

# Jerusalemviewpoints



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## The Gaza War 2021: How Iran and Hizbullah View the Attacks on Israel

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Palestinian children soldiers begin summer camp in Gaza with Hamas' al-Qassam Brigades (KHBR Press)

This article is part of the forthcoming Jerusalem Center research report: *The Gaza War 2021: The Iranian and Hamas Attack on Israel*.

- As recognized by international law, Israel has the legal right to employ the force necessary to defend itself. President Biden, on May 16, 2021, “reaffirmed his strong support for Israel’s right to defend itself against rocket attacks from Hamas and other terrorist groups in Gaza.”
- From a young age, Palestinian children are indoctrinated by the Palestinian leadership to seek death through war. For example, the daughter of a Hamas official was recorded saying, “If we die, we will die as Martyrs for the sake of Jerusalem and Al-Aqsa.” Such indoctrination is reinforced in summer camps for children and

**culminates in the conscription of children into military units, in direct violation of international humanitarian law.**

- **In the course of the 11-day conflict, from May 10 to May 21, 2021, Hamas launched 4,300 rockets at Israeli civilians in a blatant violation of international humanitarian law, which calls to protect civilian populations during military operations. Article 25 of the 1907 Hague Regulations specifically prohibits attacks or bombardment of towns, villages, dwellings, or buildings that are undefended.**
- **Hamas unapologetically uses its own civilians as human shields, unconcerned with the fatal ramifications of its actions. British Colonel Richard Kemp designated Hamas as “the first ‘army’ in history to use their own civilian populations as a primary weapon of war.” On May 12, 2021, UN Special Coordinator Tor Wennesland told the UN Security Council, “Hamas and other militants’ indiscriminate launching of rockets and mortars from highly populated civilian neighborhoods into civilian population centers in Israel violates international humanitarian law, is unacceptable, and has to stop immediately.”**
- **Israel makes a concerted effort to limit civilian casualties. The IDF engages in the practice of “roof knocking” to warn civilians prior to an attack on Hamas targets. In addition, before Israeli attacks, civilians receive phone calls advising them to evacuate. Israeli drones watch from above, and attacks are permitted only after it is confirmed that the building has been evacuated.**
- **Hamas demonstrates no respect for international humanitarian law designed to protect innocent civilians. Therefore, it is vital that Hamas be held accountable for its illegal actions in international forums and international courts of law. Without doing so, there will be no justice for those who have suffered from the grave human rights abuses committed by Hamas.**

## **Rules of Law**

As recognized by the international community, Israel has the legal right to defend itself under international law. When confronted with threats by Hamas to Israel’s citizens and national security, it is well within Israel’s right to employ the force necessary to defend itself.

U.S. President Joe Biden reiterated this sentiment on May 16, 2021, when he “reaffirmed his strong support for Israel’s right to defend itself against rocket attacks from Hamas and other terrorist groups in Gaza, and condemned these indiscriminate attacks against Israel.”<sup>1</sup>

During a debate on a one-sided resolution adopted by the UN Human Rights Council on May 27, 2021, several speakers said, “the indiscriminate barrage of rockets fired by Hamas and Palestinian Islamic Jihad into Israel were completely unacceptable.”<sup>2</sup>

Despite international law justifying Israel’s self-defense efforts, Israel continues to come under fire from international organizations. On March 3, 2021, the International Criminal Court, which launched a war crimes probe into the 2014 Gaza War, concluded, “The Court

may exercise its criminal jurisdiction in the Situation in Palestine, and that the territorial scope of this jurisdiction extends to Gaza and the West Bank, including East Jerusalem.”<sup>3</sup> The “State of Palestine” became a member of ICC and the Assembly of States Parties in the ICC in January 2015, while Israel is not a member state.<sup>4</sup>



Promotional poster announcing registration for Gaza summer camps

## The Use of Child Soldiers

One large group victimized by Hamas is Palestinian children. From a young age, Palestinian children are indoctrinated by the Palestinian leadership. Hamas-controlled media encourage young viewers to seek death through war and violence or become martyrs by sacrificing their lives for Jerusalem. Their young age and naïveté leave children vulnerable to the influence of anti-Israel and anti-Semitic language, indoctrinating them to resort to violence.

For example, the daughter of Hamas’ Ministry of Internal Affairs’ spokesman Iyad Al-Buzum, Lama, was recorded saying, “If we die, we will die as Martyrs for the sake of Jerusalem and Al-Aqsa,” insisting that Israel “will be destroyed” – evidence of the tenor of Hamas’ media campaigns.<sup>5</sup>

Additionally, Palestinian leaders use social media to share videos of child fighters, encouraging other Palestinian children to follow their lead. On February 17, 2020, PA President Mahmoud Abbas’ Fatah party shared a video produced by *Gaza TV Media* with a child soldier speaking about his desire to “shoot Jews” and “die for Jerusalem,” encouraging followers to “share the video.”<sup>6</sup>

Hamas also uses children’s imagery to garner support for their cause, as exemplified by the viral photograph of Yahya Sinwar holding a child, the son of a dead Hamas fighter, who is holding a rifle.



Screenshot from video showing Hamas leader Yahya Sinwar hoisting gun-toting child, the son of a “martyred” Hamas fighter.

Much of the indoctrination of Palestinian children takes place during summer camps run by armed groups like the al-Qassam Brigades<sup>7</sup> and the Palestinian Islamic Jihad’s *Saraya al-Quds*,<sup>8</sup> which aim to instill Islamist values and military training in children. Promotional videos and advertisements entice young children to register for these camps, culminating in the conscription of children into military units.



Screenshot from a June 2021 obituary video<sup>9</sup> of a young Hamas teen fighter who drowned. The video shows him training on an RPG, AK-47 rifle, heavy machine gun, and emerging from a tunnel.

## What International Law Says

The 2007 Paris “Principles and Guidelines on Children Associated with Armed Forces or Armed Groups”<sup>10</sup> define a “child soldier” as any person below the age of 18 who has been recruited or used by an armed group in any capacity, not just a child who has taken direct action in hostilities. By this internationally accepted definition, Palestinian children in Hamas’ summer camps and those brainwashed by armed groups through other media all fit into the category of “child soldiers.”



Screenshot of Palestinian children at a Hamas summer camp in Gaza, June 2021.

Hamas’ indoctrination of children has fatal consequences: many Palestinian children engage in violence against Israel, which often results in casualties. Such was the case with Samah Mubarak, 16, who was killed after she attempted to stab an Israeli security officer in 2019.<sup>11</sup> Both Nihad Raed Muhammad Waked and Fouad Marwan Khaled Waked, both 15, were killed after opening fire at IDF soldiers in 2016.<sup>12</sup>

## Both the Use of Child Soldiers and The Indoctrination of Youth by Hamas Violate International Human Rights Law

The Rome Statute of the International Criminal Court<sup>13</sup> stipulates:

- Article 8(b)(xxvi) considers the conscription or enlisting of children into the armed forces a war crime.

The 1989 United Nations Convention on the Rights of the Child<sup>14</sup> includes:

- Articles 28 and 29, which refer to the right of the child to an education.
- Article 36, which protects the child against all forms of exploitation.
- Article 38(2), which prohibits children under the age of 15 from directly engaging in hostilities.

- The 2000 Optional Protocol on the Involvement of Children in Armed Conflict “exists to strive for the promotion and protection of the rights of the child.”<sup>15</sup>
- Article 1 prohibits the conscription of children under 18 into the armed forces.

Various international campaigns, such as UNICEF’s “Children, Not Soldiers”<sup>16</sup> and the Coalition to Save Palestinian Child Soldiers,<sup>17</sup> were created to campaign against the use of child soldiers in conflict.



Promotional Poster for Palestinian Child Soldier Week

## Violations of Freedom of the Press in Gaza

Hamas’ control of the media means that much of the reporting coming out of Gaza is unreliable. Some journalists in Gaza report threats by Hamas if they film certain content, such as Hamas firing rockets. [See a compilation of threats to journalists, including a Spanish journalist’s admission, “If ever we dare pointing our camera on (rocket teams) they would simply shoot at us and kill us.”<sup>18</sup>] This inability to report the news objectively contributes to an overall lack of transparency regarding events in Gaza, often leading to one-sided and misinformed reporting.

In addition to facilitating the spread of false news and promoting widespread media bias against Israel, Hamas is in violation of freedoms of the press and speech. Censorship and misinformation hide the truth, and only the occasional testimonies of journalists and activists regarding their experiences reveal the extent of the limitations to freedom of speech and freedom of the press under Hamas.

To control the media, Hamas resorts to arbitrary arrests of journalists and activists. In April 2017, Hamas arrested 17 activists and journalists and charged them with “spreading

false rumors and news through social networking sites,”<sup>19</sup> despite their denying such charges.

Gazan journalist Ahmed Said recalled that Hamas police spokesman Ayman Al Batnihi told him after his arrest that Said was “causing us many problems and inciting people. I know how to deal with people. You need to be hanged.”<sup>20</sup>

## **The *New York Times* Was Not Harassed by Hamas**

Bias in the media is seen in major international news sources. On May 28, 2021, the *New York Times* published a front-page spread containing 65 pictures of children supposedly killed during the 2021 Gaza War. This article, clearly designed with an anti-Israel agenda, was based on misinformation, some obtained from the Hamas-controlled Gaza Health Ministry or the terrorist-affiliated NGO, Defense for Children International-Palestine.<sup>21</sup> On May 10, 2021, at least nine of the children pictured were killed when errant Hamas rockets fell short of reaching Israel and hit Gazan civilians.<sup>22</sup> Overall, 680 Hamas and Islamic Jihad rockets fell on Gaza.<sup>23</sup> On May 13, 2021, the IDF published a video documenting a Hamas rocket falling on Gaza.<sup>24</sup> In addition to the children, the Gazans killed by Palestinian rocket fire included ten men and two women.<sup>25</sup>

Moreover, some of the children pictured by the *Times* were actually terrorist operatives. For example, Muhammad Suleiman, 16, a member of Hamas’ Qassam Brigades, was killed with his father, Tsabar, a Hamas commander, on May 10, 2021.



An innocent “child” listed by the *New York Times* was a Hamas fighter.

Another “child” listed by the *Times* as 17-year-old Khaled al-Qanua, who died on May 13, 2021, was identified by the Mujahedeen Brigade in their official mourning notice as a 20-year-old terrorist operative.<sup>26</sup>

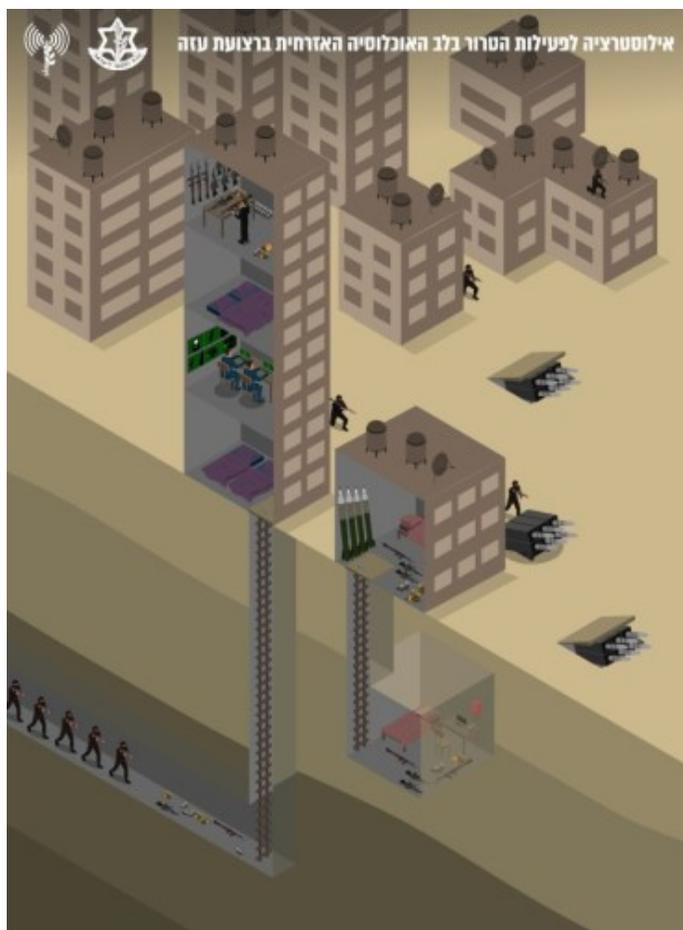
With its focus on the tragic losses of Palestinian children, the *New York Times* was acting to promote a biased anti-Israel narrative while relying on evidence provided by Hamas. The reliance on Hamas as a source prejudices the credibility and bona fides of any such foreign news sources.

The suppression of the freedom of speech and freedom of the press is not only a direct violation of the human rights of journalists and activists but also colors the way the rest of the world views the conflict, promoting a narrative as seen through the eyes of Hamas.



20-year-old fighter, Khaled al-Qanua

## Hamas' Tunnel System – Intentional Collateral Damage?



Hamas tunnels and rocket emplacements in Gaza residential areas (IDF Spokesperson)

Since the 2014 Gaza war, Hamas has been expanding its network of tunnels beneath crowded civilian areas in Gaza. Called the “Metro” by the IDF, these tunnels transport troops and weapons throughout Gaza and under civilian neighborhoods.<sup>27</sup> Alarming,

“incidental collateral damage” can be labeled in Hamas’ case “intentional collateral damage.” Videos published by Hamas and *Al Jazeera* document the extent and use of Hamas’ tunnel system for missile storage and the movement of forces undetected by Israel.<sup>28</sup>

Such tunnels constitute legitimate military targets as recognized by international humanitarian law, and thus their attack is sanctioned since they contribute substantively to the tactical fighting efforts of Hamas. As the IDF worked to destroy these tunnels, there was damage to the civilian infrastructure that existed above ground with ensuing civilian casualties.<sup>29</sup> On May 16, 2021, 42 Gazan civilians, including ten children, were reported killed after an IDF airstrike on a tunnel network and command post on Wahda Street in Gaza City.<sup>30</sup> It appears that a large sinkhole resulted, and the building precipitously sunk. One resident who lived on the third floor of a building said he and his family were “suddenly on the ground level,” according to the *Wall Street Journal*. “He said engineers who visited the site told him the building dropped some 40 feet below street level. ‘It felt like I was being sucked into the ground.’”<sup>31</sup>

An Israeli military official said the attack only struck the street and not any nearby buildings, but in the resulting explosion, three apartment buildings collapsed. The official said that something located above the tunnels that the military didn’t know about “caused a different and much bigger explosion,” collapsing the buildings.

These losses are the responsibility of Hamas: had the tunnel networks been built to *avoid* civilian areas, rather than intentionally run *under* them, many more civilian deaths could have been avoided. Moreover, none of the tunnels were made available to Gaza civilians to use as a bomb shelter.

Hamas exploited UNRWA facilities in Gaza for military operations. On June 6, 2021, UNRWA condemned the Hamas tunnel system after a passageway was found 7.5 meters below the Zeitoun Prep A Boys School.<sup>32</sup> Placing a tunnel under a school facility unnecessarily – and criminally – places civilians, including many young students, directly in harm’s way.

Other civilian deaths were caused by the collapse of tunnels during their construction. In 2016, 25 tunnels collapsed in Gaza, killing 21 tunnel diggers. It was previously discovered that Hamas employs children to dig tunnels: Hamas openly admitted in 2014 to using children for their “nimble bodies” to dig out tunnels, which resulted in the deaths of 160 children.<sup>33</sup>

Hamas’ tunnel system is in direct violation of international humanitarian law, specifically the 1977 Protocol 1 to the Geneva Convention:<sup>34</sup>

- Article 51 calls for the protection of the civilian population.
- Article 57 specifies a duty to minimize incidental loss of civilian life and injury.
- Article 58 orders that precautions be taken against the effects of attacks on civilian populations, including prohibiting the location of military objectives near populated civilian areas.

Intentionally placing military tunnels under densely populated civilian areas and disregarding the likelihood of civilian casualties not only serves to shift the blame to the IDF for Gazan civilian deaths but is evidence of Hamas' lack of consideration for the lives of both Israeli and Palestinian civilians.

## Hamas' Offensive Weaponry

In the course of the 11-day conflict, Hamas launched 4,300 rockets out of an estimated arsenal of 14,000, which caused civilian deaths in Gaza and Israel.<sup>35</sup> The 2021 war saw an increase in the range of Hamas' rockets, as compared to earlier years. In 2014, only 8 percent of all rockets fired by Hamas were long-range. In 2021, that number reached 17 percent.<sup>36</sup> Iran played a major role in Hamas' improved rocket capabilities, paying for and delivering a large portion of the rockets. Iranian instructors have aided Hamas in mastering the construction of rockets and drones. In December 2020, Hizbullah leader Hassan Nasrallah admitted, "Most of the weapons, missiles, and facilities that Palestinian resistance groups have in Gaza are supplied by Iran's Islamic Revolutionary Guard Corps' Quds Force."<sup>37</sup>

Hamas' arsenal consists primarily of three different types of rockets. Qassams are short-range rockets with a range of roughly 10 kilometers, produced cheaply and easily. Due to their short-range and unpredictable trajectories, many Qassam rockets landed in Gaza, causing civilian injuries and deaths.

Medium-range rockets, based on Iranian and Russian designs, have a range of up to 25 miles, allowing them to reach Israeli civilian areas as far as the Tel Aviv suburbs. Hamas' arsenal also includes two types of long-range rockets: the M-75 and the J-80, with ranges of 70 to 80 kilometers, with a potential to reach Tel Aviv, Jerusalem, and Ben-Gurion International Airport. Hamas also claims to have missiles with a range of 250 kilometers.



After 11 days of fighting, Hamas paraded its forces and rockets in Gaza. (*Al Jazeera* screenshot)<sup>38</sup>

The variety of ranges of Hamas' rockets provide Hamas with the ability to target densely populated civilian areas of Israel in a blatant violation of customary international humanitarian law, which calls to protect civilian populations during military operations.

Article 25 of the 1907 Hague Regulations specifically prohibits attacks or bombardment of towns, villages, dwellings, or buildings that are undefended.<sup>39</sup>

In addition to violating international doctrines that serve to protect civilian populations, Hamas' use of rockets is also in violation of Article 35(2) of the 1977 Protocol I to the Geneva Conventions, which prohibits the use of weapons, projectiles, and other materials of warfare intended to cause superfluous injury or unnecessary suffering.<sup>40</sup>

Within Hamas' arsenal, faulty technology results in rocket misfires, causing more Gazan civilian deaths. Many rockets fired by Hamas landed short of their intended target, landing in Gaza. The IDF reports that 680 Hamas rockets fell on Gaza.<sup>41</sup> On May 13, 2021, the IDF published a video documenting a Hamas rocket falling into Gaza.<sup>42</sup> Many of the civilian casualties caused by errant Hamas projectiles are then blamed on Israel. In just one day, May 10, 2021, at least eight children were killed by Hamas rockets that misfired into Gaza.<sup>43</sup>

### **Summary Executions by Hamas**

Another strategy employed by Hamas to exert control over its civilian population is through summary, extrajudicial executions. Gazan civilians face death after accusations of collaboration with Israel, often without viable evidence. Since 2009, B'tselem reported that 80 Palestinians were killed by Palestinians in Gaza, while 54 were executed by the Hamas government.<sup>44</sup> These numbers may not include the likelihood of dozens of field executions that were never reported.





Screenshots of Hamas executions in Gaza in 2014. (EuroNews)<sup>45</sup>

Since 2014, there have been accounts of Hamas executing suspected collaborators without sufficient evidence. On May 25, 2017, Hamas executed three men, claiming that they collaborated with Israel and were responsible for the death of Hamas leader Mazan Fuqaha. The executions were carried out in a public setting.<sup>46</sup> The UNCHR later condemned this execution, stating that “International law sets very stringent conditions for the application of the death penalty, including meticulous compliance with fair trial standards. This trial does not appear to have met these standards.”<sup>47</sup>

After the latest round of fighting, *Al-Monitor* reported that 43 Gazans were arrested on charges of spying for Israel.<sup>48</sup> The practice of civilian executions lacking adequate evidence is a violation of international human rights law as outlined in Article 5 of the Universal Declaration of Human Rights, which prohibits cruel, inhuman, or degrading treatment or punishment.<sup>49</sup>

## **Environmental Impact of Hamas’ Operations**

Hamas has launched incendiary kites and balloons into Israeli territory, burning crops, destroying nature preserves, and killing animals.<sup>50</sup> Palestinians burned tires at the Gaza border to create a smokescreen to assist Hamas fighters to avoid Israeli defenses, releasing toxins into the air.<sup>51</sup> By encouraging Palestinian civilians to engage in such environmentally destructive acts, Hamas violated international laws that protect the environment.

The International Law Commission’s 2019 provision on the Protection of the Environment in Relation to Armed Conflict<sup>52</sup> states in Draft Principle 1 that states must adhere to the protection of the environment before, during, and after an armed conflict, while Draft Principle 27 specifies that parties must ensure that any remnants of war that may pose a threat to the environment are removed. By deliberately causing environmental damage, Hamas is again infringing on the human rights of both Israeli and Palestinian civilians.<sup>53</sup>



Tires set ablaze by protesters on the Gaza side of the border fence, October 2018  
(IDF Spokesperson's Unit)

## Media Propaganda

As part of their effort to promote violence against Israel and Israeli civilians, Hamas relies on propaganda to encourage consumers of news and social media to support Hamas' military actions. Much of this promotional content is used to encourage Palestinian civilians to kill Jewish civilians. Hamas often draws on Islamic values to encourage such actions by promoting messages such as "killing Jews is the worship of Allah" and calling for the murder of Jewish civilians in the name of Islam.<sup>54</sup> The Palestinian Authority takes a similar approach, promising terrorist martyrs that they will be rewarded in "Paradise" with "72 Dark-Eyed Virgins." Moreover, financial support is granted to jailed murderers or their families.<sup>55</sup>

Other media content, such as music videos aired on official PA television networks, drew on visuals of Palestinian suicide bombers Wafa Idris and Ayyat Al-Akhras, coupled with lyrics such as: "Filled with desire, they are going to the Paradise of immortals, to a wedding procession with angels that fill Palestine with light."<sup>56</sup> In accordance with Islamic belief, a martyr's funeral is considered a "wedding,"<sup>57</sup> and these lyrics encourage viewers to become suicide bombers in order to be seen as a martyr.

The television series *Fida'i* (Self-Sacrificing Fighter), produced by Hamas' *Al-Aqsa TV* beginning in 2015, encouraged viewers to murder Israeli civilians. One scene depicted an armed terrorist being interrogated by an Israeli investigator, where the suspect explained that despite Islam prohibiting the murder of civilians, the murder of Israelis is justified since they are all "criminals."<sup>58</sup>

Encouraging civilian deaths through various media platforms is a direct violation of the Principle of Distinction,<sup>59</sup> set out in the 1977 Additional Protocols to the Geneva Conventions, which states that parties to the conflict must distinguish between civilians and combatants and not direct attacks against civilians. Through rhetoric aimed to incite violence against civilians, Hamas is violating both the human rights of Palestinian civilians and Israeli civilians.

## **Civilian Deaths Are the Fault of Hamas**

Perhaps the greatest human rights violation committed by Hamas during the recent conflict is the lack of value and concern for civilian lives – not limited to just Israelis, but Palestinian civilians as well. Hamas unapologetically uses its own civilians as human shields, unconcerned with the fatal ramifications of its actions. Colonel Richard Kemp, former commander of British forces in Afghanistan, designated Hamas as “the first ‘army’ in history to use their own civilian populations as a primary weapon of war.”<sup>60</sup>

To denounce Hamas’ use of civilians as human shields, the U.S. Congress in 2018 approved the Hamas Human Shields Prevention Act (HR3542)<sup>61</sup> and the Sanctioning the Use of Civilians as Defenseless Shields Act (HR3342).<sup>62</sup>

The storage and firing of weapons in civilian areas by Hamas is a violation of international law. Hamas and the Islamic Jihad facilities are often located near civilian buildings, which makes avoiding civilian deaths a near-impossible task for Israeli forces.

On May 12, 2021, UN Special Coordinator Tor Wennesland told the UN Security Council, “Hamas and other militants’ indiscriminate launching of rockets and mortars from highly populated civilian neighborhoods into civilian population centers in Israel violates international humanitarian law, is unacceptable, and has to stop immediately.”<sup>63</sup>

Article 58(b) of the 1977 Protocol I to the Geneva Convention<sup>64</sup> prohibits the locating of military objectives within or near densely populated areas to protect civilian populations.

Hamas’ military actions in May 2021 resulted in civilian deaths in Israel, including:<sup>65</sup>

- May 10, 2021: Soumya Santosh, 32, a caregiver from India, and Nella Gurevitz, 52, both killed in a Hamas rocket attack on Ashkelon.
- May 11, 2021: Leah Yom Tov, 63, killed after her home was hit by a rocket launched from Gaza.
- May 12, 2021: Ido Abigail, 5, killed by shrapnel from a rocket that penetrated the safe room in his family’s apartment.
- May 12, 2021: Nadin Awad, 16, and Khalil Awad, 52, both killed in a rocket barrage from Gaza.
- May 13, 2021: Orly Liron, 52, and Miriam Arie, 84, both died from injuries sustained while running for shelter during a rocket attack.

- May 15, 2021: Gershon Franko, 55, killed by fragments of a rocket that exploded close to his home.
- May 17, 2021: Haya Vaknin, 73, died after injuries sustained from falling while running for shelter during a rocket attack.
- May 18, 2021: Sikharin Sangamram, 24, and Weerawar Krunboorirak, 44, agricultural workers from Thailand. Both men were killed by mortar fire from Gaza at Moshav Ohad.

Hamas' targeting of civilians violates several international humanitarian laws:

The Rome Statute of the ICC:

- Article 7: Hamas is guilty of Crimes against Humanity by persecuting Israelis based on their ethnic, cultural, and religious background.<sup>66</sup>
- Article 8: Hamas is guilty of double war crimes by using Palestinian civilians as human shields and purposely attacking Israeli civilians.<sup>67</sup>

1977 Protocol I to the Geneva Convention:<sup>68</sup>

- Article 48: "Parties must distinguish between civilian populations and combatants and accordingly direct their operations only against military objectives."
- Article 51: Protection of the civilian population.
- Article 57: Duty to minimize incidental loss of civilian life and injury.

Rather than minimize civilian losses, Palestinian leaders such as Mahmoud Abbas encourage their followers to engage in violence. For example, on May 8, 2021, he stated: "Fatah calls on everyone to raise the level of confrontation in the coming days and hours in the Palestinian lands, the points of friction, and the settlers' roads."<sup>69</sup>

Hamas has no concern for the safety and lives of Israeli and Palestinian civilians – a grave human rights violation for those on both sides of the conflict. "Every single casualty, civilian and military, in both Gaza and Israel, is the direct responsibility of Hamas who launched this aggression without provocation from Israel, as they have done many times before," said Colonel Richard Kemp. "The greatest victims are Gaza civilians, who have been sold out, betrayed, and abused by their own leadership for twisted political gain."<sup>70</sup>

## **Arbitrary Detention by Hamas**

Hamas has been holding two Israeli civilians, Avera Mengistu and Hisham al-Sayed, for over five years since they entered Gaza, as well as the remains of two Israeli soldiers, Hadar Goldin and Oron Shaul. Both Mengistu and al-Sayed suffer from psychosocial disabilities with histories of wandering far on foot, making it likely that they entered Gaza accidentally. Hamas authorities have accused both men of being soldiers, even resorting to using manipulated imagery to make the men appear in military uniform. However, a

Human Rights Watch investigation affirmed that neither man was affiliated with the Israeli government at the time they entered Gaza, relying on evidence from the IDF that considered both men unfit for service due to their disabilities.<sup>71</sup> An HRW official declared, “ Hamas’ refusal to confirm its apparent prolonged detention of men with mental health conditions and no connection to the hostilities is cruel and indefensible.”<sup>72</sup>



Hadar Goldin, Oron Shaul, Avera Mengistu, and Hisham al-Sayed being held by Hamas in Gaza.

Not only is the arbitrary detention of these two men illegal under international law, but denying them adequate mental health care services is inhumane and a violation of their basic human rights.

Multiple provisions exist in international law to prevent the arbitrary detention of civilians, including:

- Article 9 of the Universal Declaration of Human Rights, which states that “no one shall be subjected to arbitrary arrest, detention or exile.”<sup>73</sup>
- Article 9 of the International Covenant on Civil and Political Rights prohibits arbitrary detention and requires parties to bring the detainees to trial.<sup>74</sup>
- On June 11, 2019, the UN Security Council passed unanimously Resolution 2474, which called upon parties to armed conflict to take all appropriate measures to actively search for persons reported missing, to enable the return of their remains, and to account for persons reported missing “without adverse distinction.”<sup>75</sup> Hamas continues to ignore the resolution’s declaration on the “importance of allowing families to know the fate and whereabouts of their missing relatives, consistent with applicable international humanitarian law, which is of crucial humanitarian importance.” The resolution further “calls upon parties to armed conflict to take all appropriate measures, to actively search for persons reported missing, to enable the return of their remains.”<sup>76</sup>

## Israel's Defense of Human Rights

Despite Hamas' violence and military operations based in civilian areas, Israel makes a concerted effort to limit civilian casualties. The IDF engages in the practice of "roof knocking" to warn civilians prior to an attack on Hamas' targets.<sup>77</sup> In addition, before Israeli attacks, civilians receive phone calls advising them to evacuate. Israeli drones watch from above, and attacks are permitted only after it is confirmed that the building has been evacuated. This practice is rooted in Israel's moral obligation and devotion to the safety of all civilians, not just its own, and is in accordance with international law. A video shows IDF pilots calling off an airstrike due to a suspicion of children in the targeted area.<sup>78</sup>

Article 61(a) of the 1977 Protocol I to the Geneva Convention<sup>79</sup> calls for humanitarian efforts to protect civilian populations against danger, including both warnings and evacuation – both of which are included in the IDF's practice of "roof knocking."

## Conclusion

Hamas demonstrates no respect for international humanitarian law designed to protect innocent civilians. Therefore, it is vital that Hamas be held accountable for its illegal actions in international forums and international courts of law. Without doing so, there will be no justice for those who have suffered from the grave human rights abuses committed by Hamas.

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## Notes

1 <https://twitter.com/WhiteHouse/status/1393707042771283969>

2 <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27119&LangID=E>

3 <https://www.icc-cpi.int/Pages/item.aspx?name=210303-prosecutor-statement-investigation-palestine>

4 [https://asp.icc-cpi.int/en\\_menus/asp/states%20parties/asian%20states/Pages/asian%20states.aspx](https://asp.icc-cpi.int/en_menus/asp/states%20parties/asian%20states/Pages/asian%20states.aspx)

5 <https://palwatch.org/page/23876>

6 <https://palwatch.org/page/17460>

7 <https://mobile.twitter.com/Jtruzmah/status/1404038104235745281>

8 <https://twitter.com/Jtruzmah/status/1404239417863282692>

9 <https://twitter.com/Jtruzmah/status/1405977742181429248>

10 <https://www.unicef.org/mali/media/1561/file/ParisPrinciples.pdf>

11 <https://www.timesofisrael.com/palestinian-woman-tries-to-stab-checkpoint-guard-is-shot-dead-police/>

12 <https://www.timesofisrael.com/palestinians-fire-on-soldiers-near-jenin-are-shot-dead/>

13 <https://www.un.org/en/genocideprevention/war-crimes.shtml>

14 <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

15 <https://www.ohchr.org/en/professionalinterest/pages/opaccrc.aspx>

16 <https://childrenandarmedconflict.un.org/children-not-soldiers/>

17 <https://www.pcsweek.org/about>

18 <https://mfa.gov.il/mfa/foreignpolicy/issues/pages/testimonies-from-gaza-and-hamas-intimidation-of-foreign-journalists.aspx>

19 <https://www.idf.il/en/minisites/hamas/hamas/violations-of-freedom-of-the-press-in-gaza/>

20 <https://www.idf.il/en/minisites/hamas/hamas/violations-of-freedom-of-the-press-in-gaza/>

21 <https://www.washingtoninstitute.org/policy-analysis/whats-wrong-ny-times-report-childrens-deaths-so-much>

22 <https://www.terrorism-info.org.il/en/another-gazan-boy-who-according-to-the-new-york-times-list-died-in-operation-guardian-of-the-walls-was-found-to-be-an-operative-in-hamas-military-terrorist-wing-the-times-list-also-included-the/>

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