About the Author

Colonel Richard Kemp (United Kingdom) was Commander of British Forces in Afghanistan and has served in Iraq, the Balkans, South Asia and Northern Ireland. He has led the international terrorism team at the UK’s Joint Intelligence Committee and served as chairman of the strategic intelligence group for COBRA, the UK national crisis management committee.

About this Report

As part of the High Level Group’s ongoing project to assess the impact of Western armies facing enemies deploying terrorist tactics, including deliberate war crimes such as hiding military personnel and infrastructure among a civilian population, Colonel Kemp has spent time on the Gaza border during the current spate of violence, observing Palestinian activity and IDF response. This report is based on his observations as well as a review of material produced by both sides and by the international community, and discussions with Israeli government ministers and IDF commanders and lawyers. Colonel Kemp’s views are though entirely his own, drawn from extensive personal experience of commanding military forces dealing with similar situations in other combat areas, including use of terrorist tactics in riot situations and military response using a range of measures including lethal force.
Hamas’s use of actual smoke and mirrors to conceal its aggressive manoeuvring on the Gaza border is the perfect metaphor for a strategy that has no viable military purpose but seeks to deceive the international community into criminalising a democratic state defending its citizens.

The UN and EU, NGOs, government officials and media — primary targets for Hamas — have been willingly taken in. For example a Guardian headline, ‘The use of lethal force to cow nonviolent demonstrations by Palestinians’, blatantly misrepresents the violent reality that has been plain for all to see. Likewise the NGO Human Rights Watch claims that we are seeing a movement to ‘affirm Palestinians’ internationally-recognised right of return’.

In reality these demonstrations are far from peaceful and do not pursue any so-called ‘right of return’. Rather they are carefully planned and orchestrated military operations intended to break through the border of a sovereign state and commit mass murder in the communities beyond, using their own civilians as cover. The purpose: to criminalise and isolate the State of Israel.

Hamas are planning to achieve maximum violence at the Gaza border on either the 14th or 15th May, coinciding with the 70th anniversary of the declaration of the State of Israel, the opening of the US embassy in Jerusalem and the start of Ramadan — a perfect storm.
Six Weeks of Orchestrated Violence

Since 30th March Hamas has been orchestrating large-scale violence on the border between Gaza and Israel. The major flare-ups have generally occurred on Fridays, following mosque prayers, when we have repeatedly seen concerted action involving crowds of up to 40,000 people in five separate areas along the border. Violence and aggressive actions, including specific acts of terrorism involving explosives and firearms, have also occurred at other times during this period.

A Perfect Storm

Hamas intend to continue this violence until the 14th or 15th of May 2018. The 15th is the date they will commemorate as the 70th anniversary of ‘Nakba’ Day - ‘Castastrophe’ Day, the day after Israel’s declaration of statehood. There is however speculation that an upsurge in violence is now planned for the 14th, coinciding with the opening of the US embassy in Jerusalem. It is expected that the violence will reach a culminating point of intensity on one or both of those days, which, as well as coinciding with Nakba Day and the embassy opening, are also at the start of the Islamic month of Ramadan, when violence usually increases in the Middle East and elsewhere.

Hamas is currently planning to mobilise up to 200,000 people to the Gaza border, which — if it materialises — will be well over twice the maximum number seen previously. Hamas will also be determined to incite greater violence than ever before, and to make significant penetrations of the border fence. In the face of such efforts it is likely that there will be very high casualty figures among Palestinians.

In addition to the border area, there are Palestinian plans for significant violence elsewhere around this time including in Jerusalem and the West Bank. Although 15th May was originally intended as the culmination of six weeks’ violence on the Gaza border, Palestinians have recently declared an intent to maintain their aggression at the border throughout the month of Ramadan.

Pretext and Reality

The Gaza violence has been orchestrated under the pretext of the ‘Great March of Return’, a demonstration to draw attention to what Palestinian leadership consider to be a right of return of their people to homes in Israel. The stated intention is 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.

The intention of the ‘right of return’ of course is not actually the exercise of such a ‘right’, which is strongly contested, and is in any case the subject of final status negotiations. It is well understood as a long-standing Arab policy intended to eliminate the State of Israel and has of course been consistently rejected by the Israeli government.

The real goal of Hamas’s violence is to continue their long-standing strategy of creating and intensifying international outrage, vilification, isolation and criminalisation of the State of Israel and its officials. This strategy includes creating situations which compel the IDF to respond with lethal force so that they are seen to kill and wound ‘innocent’ Palestinian civilians.
Hamas’s Terrorist Tactics

Within this strategy, Hamas have used a range of tactics which include firing rockets from Gaza into Israeli population centres and constructing sophisticated attack tunnels under the Gaza border into nearby Israeli communities. Critical elements of these tactics are the use of Palestinian human shields — civilians, often including women and children, who are either forced or volunteer to be present in locations from where attacks are launched or commanded; or where fighters, combat supplies and munitions are located; so that Israeli military response will include potential harm to these civilians.

In some cases, including during the current wave of violence, we have seen Hamas present their fighters as innocent civilians; numerous fake incidents staged and filmed which purport to show civilians being killed and wounded by Israeli forces; and films of violence from elsewhere, eg Syria, portrayed as violence against Palestinians.

Same Strategy, New Tactics

Following the use of rockets and attack tunnels, in three major Gaza conflicts (2008-2009, 2012 and 2014), as well as in other more isolated incidents, we now observe the use of a new tactic with the same fundamental purpose. This is the creation of large-scale ‘demonstrations’ combined with aggressive actions again intended to lure Israeli defensive action that leads to killing and wounding of Gaza civilians, despite strenuous IDF efforts to avoid such civilian casualties.

In some respects this new tactic is more effective than the use of rockets and attack tunnels, because the primary targets for these activities — political leaders, international organisations (eg UN, EU), human rights groups and media — find it harder to understand the use of lethal force against what are falsely portrayed as peaceful demonstrations which they can equate to similar activities in their own cities.

As always, many elements of these primary targets have been ready and willing to be taken in by this ploy. Since the start of this spate of violence we have seen vehement condemnations from the UN, EU and ICC; from several governments and human rights organisations including Amnesty International and Human Rights Watch; and from many newspapers and broadcast media stations. These have included demands for international inquiries into allegations of unlawful killing and accusations of breaches of international humanitarian law and human rights law by the IDF.

Hamas present their fighters as innocent civilians and video staged incidents which purport to show civilians being killed and wounded by Israeli forces.
Hamas Tactics on the Ground

Hamas’s tactics in these carefully planned and orchestrated military operations is to mass crowds at border locations and to use their fighters as well as groups of civilians to approach and penetrate the fence. They have used smoke screens created by thousands of burning tires to obfuscate their movements towards the fence (and rather ineffectively have attempted to use mirrors to blind IDF observers and sharp-shooters). They have also used burning tires and petrol bombs to attempt to breach the fence, which includes wooden components, in various places.

On Friday 4th May, among approx 10,000 Palestinians participating in violent demonstrations along the border, hundreds of rioters vandalised and set ablaze the Palestinian side of the Kerem Shalom humanitarian goods crossing site. They damaged pipes that carry gas and fuel from Israel into the Gaza Strip. This destructive action against the crossing point was repeated on Friday 4th May. Also on 4th May, two infiltration attempts were thwarted by IDF troops at two separate locations. Three of the infiltrators were killed by IDF troops defending the border. In other cases, the IDF have arrested some of those attempting infiltration.

In addition Hamas and their cohorts have deployed grappling irons, ropes, wire cutters and other tools to break down the fence. They have used drones, potentially lethal slingshots to hurl rocks at soldiers, firearms, hand grenades and improvised explosive devices, both to kill Israeli soldiers and to penetrate the fence.

Firebomb Kites and Incendiary Balloons

Burning kites have been flown from Gaza across the border intended to ignite crops and grass on the Israeli side to cause economic damage and to kill and maim. These may sound like a primitive and even laughable weapon, yet on 4th May Palestinians had prepared hundreds of firebomb kites, intending to fly them as swarms into Israel, exploiting an intense heat wave. Only adverse wind conditions prevented their deployment and potential serious harm.

In several cases burning kites have caused fires to break out. For example, on 16th April a wheat field was burned on the Israeli side of the border. On 2nd May a firebomb kite launched from Gaza caused a major fire in the Be’eri Forest burning large areas of woodland and requiring 10 firefighter teams to extinguish. Incendiary
balloons have also been tried by Hamas, including on 7th May when a balloon set fire to a wheat field near the Be’eri Forest. Israel has estimated an economic loss of several million shekels as a result of fires caused by kites and balloons.

If Hamas Broke Through

So far 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. Among them would be armed terrorists intent on reaching Israeli communities and carrying 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 dash that could be achieved in 5 minutes or less by gunmen intent on slaughter.

In this scenario, with armed terrorists indistinguishable from unarmed civilians, who themselves often also pose a violent threat, it is hard to see how the IDF could avoid inflicting heavy casualties in defence of their territory and people.

IDF Reaction: Graduated Response

This is why the IDF has been obliged to act so robustly — to prevent this situation from materialising — including by use of live fire (which has occasionally been lethal) and despite heavy and inevitable international condemnation.

As in their reactions to previous bouts of violence, the IDF have adopted a graduated response. They airdropped thousands of leaflets and used SMS, social media, phone calls and radio broadcasts to warn the people of Gaza not to gather at the border or approach the fence. They contacted Gaza bus company owners and asked them not to transport people to the border.

When these appeals were nullified by Hamas coercion against the civilian population the IDF used tear gas to disperse the crowds that approached the fence. In an innovative effort to increase precision and effectiveness they sometimes used drones to deliver the teargas. Yet tear gas does not always provide a solution, as its effectiveness is limited by time and wind conditions, and by the ability of people to mitigate its most serious effects against them.

Next, IDF forces used warning shots, fired overhead. Finally, only where absolutely necessary (by their rules

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

Among the rioters are weapons, explosives, slingshots with large rocks, and implements to breach the fence. Hamas deliberately places children in harm’s way as part of its tactics and encourages their deaths for propaganda purposes.
SMOKE & MIRRORS: SIX WEEKS OF VIOLENCE ON THE GAZA BORDER

of engagement), ball ammunition was used, aimed to disable rather than kill. Although in some cases, shooting to kill would have been lawful, the IDF maintain that even then, they still only fired shots to disable (except in cases which were clear instances of military attacks, such as shooting attacks against IDF forces). In all cases, the IDF forces operate according to standard operating procedures, drafted to suit the circumstances and compiled in conjunction with various authorities in the IDF.

Nevertheless, several died as a result of this gunfire and many more were wounded. Palestinian authorities claim approximately 50 people have been killed up to now and hundreds more wounded. Of those killed, Israel assesses that 80% were terrorist operatives or individuals associated with them. The price — in human life, suffering and adverse international opinion — has undoubtedly been high; but the fence has not been significantly penetrated and an even higher price has therefore been avoided.

International Condemnation, No Solutions

Many have argued that Israel should have acted differently in response to this threat, including UN Middle East envoy Mladenov who condemned Israel’s actions as ‘outrageous’. The UN High Commissioner for Human Rights, Zeid Ra’ad al-Hussein, condemned the use of ‘excessive force’ by Israel. The ICC Prosecutor for the International Criminal Court, Fatou Bensouda, asserted that ‘violence against civilians — in a situation such as the one prevailing in Gaza — could constitute crimes under the Rome Statute of the ICC.’

Yet despite their condemnations, none 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.

Some have contended that Israeli troops used excessive force because they fired live bullets 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 when 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 a 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 mentioned above.

**Failure of Understanding by the International Community**

Those who argue that the IDF should not have resorted to live ammunition in this situation are in fact arguing that they should have waited to act until tens of thousands of violent rioters (and amongst them, terrorists) had stormed into Israeli territory and were perilously close to Israeli civilians, security forces and property, rather than using pointed and accurate force against those individuals posing the greatest threat in order to avoid that catastrophic scenario from becoming reality.

Some have also contended that they could find no evidence of any ‘protester’ using firearms. 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 their 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 — a serious threat that involves spades, not guns. Now, as well as continuing to dig tunnels, they are trying above ground, using their population as cover — the guns will only 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 or she is there to protect.

There has been criticism (especially by Human Rights Watch) that Israeli officials allegedly green-lighted illegal actions by soldiers. For example HRW cite comments made by the IDF Chief of Staff, the Prime Minister’s spokesman and the Defence Minister as evidence of incitement.

It presumably hasn’t occurred to them that these officials exercise authority through private communication...
channels not in public media, and that such comments are not instructions to troops but warnings to Gaza civilians made in order to reduce the prospects of violence; and to allay the valid fears of Israelis living close to the border. When the Chief of Staff says he is positioning ‘100 snipers on the border’ that is an expression of his lawful duty to defend his country, not an admission of intention to use unlawful force.

Some human rights groups (again including HRW) and media commentators have criticised use of force by the IDF on the basis that there have been no reports of injuries to soldiers. They have suggested that this indicates a ‘disproportionate’ response by the IDF. As so often in commenting on the operations of Western forces these so-called experts misunderstand — or misrepresent — the realities of security operations and the dictates of the law. And indeed it is not necessary to show harm in order to demonstrate the existence of a real threat. The fact that IDF soldiers were not seriously wounded demonstrates their military professionalism, not the lack of threat.

We have also seen the claim that, in the absence of armed hostilities, the use of force in Gaza is governed by international human rights law not the laws of armed conflict. This is in fact a false position: the whole of Gaza is a war zone, made so by Hamas’s long standing armed aggression against the State of Israel. Therefore in this situation both types of law are applicable, depending on the precise circumstances.

It is lawful for the IDF to engage and kill an identified enemy combatant anywhere in Gaza in accordance with the laws of war, whether in or out of uniform, whether armed or unarmed, whether or not presenting an imminent threat, whether attacking or running away. In practice however, in contending with the violent riots, the IDF seems to have been operating on the assumption that all persons are civilians (and thus do not resort to lethal force as a first resort) unless it is clearly apparent to be otherwise.

So far 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. Among them would be armed terrorists intent on reaching Israeli communities and carrying out mass murder and abductions.

Playing Into Hamas’s Hands

There have been numerous claims that the Israeli government has refused to carry out any official inquiry into the deaths incurred. Again this is entirely false. The Israelis have stated that they will examine incidents using their own internationally-respected legal systems. What the Israeli government said is that it refuses to bow down to calls for an international inquiry, just as the US, UK or any other Western democracy would also refuse.
All of these false criticisms of Israeli action, as well as threats to initiate international investigations, to put Israel in front of the ICC and to invoke universal jurisdiction against Israeli officials involved in dealing with this situation, play into the hands of Hamas. They validate the use of human shields and Hamas’s strategy of forcing the killing of their own civilians. The implications are wider than just for this conflict. As we have seen in earlier bouts of violence, similar international reactions, including unjust condemnation, causes more widespread use of such tactics and increases deaths among innocent civilians worldwide.

Greater violence to come?

As mentioned above it is probable that we will see even more deaths than we have seen so far when Hamas’s campaign reaches its planned culmination on 14th or 15th May, potentially resulting in mass casualties among Palestinians. It is equally probable that we will see commensurately heightened condemnation in the media and among international organisations and human rights groups. Those with an anti-US as well as an anti-Israel agenda will also inevitably link this violence to President Trump’s decision to open the US embassy in Jerusalem.

An area in which Israel’s friends and allies can assist is countering the anti-Israel propaganda that Hamas seeks to generate, including pressuring political leaders, human rights groups, international organizations and the media to avoid false condemnation of Israel; and rejecting demands for international action such as one-sided UN investigations and resolutions.
Future action

Hamas’s new tactic has had significant success in turning elements of the international community against Israel and causing damage to its reputation. It is probable that even after this wave of violence concludes the effects will continue to be felt.

There is likely to be additional efforts to initiate additional condemnations by international actors, such as the various UN bodies, as well as dedicated reporting by UN Special Rapporteurs. In addition, there are likely to be efforts to drag the ICC Prosecutor into examining these incidents, as well as to trigger legal proceedings in different states (using ‘universal jurisdiction’) to try and smear or even have arrested will be invoked against IDF personnel and Israeli politicians.

Inevitably, Hamas and other Palestinian groups will try the same tactic again in the future. To mitigate this, Israel is reportedly preparing to strengthen the Gaza border fence to make penetration more difficult without having to resort to lethal force. (They are already working on an underground barrier to prevent penetration by tunnelling.) However, this is a long-term project and the extent to which an impenetrable barrier can be produced is not clear.

In addition, the IDF is giving increased consideration to non-lethal weapons. To date, despite significant international work in this area, no viable and effective system has been developed that would work effectively in such circumstances.

An area in which Israel’s friends and allies can assist is countering the anti-Israel propaganda that Hamas seeks to generate, including pressuring political leaders, human rights groups, international organizations and the media to avoid false condemnation of Israel; and rejecting demands for international action such as one-sided UN investigations and resolutions. Such pushback, preferably accompanied by strong condemnation of Hamas’s violent tactics, could help discourage further use of this course of action. Of course, in the face of a heavily entrenched anti-Israel agenda this is more easily said than done.

As in their reactions to previous bouts of violence, the IDF have adopted a graduated response. They airdropped thousands of leaflets and used SMS, social media, phone calls and radio broadcasts to warn the people of Gaza not to gather at the border or approach the fence. They contacted Gaza bus company owners and asked them not to transport people to the border
General Vincenzo Camporini (Italy) is the former Chief of Defence Staff of Italy. He served as Deputy Chief of Defence General Staff and President of the Italian Centre for High Defence Studies before being appointed Chief of Staff of the Italian Air Force and subsequently Chief of Defence General Staff.

Lieutenant General Michael D. Barbero (United States) has served as Director of the Joint Improvised Explosive Device Defeat Organization (JIEDDO) from March 2011 until May 2013. He previously served in Iraq as the Commander of Multi-National Security Transition Command, and the Commander of the NATO Training Mission. Barbero has been awarded with the Defense Distinguished Service Medal, among others honors.

General Lord Richard Dannat (UK) is the former Chief of the General Staff of the British Army. Dannat has previously served as the Military Assistant to the Minister of State for the Armed Forces and Assistant Chief of the General Staff. He has been honored with the Military Cross, the Queen’s Commendation for Valuable Service and was appointed as Commander of the Order of the British Empire. Dannat is member of the House of Lords.

Lieutenant General Kamal Davar (India) served as the first Director General of the Defence Intelligence Agency of India. A former Director-General, Mechanised Forces at Army Headquarters in 2001 he has held a large number of high ranking command posts in the Indian army and served on the Indian Military Training Team in Iraq.

Lieutenant General David A. Deptula (United States) was the principal attack planner for the Desert Storm coalition air campaign in 1991, served as Director of the Combined Air Operations Center in Afghanistan and served as the first Deputy Chief of Staff for Intelligence, Surveillance and Reconnaissance (ISR), Headquarters Air Force.

Colonel Richard Kemp (United Kingdom) was Commander of British Forces in Afghanistan as well as serving in Iraq, the Balkans, South Asia and Northern Ireland. He has led the international terrorism team at the UK’s Joint Intelligence Committee and served as chairman of the strategic intelligence group for COBRA, the UK national crisis management committee.

Brigadier General Alain Lamballe (France) served in the General Secretariat for National Defence as head of the Southeast Asia and Europe sections as well as heading the Central Liaison Mission for Assistance to Foreign Forces. He is the former Director of the Department of Security Cooperation of the OSCE Mission in Bosnia and Herzegovina.

Major General Andrew James Molan (Australia) served as the Chief of Operations for the Headquarters Multinational Force in Iraq. He is a former Commander of the Australian Defence College and has served as Adviser to the Vice Chief of the Australian Defence Force on Joint Warfighting Lessons and Concepts.

General Klaus Dieter Naumann (Germany) is the former Chief of Staff of the Bundeswehr, the German armed forces and served as Chairman of the NATO Military Committee from 1996 to 1999.

Ambassador Pierre-Richard Prosper (United States) is the former the U.S. Ambassador-at-large in charge of the Secretary of State’s Office of War Crimes Issues. A former Presidential envoy and adviser to the National Security Council he was previously a war crimes prosecutor for the United Nations International Criminal Tribunal for Rwanda.

Colonel Eduardo Ramirez (Colombia) is an elected member of the Congress of Colombia who served with the Colombian National Police from 1987 until 2013. He was formerly the Chief of Security Staff for President Uribe of Colombia as well as Chief of Section at the Judicial and Criminal Directory of the National Police.

Admiral José María Terán (Spain) serves in the Office of Strategic Assessment of the Minister of Defence of Spain. A former Chief of the Joint Staff and Chief of the Strategic Analysis Group, he has also served as Director for Reorganization of the Spanish Intelligence Service.

Rafael L. Bardaji is the Executive Director Friends of Israel Initiative and National Security Advisor to Former President, José María Aznar. He formerly served in the Government of Spain as the National Security Adviser and in leadership positions in the Ministry of Defence.

Davis Lewin is the Director of the project.
About the High Level Military Group

The High Level Military Group (HLMG) aims to add a professional military and legal element to debates about warfare in the 21st Century. The HLMG was formed in early 2015 with an initial mandate to examine Israel’s conduct of the 2014 Gaza Conflict, in the context of a larger project seeking to address the implications for warfare where democratic nations are engaged in fighting enemies who disregard the Law of Armed Conflict (LOAC) but exploit our own nations’ adherence to LOAC for their gain. It is comprised of top-level practitioners from democratic nations whose expertise covers the entire gamut of the conduct of warfare and who are intimately familiar with the battlefield scenarios, operational and legal imperatives, and military and humanitarian duties. Its initial report considered the 2014 Gaza Conflict, and further HLMG reports have offered a contextual assessment of military campaigns conducted against terrorist adversaries, and the relevancy of the ‘Home Front’ challenges faced by Israel to the West’s fight against terrorism.¹

Smoke & Mirrors: Six Weeks Of Violence On The Gaza Border

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