'Nighttime Disturbance Unit' point directly to such aims.
 - Finally, Hamas has used these events to conduct psychological warfare against the Israeli civilian population. For example, the nighttime riots on the border with the Kerem Shalom community involved the use of lasers into residential areas, tyre burning with smoke towards the community, and the use of loudspeakers with messages in Hebrew to the effect that they are coming to slaughter the residents of the community (e.g. <https://www.ynetnews.com/articles/0,7340,L-5364727,00.html>).

Publicly available materials provide evidence of these determinations, and complement the above assessment based on military experience and expertise. Public materials that support these determinations include: (A) public statements by Hamas; (B) an understanding of Hamas and its prior behavior; (C) an assessment of Hamas training and activities prior to the border events; (D) evidence of Hamas's control over the events; (E) evidence of the extent of involvement of Hamas in the events and evidence of attempts at execution of Hamas's plans by these operatives during the events; and (F) an operational understanding of the military nature of the mass events on the border.

A - PUBLIC STATEMENTS

Among other similar comments by Hamas officials, the words of the leader of Hamas in the Gaza Strip, Yahya Sinwar, on 6th April 2018, make clear Hamas's intent for this operation: 'They [Israel] will wait for the big push, we will take down the fence and tear their hearts out of their bodies' (which can also mean 'to take revenge' or 'make them suffer' in Arabic parlance).¹ This cannot be dismissed as mere rhetoric, as events on the ground have borne out the reality of Sinwar's violent intent. Hamas have made numerous such public statements as to their intentions behind the events.²

Indeed, in using the term 'Great March of Return', and promoting a 'return' to homes inside Israel, Hamas made evident its real intentions for the events. To be sure, Hamas has no expectation or intention that a mass entry of Palestinians into Israel from Gaza will lead to an actual 'return' of

¹ <https://www.youtube.com/watch?v=klFbf6VG7uA>.

² <https://www.memri.org/reports/great-return-march-campaign-initiative-sponsored-hamas-whose-goal-was-breach-border-fence>.

Gazans to the places inside Israel that they claim they were forced to leave. Rather, Hamas used these notions to incite the masses to create the breach in the border that could then be exploited for carrying out military operations against Israeli security forces and civilians. Proof of the effectiveness of this incitement may be seen in the social media pages of the ‘Great March of Return’, which posted maps and aerial photographs showing the routes and distances from various parts of the Gaza Strip to nearby Israeli communities. Some of these maps were accompanied by specific calls to infiltrate these communities by various routes.³



Drone footage captures “Great March of Return” protests at Israel-Gaza border

B - PRIOR HAMAS CONDUCT

Such a determination is also supported by a familiarity with Hamas’s past *modus operandii*.

Hamas has a history of using civilians as shields for military operations (see pages 98-101 of the ‘The 2014 Gaza Conflict: Factual and Legal Aspects’ governmental report), as well as directing and inciting civilians to ignore Israel’s warnings intended to prevent their harm (see page 177 of the same report). Further, Hamas has a history of using civilian guise to carry out attacks against Israeli civilians and security forces (see same report, as well as Hamas’s history of conducting suicide attacks in Israel). Hamas also has a history of deliberately misrepresenting its intentions, as well as its actions, in order to avoid condemnation as well as to encourage condemnation of Israel (see Annex to same report).

In addition, it is known that Hamas does not promote free speech in Gaza nor permit freedom of assembly or the right to protest amongst its own population, and openly violates international law, including the law of human rights.

Thus, it is a reasonable determination for a military commander to make – even without the intelligence available to the IDF – that these events are not merely intended as a ‘protest’ against Israel, but rather conceal an intention by Hamas to use the events in order to carry out military operations.

³ <https://www.memri.org/reports/great-return-march-campaign-initiative-sponsored-hamas-whose-goal-was-breach-border-fence.5>

C - TRAINING AND OPERATIONS PRIOR TO BORDER EVENTS

Hamas conducted military training exercises immediately before the first day of rioting in March, as well as other subsequent training. These exercises included assault from vehicles which can infiltrate quickly into Israeli territory and training in abducting IDF soldiers, showing their intentions after a border break-through.⁴

Further, in the months prior to 30 March, there were numerous border incidents which pointed to Hamas's efforts to test and assess IDF response capabilities as well as IDF defensive systems and mechanisms on the border. Hamas has publicly released information revealing such actions, such as planting an IED beneath a flag on the border fence and infiltrating into Israel and planting IEDs inside Israel.⁵ ⁶

The logistical effort and resources invested by Hamas was significant – from organizing and funding buses to transport people to the border area, the public statements that money will be paid to those wounded or killed in the events, and setting up gathering points with tents, food, free wifi and more — and cost Hamas tens of millions of dollars according to reports.

D - HAMAS CONTROL OVER THE MASS EVENTS

As noted above, Hamas in the past successfully enforced the border area restrictions and ensured that no-one was present there except with prior coordination. The simple fact that Hamas withdrew its systems and forces charged with this task points to Hamas's responsibility for the events (as well as the fact that Hamas could have easily avoided putting its population in danger by enforcing the understandings regarding the restricted presence near the border).

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Yet the starker indication that these events were entirely under Hamas control is the simple fact that when it suited Hamas's political interests, the events occurred and were of a violent nature, and when such actions did not serve Hamas's interests, the border was quiet. As the most recent example of this, in November 2018, Qatar began to make large cash payments to Hamas in Gaza. The most recent payment of \$15 million was handed over in December 2018.⁷ These payments are reportedly part of an agreement with Hamas to diminish violence along the Gaza border. Since the

⁴ <https://www.terrorism-info.org.il/en/hamass-military-wing-conducted-large-scale-military-maneuver/>.

⁵ <https://twitter.com/GroundBrief/status/1062281295579963392>.

⁶ <https://twitter.com/Jtruzmah/status/1046472198003744768>.

⁷ <https://www.timesofisrael.com/hamas-workers-collect-salaries-as-qatar-injects-more-cash-into-gaza/>.

first payment, the border violence has reduced. Although demonstrations have continued, they have been far more restrained (this can also be seen in public statements by Hamas, which have specifically referred to the more restrained nature of these events). Similar such examples can be gleaned from examining media reports regarding the status of negotiations between Hamas and Israel and other parties regarding the situation in Gaza and corresponding the status of such negotiations with the level and extent of violence of the border events at that time.

Thus, these violent border events are not separate from the ongoing conflict between Israel and Hamas. They serve a purpose the same way as other Hamas military efforts do — not only for attacking Israel and to bring world condemnation onto the country when it responds, but also as a lever for political and financial gain. Hamas's control over these events, whether they occur and how violent they are, has thus clearly been attested to.^{8 9}

E - EVIDENCE OF INVOLVEMENT OF HAMAS OPERATIVES AND ATTEMPTED EXECUTION OF OPERATIONAL PLANS

It has been reported publicly, including by Hamas itself, that a very large number of Hamas operatives have been involved in these events. The Meir Amit Intelligence & Terrorism Information Center, an independent Israeli assessment organization, assesses that of the Palestinian fatalities from 30 March - 5 May 2018 during the border violence, 83%, or 92 of 112 people, were known terrorist operatives or individuals associated with terrorist organisations, the majority Hamas. These figures are consistent with figures provided in official Hamas statements.¹⁰ Visual recordings of the events indicate that the events are carefully controlled, such as by operatives using radios, and the clear sequence of events which accompanied each mass event (see below).

In addition, there have been a number of incidents over the past months where it appears that Hamas has attempted to put into place its operational plan, in order to exploit a breach or use the cover of civilians to execute attacks. Thus, there have been documented incidents where Hamas exploited breaches in the security fence or the cover of civilians in attempts to break through the barrier, including an attempted infiltration by eight Hamas terrorists during the violence on the border on 14 May.¹¹

An IDF soldier was killed by sniper fire during one of the mass events. Others have been wounded by grenade fragments and by rocks hurled from slingshots.^{12 13 14}

The considerable use of explosive devices and other weaponry, as already mentioned, indicates the attempt to achieve and exploit a breach.^{15 16}

⁸ <https://www.timesofisrael.com/hamas-says-indirect-ceasefire-talks-with-israel-halted-violence-to-escalate/>.

⁹ <https://www.timesofisrael.com/report-armed-gaza-factions-agree-to-temporarily-rein-in-border-violence/>.

¹⁰ <https://www.terrorism-info.org.il/en/findings-itics-examination-identity-palestinians-killed-events-great-return-march-30-2018-may-15-2018/>.

¹¹ <https://www.timesofisrael.com/idf-says-it-thwarted-hamas-gunmen-attempting-to-breach-fence-monday/>.

¹² <https://www.timesofisrael.com/idf-believes-gaza-snipers-used-iranian-armor-piercing-rifle-to-kill-soldier/>.

¹³ https://www.youtube.com/watch?time_continue=8&v=gwKTYaQDuyE.

¹⁴ <https://www.timesofisrael.com/islamic-jihad-sets-sniper-sights-on-senior-idf-commanders-in-new-video/>.

¹⁵ <https://twitter.com/Jtruzmah/status/1050794602095996928>.

¹⁶ <https://twitter.com/Jtruzmah/status/1038495261440393216>.

Finally, there have been incidents of infiltration that Hamas has not been able to exploit fully for a larger attack, including a case where a Palestinian individual was caught after setting fire to a greenhouse and before reaching residential homes; and a case where a localised breach in the fence was achieved followed by a number of Palestinians charging an IDF post and physically attacking a soldier.¹⁷ ¹⁸

Hamas's tactics in these carefully planned and orchestrated military operations are to mass crowds at border locations and to use their fighters as well as large groups of civilians to approach and penetrate the fence.

F - OPERATIONAL ASSESSMENT OF HAMAS TACTICS

Assessing the nature of the mass events on the border indicates clearly that these are not popular or sporadic incidents of mass protest (even violent ones), but rather carefully orchestrated events, managed by military operatives, and with a clear goal of creating large-scale breaches of the border security infrastructure. This can be seen by looking at the use of personnel, the sequence of events at each mass border incident, and the nature of the weapons employed.

Personnel

Firstly, it is apparent that Hamas have deployed numerous operatives on the ground to control events, to incite the crowd, to breach the border, to encourage mass advance into Israeli territory and to perpetrate terrorist attacks against soldiers and civilians from both sides of the border. Visual evidence indicates the use of radios and other communications to direct the crowds. Many of these operatives have been identified by the IDF, and significant numbers of those killed and wounded have been declared by Hamas to be members of their organization.¹⁹

Sequence of Events

Secondly, the events had a clear sequence to them that was designed to achieve the goal of breaching the border. This sequence was as follows:

- Prior logistical support: the facilitation of bringing tyres, wire cutters and other tools to the border area and deploying them in advance of the mass events.
- Creating smokescreens: small squads (usually minors) set tyres on fire in order to obfuscate movements towards the fence.
- Attacking, distracting and endangering Israeli security forces: once squads could approach the fence under the cover of the smoke, then grenades, petrol bombs and other IEDs would be thrown at forces to keep them away from the fence (for more information on the means used, see below).
- Destroying security infrastructure and facilitating a breach: under this cover, other squads would sabotage security infrastructure and the fence by using a range of cutting tools, grappling irons and ropes.

¹⁷ <https://www.timesofisrael.com/palestinian-infiltrates-gaza-border-fence-nabbed-after-intense-manhunt/>.

¹⁸ <https://www.timesofisrael.com/2-palestinians-reported-killed-in-violent-riots-on-gaza-border/>.

¹⁹ <https://www.terrorism-info.org.il/en/findings-itics-examination-identity-palestinians-killed-events-great-return-march-march-30-2018-may-15-2018/>.

- Exploiting a breach: visual evidence clearly indicates that Hamas had deployed motorbikes and jeeps in the rear of the area of activity, to be used to advance through any breach and move rapidly to attack Israeli troops and civilians.

The final stage of attack would be accompanied by ancillary efforts such as rocket launches and triggering cross-border tunnels. This is demonstrated by the fact that during these events, the IDF uncovered and neutralized a number of cross-border tunnels, and also that Hamas and other groups launched hundreds of rockets and mortars and conducted cross-border fire.

So far the final stages of this plan has not been realized, and Hamas has not succeeded in significant penetrations of the fence. If however they did, it is to be expected that they would seek to pour thousands of people through the gaps as already mentioned. Among them would be armed terrorists intending to reach Israeli communities and carry out mass murder and abductions. One of the places Hamas attempted to breach is adjacent to the kibbutz of Nahal Oz, just a few hundred yards from the border — a sprint that could be achieved in 5 minutes or less by gunmen intent on slaughter. In media interviews leaders of Hamas admitted that they had instructed participants in the riots to arm themselves with weapons, to use them during the riots and to kidnap Israeli soldiers to be handed over to Hamas.

As a result, it is clear that many of those involved in these events can be considered to be directly participating in the armed conflict against Israel. For example, sabotaging the border security infrastructure, which provides opportunity (or even simply encouragement) to breach the border and infiltrate into Israel, is clearly an action which supports Hamas's military activities against Israel (especially when such activities are directed and supported by Hamas itself). Such actions would clearly warrant the use of live fire where necessary in order to remove the threat posed by these actions.

Means Employed

Thirdly, the means employed in the context of these events clearly point to their military nature.

Besides instances of shooting attacks, Hamas have used military-grade explosives during these events, weapons which are held only by Hamas military units. For example on 28 September, as part of a report noting that over 100 grenades and bombs were thrown into Israel during the violent events on the border that day, pictures were released depicting grenades used by Hamas in the 2014 Gaza Conflict.²⁰

Importantly, significant damage has been done, and loss of life threatened, by sending balloons, kites and inflated condoms carrying incendiaries and explosives into Israel. This seems to have started as a popular initiative. Hamas realised its potential and developed it into an effective military tactic that became an ancillary effort to the mass events at the border as well as a stand-alone operation.

Such a weapon, although crude, obviously poses a clear risk to life as well as property. Many have landed in kindergartens, playgrounds and residential areas, and are often disguised as children's toys apparently in order to encourage children to approach and handle them. In practice, they have caused immense damage to agriculture, nature reserves and the ecology of the area.^{21 22}

²⁰ <https://twitter.com/IDF/status/1046076919115067392>.

²¹ <https://medium.com/@HarelDan/incendiary-kites-burn-scars-graphs-6f7f6c86998f>.

²² <https://hareldunn.github.io/visualizations/IncendiaryKites/#12/31.4282/34.4971>.

This effort has been integrated into the events at the security fence. Firstly, they endanger the IDF forces defending the border, as they allow Hamas to create a threat on the flanks and in the rear of the forces themselves. It is a tenet of proper defense not to allow exposure of forces from more than one front, and such actions create a real danger to the forces. Second, they specifically target military infrastructure and resources, which naturally weakens the IDF's defensive capabilities.^{23 24 25}



Incendiary kites adopted as an effective new military tactic



At this stage our resistance, it is a popular resistance and we use these kites...

Despite claims of popular resistance, Hamas has a well developed and effective tactical approach to the use of such innovative low-tech weaponry

Thirdly, together with other developments such as regular and repeated attempts to breach the border at night and organised efforts to land boats from Gaza on Israeli shores, the airborne attacks have served to distract the forces from their primary task of defending the border security infrastructure, and have required a diversion of manpower and resources (it is not uncommon to see IDF soldiers fighting spot fires throughout southern Israel). Therefore, this effort not only endangers life, but also makes it more difficult for the security forces to contend with the efforts to breach the security fence.

INTERIM CONCLUSION

From the above, it can be clearly seen that Hamas **intended to use** these events as a part of its ongoing armed conflict with Israel, together with other terrorist organizations in Gaza, and primarily to create a mass breach of the border security infrastructure and allow for infiltration of operatives into Israeli territory in order to harm civilians and security forces. It can be seen that Hamas **had the means** with which to achieve this, including full control over the area of the events, influence over the population used to create the breach and shield its military operations, deploying operatives to the area and possessing both the means (weaponry) and additional methods (rockets, mortars, tunnels, ground-to-ground fire) with which to support this effort. Finally, it can be seen that Hamas **in practice tried to execute its plans**, by considering the nature and scope of the violence of the events, the actual damage caused to the border security infrastructure and other military and civilian assets, the death and wounding of Israeli security forces, and open admission by senior Hamas leaders.

²³ <https://twitter.com/Jtruzmah/status/1038843758261882880>.

²⁴ <https://twitter.com/Jtruzmah/status/1045908381100167168>.

²⁵ <https://twitter.com/Jtruzmah/status/1038193457284542464>.

PART 4 – IDF RESPONSE

The following section presents my professional assessment of the IDF's response to the above events, based on visits to the Gaza border during violent actions and discussions with IDF commanders and soldiers as well as Israeli government ministers.



Gaza protests led by Hamas deliberately mix terrorist operatives and civilians, including women and children

A – PREVENTATIVE ACTION

One of the reasons the events on the Gaza border cannot be closely compared to most other nations' experience of dealing with and controlling violent riots, such as the recent (winter 2018) riots in Paris, is that the IDF have no direct control of the area where the riots occur. Intelligence that riots are being planned cannot be exploited as it can be in other places, by taking police action such as making preventative arrests. In reality, the activities on the Gaza border are actions in another country which threaten a border invasion, rather than internal violent disorder to which they have been incorrectly compared.

This limits the range of options open to the IDF in dealing with the situation. An option the IDF did not take up would have been to make an incursion into Gaza and take complete military control over the area adjoining the border by permanently deploying IDF forces in that area. Had this been attempted it would have required a full-scale military operation against Hamas, and would have encountered serious military resistance by Hamas (as prior military operations in Gaza have demonstrated), resulting in many IDF soldiers killed and wounded by Hamas mines, booby traps, IEDs and gunfire; and resultant higher death rates among the Gaza civilian population.

In effect this meant the IDF's only options for preventative action was to issue warnings to the civilian population against taking part in the border events and to strengthen the security infrastructure as much as possible.

It should be noted that these events, to the extent of my knowledge, are unique in the experience of Western militaries. I am not aware of a similar situation in which military forces have been required to contend with non-state armed groups, possessing significant arsenals and capabilities, attempting armed infiltrations through cover of mass breaches of a long border area – and all just hundreds of metres from civilian residential areas. Thus, the IDF could not have been expected to comprehensively understand what to expect when these incidents began, despite its intelligence efforts and preventative actions. As a result, any professional assessment of these events must take this into account and consider the learning process needed in order to determine how to best contend with such events as they became ongoing.

B - WARNINGS

From the outset the IDF issued warnings to the civilian population of Gaza not to come to the area of the fence and not to attempt to enter Israeli territory. This included air-dropping leaflets, making phone calls, sending text messages, social media alerts and radio messages. The IDF communicated with the owners of bus companies in Gaza, warning them not to heed Hamas's orders to bring people to the area of the fence. As time has passed, the IDF has continued and increased these warnings in advance of expected mass events.

When crowds began to assemble adjacent to the border fence the IDF used public address systems to warn them of the dangers and risks of approaching the security fence and taking part in Hamas's activities near the fence.

It is my professional opinion that the warnings provided by the IDF maintained the necessary balance between allowing Gaza civilians to understand the danger in which Hamas was placing them in, as well as being sufficiently 'strong' as to counter Hamas's incitement and coercion to bring people to the border area. It is clear that in such a context, warnings to the local population need to be as vehement as possible, even when they exceed what the rules of engagement actually permit the forces to do – all in order to try and prevent, as much as possible, people from approaching the border and placing themselves in danger.



Israel is currently in the process of constructing a more substantial barrier. This consists of a concrete wall six metres in height, with deep foundations to act as a block

C – SECURITY BARRIER

The security barrier between Hamas-controlled Gaza and Israeli territory consists of two separate fences. The first, inside Israeli territory, is a metal fence, approximately six feet high with sensors built into it to detect penetration. At a distance of between 20 and 80 metres from the first fence, on the Gaza side, is a concertina barbed wire fence. Both fences are insubstantial, and can be relatively easily penetrated, which is partly why the IDF had to take robust action to prevent large-scale mobs from approaching and breaking through the fences.

Israel is currently in the process of constructing a more substantial barrier. This consists of a concrete wall six metres in height, with deep foundations to act as a block against Hamas attack tunnels penetrating from the Gaza Strip into Israeli territory. It will also include above and below ground sensors. However, the barrier is still under construction and will not be completed for a considerable time. Meanwhile the vulnerabilities of the existing barrier remain.

When the IDF became aware of Hamas's plans to amass large crowds and penetrate the security barrier, they took action to increase its effectiveness, including clearing vegetation from the vicinity of the fence to improve surveillance on attempts to penetrate, thickening of the barbed wire element and digging deep trenches at critical points on the Israeli side of the fence to impede the movement of any crowds and terrorists who succeeded in breaking through the fence.

It should be noted that these actions are not simple operationally, and entail a great deal of risk to the forces. Such activities require prolonged exposure to fire from Hamas and other groups, and are especially dangerous considering the history of attacks on IDF forces operating in the border area.

D – NON-LETHAL WEAPONS SYSTEMS

When the warnings outlined above were ignored — or negated by Hamas pressure on the civilian population — the IDF used non-lethal weapons systems to try and disperse the crowds and prevent them getting close to and penetrating the fence. This included tear gas. Tear gas has limited effect, as it is rapidly dispersed especially in the open and with even a light breeze. It should be noted that in the Gaza context, the direction of the wind is almost always east, meaning that any tear gas almost immediately returned to the IDF forces.

The effects of tear gas can also be mitigated by rudimentary defence measures, demonstrated by numerous contraptions used by Palestinians during the events. Tear gas can usually only be used at relatively short ranges.

The IDF attempted to enhance the effects of tear gas, overcoming range issues, by developing drones to disperse the gas at a distance and with greater than usual precision.

Foul-smelling 'skunk' liquid was also tried as a means of dispersing crowds. Again this is a short range weapon and has limited effect in these conditions. The IDF also used sponge-tipped bullets in some circumstances although again the effectiveness of these munitions is reduced because they are short range weapons. They used water cannons and fire trucks, not to control the crowds (which again would not have succeeded at the relevant distances) but to attempt to extinguish burning tyres used to obfuscate movement and burn the security barrier.



Remains of a rocket fired from Gaza at an Israeli town



An Israeli soldier next to an entrance to a cross-border attack tunnel dug from Gaza to Israel

The IDF investigated the use of other non-lethal systems, including consulting foreign armies and police forces, but concluded that no other currently available weapons would have been effective, including for example, sonic systems. They continue the search for more effective means to intervene without resort to lethal weapons.

E – BALL AMMUNITION

After warnings, reinforcement of barriers and a range of non-lethal weapons had been exhausted, the IDF sometimes, as a last resort and after all other options had been exhausted, used potentially lethal weapons to avert direct threat to life or to prevent penetration of the security barrier which would have led to direct threat to life.

The initial stage of graduated use of potentially lethal force was to fire warning shots overhead in some circumstances.

The IDF rules of engagement (ROE) for use of potentially lethal fire are classified. As a former military commander, I can attest that this is for good reason – a military force cannot expose its methods of operation to the adversary, who will then exploit the restrictions the military places on its soldiers against them. The following is my understanding of the ROE on the basis of the non-classified briefings I received and publicly available sources.

The ROE, also known within the IDF as Standard Operating Procedures (SOP), applicable to the violent border events, have been specifically designed for this situation. Like all military ROE they can be varied according to the precise circumstances at the time and the weapon systems being used. They are intended to guide commanders' decisions and soldiers' actions, ensuring that they remain within the applicable Israeli and international law. The ROE divide participants in the violent border events into three groups:

- a. *Those involved in terrorist activity.* These are visibly armed and present an imminent threat to life. These individuals can be shot in accordance with normal anti-terrorist actions. These are the only individuals involved in these events who may be deliberately fired at to kill.
- b. *Key instigators and key rioters.* These are individuals who are organising violent actions and attempts to breach the security barrier; they may be armed with incendiary devices and cutting equipment etc. Rules of engagement permit firing below the knee 'as a last resort only, subject to strict requirements derived from the principles of absolute necessity and proportionality, and after all other measures have been exhausted but remained ineffective'.²⁶
- c. *Those who are not involved.* Bystanders and members of the crowd who are unarmed and do not appear to be organising rioting. These individuals will not be shot at unless they become involved in one of the above activities.

I questioned many IDF commanders, snipers and other soldiers on their understanding of the ROE on several occasions. Although they were not authorised to discuss the detailed ROE with me, it was clear that they understood the need for restraint and that they were only to open fire on individuals in accordance with the ROE on which they had been briefed and trained, and only in

²⁶ Israeli High Court of Justice Judgement HCJ 3003/18 HCJ 3250/18.

order to wound (unless dealing with a terrorist attack). Commanders explained to me the levels of authorisation for opening fire, which were not generally delegated below the rank of lieutenant colonel except in immediate situations of danger.



IDF soldiers at the Gaza border fence

Photo: Israel Defence Force © 2018

Where possible, ball ammunition in accordance with the rules of engagement was executed by trained and qualified snipers using specialist sniper weapons and equipment, in order to ensure the most precise fire, to minimise the likelihood of death or missing the target. In many cases, the most experienced snipers from the Israeli military and police special units were deployed rather than standard soldiers. Despite potential impact on other operations, the IDF frequently kept these specialist individuals at the Gaza border in order to minimise deaths and misfires in this demanding situation.

However careful and well-controlled were those who employed ball ammunition, in such confused circumstances it is inevitable that some people would have been hit unintentionally through misaiming, ricochet and bullets passing through one person into another. It is also inevitable that sometimes an individual would be killed when the intention was to wound by firing at the legs. In some cases, individual Palestinians, knowing that the IDF policy was to shoot to wound, would run crouched down to make it more difficult to hit only the legs. Thus IDF snipers were left with a choice to increase risk of unintentional killing, or hold their fire against a target that was permitted to fire at. Unintentional killing for a range of reasons is always likely in a ‘fog of war’ situation, and even more so when the organisers of these actions deliberately create a situation to increase confusion and risk to life.

F – DEVELOPMENT OF OPERATIONS

As noted above, since the start of this series of events, Hamas have varied their tactics. The IDF have responded to changes and have also worked intensively on developing and improving their operational response to all situations. For example, as mentioned earlier, tear gas to disperse crowds and push them back from the border could initially be used only at very short ranges until the drone was developed for dispersal, mentioned above, which helped raise the threshold for using live fire.

Equally the IDF tried to use large fans to blow smoke away, to reduce obscuration for snipers and thereby reduce the prospects of accidentally hitting targets. They conducted frequent training in operational manoeuvre, enabling mobile units to respond more effectively and with less risk to themselves. They moved sniper fire positions closer to the border, raised them higher and provided them with greater protection, thus making them more effective. All of these measures, and others, served to reduce the need for potentially lethal fire and make it more accurate when it was used.

G – POST OPERATIONAL INVESTIGATIONS

Every known incident of death of Palestinians in these events is analysed to assess the possibility of wrong-doing, whether through accident, negligence or criminality. This is conducted by the IDF's Fact Finding Assessment Mechanism (FFAM), headed by a Brigadier-General outside the operational chain of command. The reports of this team are submitted to the independent IDF Military Advocate General (MAG) for legal assessment to ascertain whether there is reasonable suspicion that a criminal offence has been committed. According to reports, so far the MAG has opened 3 criminal investigations and is assessing other cases referred to him.

In addition to legal investigation, the FFAM seeks to identify lessons learned from incidents under investigation so that IDF tactics and procedures can be adjusted if necessary, to minimise the likelihood of causing unnecessary casualties among Palestinian civilians as well as to increase overall effectiveness of operations.

H – CRITICISMS OF IDF ACTION

Many political leaders, international organizations such as the UN and EU, human rights groups and commentators have made severe criticism of the IDF's defensive actions on the Gaza border. Much of this is unfounded and based on lack of knowledge and bias rather than detailed insight into the facts and a professional understanding of military operations including the laws that govern them.

Some have suggested that the IDF opened fire indiscriminately at unarmed civilians at the border. This is contradicted by the assessment by the Meir Amit Intelligence and Terrorism Information Center,²⁷ mentioned above, and in line with Hamas's own claims, that of all fatalities inflicted between 30 March and 15 May 2018, 83% were known terrorist operatives. Of the remaining 17%, or 20 people, some might have been unrecognised terrorist operatives, other non-members who nevertheless represented a threat and others who were inadvertently shot as a consequence of the fog and friction of war. It is also possible that some of these were killed in contravention of IDF

²⁷ <https://www.terrorism-info.org.il/en/findings-istics-examination-identity-palestinians-killed-events-great-return-march-march-30-2018-may-15-2018/>.

ROE, and as mentioned earlier, the IDF are investigating a number of cases of potential wrong-doing.

Some have criticised use of force by the IDF on the basis that only one IDF soldier has been killed during these events and relatively few wounded. They have suggested that this indicates a ‘disproportionate’ response by the IDF. As so often in commenting on the operations of Western forces, the IDF in particular, these people misunderstand — or deliberately misrepresent — the principle of proportionality in the laws of war. I cover this issue in my assessment below. And indeed it is not necessary to show harm in order to demonstrate the existence of a threat. The fact that IDF soldiers were not seriously wounded demonstrates their military professionalism, not the absence of threat.



IDF troops guarding the Gaza border

Photo: Israel Defence Force © 2018

Some contend that they could find no evidence of any ‘protester’ using firearms. Events have shown that this is far from the truth. But in any case, they fail to understand that this type of conflict is not about uniformed armies confronting each other openly carrying guns. In these circumstances firearms are not needed to present a threat. In fact, the opposite is the case given the terrorists’ known objectives and modus operandi. Their weapons are wire cutters, grappling hooks, ropes, smokescreens, fire and concealed explosives.

Hamas has spent years and millions of dollars digging attack tunnels underground trying to get into Israel to carry out mass murder — a serious threat that involves spades, not guns. Now they have also been trying above ground, using their population as cover — the guns will be pulled out once they have achieved their aim of forcing a mass penetration. A soldier waiting for a gun to appear would be signing his own death warrant, and that of the civilians he is there to protect.

Criticisms of Israel's policy based on the high number of those wounded by ball ammunition during the events are misguided and are not indicative of any problematic policies or implementation of policy on behalf of the IDF. The preparations, precautions, warnings, rules of engagement and manner of implementation by the forces themselves show that the IDF did what was required in order to ensure that live fire was used only as a last resort, and only in order to negate actual threats to the lives of soldiers and civilians. Considering that these events have been ongoing for over nine months, have included hundreds of incidents of mass events on the border, each involving tens of hundreds or tens of thousands of persons – the number of alleged wounded actually further strengthen the above determination regarding the IDF's conduct.

Overall, based on reports it can be assessed that approximately 300,000 people have participated in these events, and as described above they have included large amounts of serious violence including explosives, airborne incendiary devices, shootings, and so on. The fact that approximately 5,000 persons have been wounded by live fire (according to figures provided by the Hamas Ministry of Health, which have not been validated by an external neutral party) constitutes less than 3% of the total amount of persons, is further indication of the IDF's restrictive usage of ball ammunition, and certainly does not indicate on its own any problematic behavior on behalf of the IDF.

Indeed, let us consider just one generic incident of mass encroachment on the border: assuming that in one such event thousands of persons participate, and the event takes place over a number of hours, and during that time hundreds of people charge the fence and try to create a breach, and against this the IDF – after exhausting all non-lethal means – uses live fire against 10-20 persons who were main inciters or directly involved in the hostilities, this is to be considered a reasonable and restrained response. The fact that this continues to repeat itself, day after day, week after week, month after month, and at numerous places along the border – should not change the reasonableness of the IDF's response. Indeed, it is a reflection on Hamas itself, who despite knowing what the IDF is required to do to defend its borders, continues to send its civilian population into harm's way.

INTERIM CONCLUSION

Therefore, it is my professional opinion that the IDF's preparations for these events was conducted in a professional and reasonable manner, and that the IDF's policy for the use of force conformed to the military necessity. In my opinion, there was no other reasonable alternative that the IDF could have employed in order to contend with the threats posed by these events.

PART 5 - SUMMARY ASSESSMENT

Throughout the period of the border violence, Hamas have been working on attack tunnels, some of which have been located and neutralised by the IDF.²⁸ They have fired rockets and mortars from Gaza, including in response to the deaths of some of their operatives. They have maintained their campaign of incendiary attack from the air. They have used boats to challenge and distract the Israeli navy. They have developed tactics of night rioting including use of loudspeakers with threatening messages through the night to terrify the Israeli border communities and to wear down the IDF.

Although this inquiry focuses on the border violence, that cannot be seen in isolation. IDF commanders must make judgements and decisions based on the full spectrum of potential threats from Gaza. For example, in working out their plans they must assume that should a breach be created in the Gaza border which is then exploited by terrorists and mass mobs, Hamas will launch a coordinated rocket barrage.

It is clear that Hamas rockets are immediately ready to launch and could be used in this scenario. We saw in November 2018 that Hamas and its partners are capable of unleashing a barrage of 500 rockets in a single day. In addition, Hamas could activate attack tunnels and fire anti-tank missiles in coordination with rockets and large-scale border incursion. It is therefore overly simplistic to view Hamas's operations and the IDF response simply as an isolated police-type situation. Whatever the precise nature of each individual action, it takes place on a battlefield and within a military campaign.

I have commanded British forces in numerous violent riot situations, including where terrorists orchestrated riots and positioned their operatives, armed with weapons and explosives, among the civilian population; in multiple simultaneous locations; and where wider threats also existed beyond the immediate riot situation.

However the situations I have been involved with, and most other similar situations involving Western forces, are markedly different from the situation facing the IDF, in the following respects:

- a.** The rioting and terrorist activity occurred in what is effectively a foreign country, outside the direct control of the forces responsible for countering it.
- b.** The territory in which rioters act is usually under the control of the security forces, which enables them to operate more freely among, in depth and on the flanks of the rioters, which can isolate a riot situation and protect the forces seeking to control it, with less lethal threat to themselves and others. In Gaza this was not possible except to a limited extent by air surveillance and the IDF remained vulnerable to a range of lethal threats separate from the rioting crowd and the terrorists among them.
- c.** Many of the measures that can be effective in controlling riots at close quarters could not be applied as effectively, or at all, because the IDF have been unable to close with the rioters by making an incursion into Gaza. Such measures include establishing a baseline of riot control officers and vehicles to block and channel rioters, use of snatch squads to seize key rioters and instigators, use of vehicles to disperse crowds, use of water cannon, use of tear-gas, use of plastic bullets or baton rounds and use of CCTV and other surveillance to deter rioters who then risk subsequent arrest and imprisonment.

²⁸ <https://www.jpost.com/Arab-Israeli-Conflict/IDF-destroys-Hamas-terror-tunnel-569170>.

- d. The usual deterrence against rioters, that they are liable to be arrested during or after a riot, does not apply. In fact the opposite applies. The authorities in Gaza encourage and incentivise their rioting and make substantial payments to those who are injured and the families of those who are killed. It has been very clear throughout these events that even the threat of wounding or death will not deter many of the rioters in this situation.
- e. Usually rioters, such as those in Northern Ireland, London, Paris and elsewhere, act in response to a particular situation or to draw attention to their cause. Their objectives tend to be limited. The greatest risk is usually damage to property, looting and non-lethal attacks against security forces. They do not seek to invade territory and carry out mass murder of the nearby civilian population.
- f. A riot is not normally part of a wider military operation, albeit sometimes terrorists can be intermingled with rioters, intent on lethal attacks against security forces. In Gaza the rioting was intended to create a breach in the security barrier and invade Israeli territory and was used as part of a wider campaign including a range of other weapons and tactics including attack tunnels and rocket firing, as mentioned above.
- g. Although terrorists, including in Northern Ireland, have used rioting crowds as human shields, they usually employ this tactic to confuse the security forces and allow them to attack with greater impunity. In the case of Hamas, they also desire that their human shields be killed or wounded by the security forces to create international outrage and vilification. This is why they, again unusually, push women and young children to the front of the rioters to maximise outrage if they are killed or wounded.

Those who claim the IDF exceeded the necessary use of force in confronting the Gaza violence, asserting that most Western security forces do not use live ammunition to control rioters, have failed to recognise the above critical differences from situations hitherto faced by Western forces. Although in some cases British and other Western forces have had to resort to use of live fire in controlling riots associated with terrorism, it is thankfully very rare because of the differences I mention.

Some have contended that Israeli troops used excessive force because they fired live ammunition against demonstrators who posed no imminent threat to life, including the EU who have expressed alarm over ‘the use of live ammunition by Israeli Security Forces as a means of crowd control’. In fact, the so-called ‘demonstrators’ did pose an imminent threat to life. Today, it is well accepted in international law that live ammunition can be used when there is a serious threat of death or injury, and where no other means have succeeded in confronting the threat. There is no requirement that the threat be ‘immediate’ — rather, such force can be used at the point where it becomes ‘imminent’; ie when there is no intermediate stage in which an aggressive action can be prevented before it becomes an immediate threat.

The reality is that, under the conditions deliberately created by Hamas, there was no effective intermediate step that could have been taken, short of shooting those who posed an imminent threat. Had these people (who can hardly be called mere ‘demonstrators’) been permitted to reach the fence and breach it there would have been not just an imminent but an immediate threat to life which could only have been prevented by inflicting far higher casualties, as discussed further below.

In more ‘standard’ riot situations, a crowd surging into an area that the security forces must deny to them would be stopped by one or more of the short range methods mentioned above, such as plastic bullets or riot control vehicles or deployment of a base-line. Leaders or leading formations would be targeted. On the Gaza border such options do not exist due to weapons range and effectiveness. Therefore, the IDF as a last resort engaged key rioters and instigators with shots to the legs to break up the momentum of their surge towards the security barrier. The principle is no different to other riot situations but of course the potential for serious injury and lethality is greater.

The decision to take such measures both as a policy and as an individual action was made on the basis of a proportionality and necessity calculation — as indeed it would when deciding to use non-lethal riot control techniques, which in reality can and have also caused severe injury and death. That proportionality and necessity calculation should be seen in the following context.



Israeli soldiers with the HLMG delegation



The distance from the border to various Israeli civilian communities is short, and in some cases can be covered on foot and by motorbike and jeep very quickly, in a matter of minutes. The example of the kibbutz of Nahal Oz is mentioned above. If not stopped by IDF action at the border, a mob of thousands could have been loose in Israeli territory, among them armed terrorists, often indistinguishable from the rest of the mob. As mentioned earlier, Hamas also encouraged members of the rioting mob to arm themselves with anything they could find, and many of these, whether armed with firearms, machetes, knives or whatever, would also have represented a threat to civilians or soldiers. As also mentioned previously, this situation could have been coordinated with intense rocket fire and the use of attack tunnels, increasing the danger and confusion.

In such a scenario, and despite containment plans, the IDF would almost certainly have had to shoot at this mob to prevent them and the terrorists amongst them from reaching civilian communities. It is of course not possible to estimate the scale of death and wounding that might have resulted, including potential death and wounding to Israeli civilians and soldiers. However, it is necessary to make the assumption that the numbers would have been significantly greater than the numbers killed and wounded in the IDF's operations to prevent this situation occurring.

This would have been an assumption that I and other Western military commanders would have made in the circumstances. It is upon this assumption that the IDF could reasonably have calculated that their actions to prevent this threat from materialising were necessary and proportionate to the danger apprehended. Within such a proportionality/necessity calculation, for a military commander considering the risk to civilians of his military actions, it is incumbent upon him not just to consider the potential threat to his own population and forces, but also the potential for greater harm to be caused to the enemy's civilian population if a particular action is not taken (in this case, preventing the breach at the border). In my judgement the potential threat to both Israeli and Gaza citizens justifies the actions of the IDF to prevent it.

I observed closely the IDF's activities on the Gaza border on a number of occasions during these violent events. I was briefed by and questioned a range of officials from the Defence Minister and National Security Adviser downwards and military commanders from the Deputy Chief of Staff of the IDF down to individual commanders on the ground on the operational plans and procedures and rules of engagement (within the constraints of security classification). On the basis of these briefings and observations, plus my own experience of commanding troops in similar situations I have concluded that the actions of the IDF were, taking into account all circumstances, reasonable, necessary and proportionate to the threat.

Faced with such a challenging set of circumstances I do not believe any other Western security forces would have been able to achieve their mission with fewer civilian casualties, and I believe that some might have found it necessary to inflict more casualties.

The IDF's ROE were in-line both with international law as well as with military standards of other Western militaries. The IDF's institutional efforts to both prevent the violence as well as develop tactics and means for better contending with the violence indicate its commitment to reducing harm, to the extent possible, while ensuring it succeeds in its mission in protecting the Israeli population

I make this point in the light of the facts that the IDF had access to high grade intelligence, had very detailed knowledge of the terrorist organizations, the population and the topography of the operational area, and were able to deploy highly experienced and proficient snipers from a range of units including military and police special forces to an extent beyond the capability of many Western security forces.

In my professional opinion, the IDF's ROE were in-line both with international law as well as with military standards of other Western militaries. The IDF's institutional efforts to both prevent the violence as well as develop tactics and means for better contending with the violence indicate its commitment to reducing harm, to the extent possible, while ensuring it succeeds in its mission in protecting the Israeli population. Furthermore, it is my opinion that IDF commanders operated reasonable, professionally and in proportion to the threat, and that they utilized their professional discretion in a reasonable manner. I received the impression that commanders knew how to assess individual situations and decide at what point they needed to use live fire against individuals in order to prevent a mass breach from occurring.

Of course, the loss of innocent life and the wounding that occurred as the IDF responded to the violent activity on the border is tragic. I should make clear, however, that in my judgement, responsibility for all of this loss of life lies with Hamas, which created the situation that caused it, and not with the IDF, which took all possible measures to minimise loss of life and wounding. Had Hamas achieved its objectives and succeeded in creating one or more breaches in the security barrier through which its terrorists and large-scale mobs entered Israel, in my opinion the loss of life would likely have been far greater.

It should also be noted that as a result of the developing nature of these events, their connection to the larger conflict with Israel and hostilities conducted through other means, and the different purposes which the events have served over the months, from a professional viewpoint these events cannot be assessed together. Military commanders (and political directives) take into consideration such factors when determining their response, and thus a proper assessment needs to take them into account. For example, the response to an incident known by the IDF to be aimed at testing border defense systems will be dealt with differently by a commander than an event aimed at placing political pressure on Israel. Thus, criticism of IDF action without being aware of factors such as the purpose of the particular events in question and the wider potential context, is incomplete.

Many people, including UN officials, political leaders, human rights organizations, media commentators and analysts have asserted that the IDF should have acted differently, without resorting to the use of live fire. However, I have not seen a single realistic proposal from any of these individuals or bodies as to what the IDF should have done differently to control this situation. To repeat, despite their condemnations, not one of these officials, or any other experts, has so far put forward any viable alternative courses of action to prevent violent penetration of Israel's borders.

PART 6 - CONCLUDING REMARKS

As stated above, the primary objective of the internationally-proscribed Hamas terrorist group in attacking Israel using rockets, mortars, attack tunnels, amphibious landings, airborne incendiaries, IEDs, sniper and anti-tank fire and mass border penetration, is to attack Israeli civilians and security forces, as well as to force Israeli defensive action which kills and injures Gazan citizens and consequently attracts international opprobrium, isolation and economic damage.

The unjust and widespread criticisms mentioned earlier, as well as many others, whether as a result of ignorance, malice or both, validate Hamas's tactics, including the use of human shields. They encourage Hamas to continue and extend its violent actions against the State of Israel. This causes untold harm to Israel, as soldiers and civilians are killed and wounded, thousands are forced to spend hours in bomb shelters, property is destroyed or damaged and the economy suffers. It causes even greater harm to the citizens of Gaza. Inevitably many are killed and seriously wounded, property is damaged or destroyed, freedom of movement is curtailed, economic and social development is retarded and resources which should be spent on civilian infrastructure and welfare are used to build and stockpile offensive weapons and construct military infrastructure including tunnels.

This is also the effect of international action such as threats to put Israel in front of the International Criminal Court and to invoke universal jurisdiction against Israeli officials involved in dealing with Hamas and other aggression. It has also been the effect of the biased UN Human Rights Council investigations of the past, in particular the Goldstone investigation into Operation CAST LEAD in 2009 which was so fundamentally flawed that the chairman, Judge Goldstone, later retracted the main claims against Israel made in his report.

I have noted above concerns over the biased mandate given to the COI as well as the lack of essential relevant expertise. I would urge you to resist the mistakes of previous inquiries which have served not only to further undermine the credibility of the UN Human Rights Council, such as it is, but much worse than that, as I mentioned, to incite further violence and bloodshed. Instead of ritual condemnation of the State of Israel, which is trying to defend its citizens and its territory while at the same time minimising the risk of harm to the people of Gaza, the COI should support Israel's necessary actions and condemn Hamas and the other proscribed terrorist groups in Gaza, in the strongest possible terms, and demand that they be held accountable for the violence, bloodshed and suffering they have caused by their unprovoked aggression. Similarly the COI should condemn the Islamic Republic of Iran which has been responsible for funding Hamas and other terrorist groups in Gaza, and supplying them with arms and ammunition, as well as directing and encouraging their offensive action against Israel.

There would also be a further, wider consequence of the failure of the COI to produce a fair and objective report to the UN Human Rights Council. Not only would such an unfair report encourage and embolden Hamas and other Gaza terrorists, it would also encourage and embolden terrorist groups around the world, causing greater use of human shields and increasing bloodshed. It would also further incite anti-Semitism everywhere, with potentially lethal consequences. In addition, condemnation of the army of a democratic nation that adheres strictly to the laws of armed conflict, will tend towards constraining the actions of armed forces of other democracies who are faced with violent assault against their civilian populations, also increasing the prospects of violence and suffering. By demanding unreasonable standards for militaries contending with the threats described in this report, the COI risks both endangering life and the image of the actual international law governing such conduct. This has been a long-standing concern of the members of the High Level Military Group as they have observed unjust criticism and condemnation of the IDF. Due to the commissioners' lack of relevant expertise and experience, particular care should be taken in making conclusions and determinations that could be viewed as overly restricting the ability of democratic states to adequately defend their own population from attacks by terrorist organizations.

ANNEX

Update to Submission to COI

Following the above submission, oral testimony and subsequent correspondence and dialogue with the Commission, I have seen it necessary to provide clarifications and affirm my positions on specific issues. This Annex includes such analysis, and is current as to 4 February 2019.

Explicit Evidence of Hamas's Military Intentions

The above submission describes Hamas's military intentions in the context of the border violence based on my professional military understanding of the nature of operations of Hamas and other armed groups, open sources and visits to the Gaza border.

With regard to the apparent lack of explicit statements by Hamas as to their military intentions, I note the following.

One cannot expect to find explicit statements by Hamas to the effect that their intention is to carry out attacks under the guise of the riots, or visual evidence of openly armed Hamas terrorist operatives wearing uniforms and marching towards the border in formation. Indeed, this is the underlying rationale behind the so-called 'Great Return March' – using the 'civilian' nature of the events as cover to carry out attacks with surprise.

Explicitly revealing military plans by Hamas would harm the chances to execute the plan with success. This is not unique to this context – militaries typically do not reveal their operational plans for fear of having them thwarted.

It should also be considered that in the absence of such explicit evidence, it would not be a simple matter to dismiss the fact that Israel has stated in its official submissions to the Supreme Court that it possesses intelligence attesting to Hamas's intentions to use the events to carry out attacks. One cannot expect Israel to publicly release such intelligence, especially considering that the events, not to mention the wider conflict with Hamas, is still ongoing.

Nevertheless, as explained in the above submission, it is reasonable to conclude that this was Hamas's intentions based on publicly available information and sources. In short:

- There is clear evidence Hamas organized, supported, funded, and promoted these events, and allowed them to occur or not to occur according to its political needs at the particular time.
- There is clear evidence Hamas used these events to incite the masses to breach the border, in the best case calling on them to return to their 'promised lands', and in the worst, calling on them to murder and pillage.
- There is clear evidence that this was the mood of the public as well.
- There is clear evidence that Hamas has the capabilities to exploit such a breach and has the capabilities to support such an operation.
- There is clear evidence Hamas has trained for infiltrating into communities and military posts.
- There is clear evidence Hamas has undertaken similar efforts in the past (tunnels into Israeli territory; using civilians as human shields; and so on).
- There is clear evidence of Hamas's direct involvement in the attempts to carry this out – from taking responsibility for launching incendiary/explosive devices; the high level of involvement of Hamas operatives/affiliates; the amount of military-grade grenades and other explosives; the sniper and other shooting attacks; and more.

Finally, one must consider the role of other terrorist organizations besides Hamas. As documented and published, it is not just Hamas that is using these events to carry out attacks. Other armed groups such as Palestinian Islamic Jihad and Al-Qaeda associated groups have also been operating on the Gaza border. In some respects, these organizations are even more dangerous than Hamas, because they do not have the other factors to consider – they, for example, are not beholden to Hamas commitments to Qataris or others to curb the violence, and do not have to take into account other considerations that Hamas does, such as the anger of the population with regards to the state of the medical system or the political infighting with the Palestinian Authority.

Hamas Military Trainings Prior to 30 March 2018

In the above submission, I referred to a publicly reported Hamas military training that took place in March 2018, which included training infiltrations, kidnappings and taking over IDF installations (see page 11). I noted that this evidences Hamas's intentions to use the border violence as cover for carrying out attacks. This remains my assessment, despite the fact that these trainings did not include scenarios involving masses of the civilian populations.

The fact that the video does not reference or include scenes of masses of civilians does not indicate that the training is separate from the border events. Rather, it shows exactly the opposite. Hamas intended – and openly stated, incited, and so on – for the *masses* to create the breach (interspersed with their own operatives). Thus, this was not something they needed their combat units to train. What was supposed to come next (in addition to lynching and attacks by the masses) was an exploitation of that breach by combat units, including infiltration into civilian and military areas and subsequent attacks. This is what the training involved.

The fact that this training took place so close to March 30 is, in my view, a further indictment of Hamas's intentions in this regard. At the very least, it suggests that the IDF had a reasonable basis to act on the knowledge that these are Hamas's capabilities, and that it is reasonable to believe that Hamas could trigger such capabilities if the border is breached.

Further, it should be noted that it is not just Hamas training such scenarios, and there are publicly available videos released by other armed groups in Gaza during the border violence which include scenarios as such as fence breaches. In this regard, the IDF has an obligation to prevent such scenarios from materializing by defending from breaches in the border security infrastructure.

Lack of Visual Evidence of Hamas's Military Wing at the Border

In the above submission, I noted that jeeps and motorbikes were present at the backlines of the border violence, indicating Hamas's intention to exploit breaches in the border to conduct fast-moving attacks inside Israel. This assessment is not affected by the fact that these jeeps and motorbikes do not outwardly carry Hamas military insignia.

As noted above, Hamas's operational methods include deliberately concealing the military nature of its activities and materiel. Just as Hamas militants operating within the crowds do not distinguish themselves from the surrounding civilians, Hamas intentionally disguises the vehicles it intends to use to exploit breaches in the border for penetrating into Israeli territory.

A military understanding of Hamas and its history of operations is required to understand that those present at the Gaza border are not there simply as spectators. Particularly, Hamas has used such vehicles in the past – for example, during the 2014 Gaza war, the IDF found a number of motorbikes in

the tunnels that reached in Israel, ready to be used to infiltrate deep into Israel, kidnap and return quickly to Gaza. Seeking explicit visual evidence of Hamas military insignia on personnel or vehicles in the context of these events would evidence a gross misunderstanding of the nature of operations of Hamas and other armed groups in Gaza.

Use of Incendiary and Explosive Airborne Devices

In the above submission, I noted that “flying flaming and explosive kites and balloons into Israeli territory to kill and maim, as well as to destroy military infrastructure, burn crops, forested areas, designated nature reserves, houses and other buildings”. In my opinion, these means were used to intentionally cause these results.

Sending flaming and explosive devices into Israel knowing approximately where they will land due to the wind constitutes, in my professional assessment, an intentional attempt to kill and harm. The clear involvement of Hamas and other militants in this effort further suggests their intent. Finally, even if one decides not to find that there was intentional intent to kill and maim, these certainly constituted indiscriminate means.

In this regard, in order to conduct a proper assessment of the border violence, it is integral to consider the wider context and ancillary events occurring at the same time in Gaza. For example, from a military perspective, the rocket fire from Gaza cannot be seen in isolation from the border violence. This is because both the border incidents and the other incidents (rockets, mortars, cross-border fire) are executed by the same groups, in the same territory, with the same stated intentions, and during the same period of time. It is also because there is a causal connection between the two. For example, in January 2019, IDF forces responded to an explosive device that landed in Israel attached to a balloon, following which a rocket attack was conducted from Gaza (see, for e.g. <https://www.timesofisrael.com/hamas-renews-funding-for-incendiary-kite-units-ahead-of-expected-escalation/>). In my view, ignoring these events and restricting analysis only to the border violence would not allow for a proper fact-finding process.

Corrections

The picture on page 21 of the Submission is not of IDF soldiers at the Gaza border fence, but rather at a location approximately one kilometer from the border.

The statement on page 14 regarding Hamas leaders instructing rioters to arm themselves with weapons during the events is incorrectly referenced to media interviews, and rather should be referenced to evidence gathered by Israeli security forces during questioning of Palestinians detained while in Israeli territory. Some of this evidence has been published by Israel's Security Agency in the media and on its website.

As stated above, the primary objective of the internationally-proscribed Hamas terrorist group in attacking Israel using rockets, mortars, attack tunnels, amphibious landings, airborne incendiaries, IEDs, sniper and anti-tank fire and mass border penetration, is to attack Israeli civilians and security forces,



HIGH LEVEL MILITARY GROUP

**Submission by Colonel (Retd) Richard Kemp CBE
on behalf of the High Level Military Group
to**

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Protests in the Occupied Palestinian Territory**

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