A summer night, the window is open and grasshoppers are making music for us on a gentle breeze. This evening I went to bed early, after another hot summer day with the children. Thoughts pass through my head when suddenly the loudspeaker outside goes on, and a woman’s soothing voice announces, “Color Red, Color Red.” A loose translation: a mortar shell or [Q]assam\(^1\) will hit in another 15 seconds.

I switch to autopilot. Shake my husband, “Run and get them.” The two of us shoot up, almost pushing each other as we race, breathless, to the other side of the house—to the children’s room. In that second I am always struck dumb—and for a fraction of a second, I am united with all those Jewish mothers who came before me, and who experienced with me this dreadful moment—“who should I take?” The last thought a mother wants...

\(^1\) A “Qassam” is the type of rocket that Hamas has used in its unconventional and indiscriminate warfare against the civilians of southern Israel. “Hamas referred to its rockets as ‘Qassams’ for Sheikh Iss al-Din al-Qassam, a Syrian who in the 1930s worked among displaced and landless Palestinian peasants in what is now northern Israel, and whose death in a clash in 1935 with British troops helped to spark the 1936-39 Palestinian revolt.” HUMAN RIGHTS WATCH, ROCKETS FROM GAZA: HARM TO CIVILIANS FROM PALESTINIAN ARMED GROUPS’ ROCKET ATTACKS 7 n.4 (2009), available at http://www.hrw.org/sites/default/files/reports/optqassam0809web.pdf.
to think flashes through my head, "Which of them should I take first?"\(^2\)

This Jewish mother, living in southern Israel, recalls her thoughts after waking in the night faced with the ominous decision of which of her children she would rush to safety first.\(^3\) The amount of time to react to these rockets is extremely limited, a mere fifteen seconds. Residents have learned to respond to the initial electronic "click" that is heard when the alert sirens are turned on.\(^4\) Every split second is needed for families to find shelter. How far could you get in fifteen seconds? Which child would you rush to safety first?

"Israel was bomharded by some 12,000 rockets and mortar shells between 2000 and 2008, including nearly 3,000 rockets and mortar shells in 2008 alone."\(^5\) This persistent reality forced the Israeli Defense Force (IDF) to undertake a three-week military operation in Gaza from December 2008 to January 2009,\(^6\) known as Operation Cast Lead. Hamas, an internationally-declared terrorist organization,\(^7\) currently controls the Gaza Strip and is responsible for the attacks that have terrorized southern Israel for more than a decade.\(^8\) The Israeli

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\(^3\) Id.


\(^6\) MFA, OPERATION IN GAZA, supra note 5, ¶ 1.


\(^8\) MFA, OPERATION IN GAZA, supra note 5, ¶ 40.
city of Sderot, with a population of nearly 20,000 persons, has been the target of thousands of these attacks.

The international community, particularly the United Nations (UN) Fact Finding Mission, was quick to criticize Israel's response to the Hamas terrorist attacks during Operation Cast Lead. The report by the UN Fact Finding Mission on the Gaza Conflict, commonly known as the "Goldstone Report," roundly condemned Israel for international law violations, while failing to adequately acknowledge the obvious international law violations by Hamas and its terrorist allies. For example, the Mission, led by South African Judge Richard Goldstone, claimed there was no direct evidence of Hamas's use of civilian areas to launch attacks and shield themselves from attack. Yet, such evidence was readily available on YouTube. In response to the Goldstone Report, Sderot doctor Adiana Katz stated, "It is clear that Goldstone and his committee have been significantly impacted by the foot-

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9 Id. ¶ 46.
10 Sderot Media Report, supra note 4.
12 Judge Richard Goldstone, the head of the Mission, later made a statement that retracted some of the conclusions that the Mission assumed, but by that time, Israel had become the target of criticism. See Richard Goldstone, Reconsidering the Goldstone Report on Israel and War Crimes, WASH. POST, Apr. 1, 2011 (hereinafter Reconsidering the Goldstone Report), http://www.washingtonpost.com/opinions/reconsidering-the-goldstone-report-on-israel-and-war-crimes/2011/04/01/AFg111JC_story.html.
13 G.A. Res. 12/48, supra note 11, para. 482 (reporting that, in reference to Hamas launching rockets from urban areas, "[t]he Mission has not been able to obtain any direct evidence that this was done with the specific intent of shielding the rocket launchers from counter-strikes by the Israeli armed forces.").
14 See Doretos23, Hamas Using Children as Human Shield, YOUTUBE (Jan. 2, 2009), http://www.youtube.com/watch?v=J08GqXMb3YE (providing images of a Palestinian man dragging a child to protect himself while he runs across the street); Idfmedia, Cast Lead Video: Hamas Terrorist Uses Children as Human Shield, YOUTUBE (Sept. 17, 2009), http://www.youtube.com/watch?v=2vHDyuSTneA (providing images of a terrorist using a group of children to protect himself as he leaves a building); Idfmedia, Hamas Booby Trapped School and Zoo, YOUTUBE (Jan. 11, 2009), http://www.youtube.com/watch?v=Hhs9ihSmU; Jeffreyalberta, Hamas Using UN Ambulance, YOUTUBE (Jan. 6, 2009), http://www.youtube.com/watch?v=5oesBeCFaAlg&NR=113 (showing Palestinian fighters commandeering a UN ambulance at the end of the video); Pmwvideos Pmw, Hamas Using Palestinians as Human Shields, YOUTUBE (May 15, 2008), http://www.youtube.com/watch?v=RTu-AUE9yes (boasting about using human shields).
age of Gaza. . . [b]ut we have nine years of rocket attacks that have severely damaged Jewish children and adults. And their plight has been completely ignored by the UN.”¹⁵ The Goldstone Report and other reports by non-governmental organizations (NGOs) jumped to conclusions and accused Israel of violating international law while dismissing the blatant violations of international law that Hamas has committed for years.¹⁶

“Would Judge Goldstone agree to live under such conditions?” asks Dr. Katz.¹⁷ Is there any sovereign nation that would have endured such conditions for eight years? On July 23, 2008, President Barack Obama, during a speech in Sderot, stated, “I will work from the moment that I return to America, to tell the story of Sderot and to make sure that the good people who live here are enjoying a future of peace and security and hope.”¹⁸ With Hamas in control of the Gaza Strip, there has not been, and cannot be, any lasting peace, security, or hope for the residents of Sderot. This Note is an effort to tell the story of Sderot.

This Note is, in part, a case study of the city of Sderot and will attempt to describe the realities that residents have faced in the periods leading up to, during, and since Operation Cast Lead. This Note begins with a brief history of the conflict surrounding the Gaza Strip. This Note will then highlight Israel’s inherent right of self-defense along with a brief summary of the relevant international law. Following the brief introduction to the relevant law is a comparison of the conduct of both Hamas and Israel during Operation Cast Lead. Lastly, this Note will serve as the voice of Sderot. Testimonies and reports will be highlighted in an effort to adequately portray Sderot’s unique perspective in the aftermath of Operation Cast Lead.

¹⁶ MFA, OPERATION IN GAZA, supra note 5, ¶ 20.
¹⁷ Sderot Residents Fed Up, supra note 15.
I. WHO IS SDEROT'S NEIGHBOR?: THE CONTEXT AND HISTORY BETWEEN GAZA AND ISRAEL LEADING UP TO OPERATION CAST LEAD

Sderot is only a few kilometers away from the Gaza Strip making it an easy target for Hamas rockets. The Gaza Strip, a short area of land adjacent to the southwestern end of Israel, was occupied by Israeli forces during the Six Day War in June 1967. Israel remained in control of Gaza until the summer of 2005, at which time, the Israeli government unilaterally implemented a plan to disengage from Gaza. All Israeli settlers and military personnel were withdrawn from Gaza in accordance with the disengagement plan, leaving control of Gaza up to the will of the Palestinians.

Hamas, a radical Muslim-Palestinian terrorist organization, refuses to recognize the State of Israel. Hamas’s declared goal has been to create a Muslim state encompassing the entire area covered by the British Mandate of Palestine. After Israel’s withdrawal from the Gaza Strip, the Palestinian Authority held elections in 2006 for the Gaza Strip. As a result, Hamas gained administrative control. Soon thereafter, in June 2007, Hamas mounted a military coup and took full control of Gaza. Thus, Gaza continues to be under Hamas control.

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19 Sderot Media Report, supra note 4.
21 Id.
22 Id.
24 Cohen, supra note 20, at 24. In 1921, after assuming authority by the League of Nations as Mandatory in Palestine, the United Kingdom divided the Mandate of Palestine into two separate parts: (1) a large, eastern portion (generally located east of the Jordan River and known today as the Hashemite Kingdom of Jordan), which the British renamed “Trans-Jordan” and (2) a small, western portion (generally located between the Jordan River and the Mediterranean Sea and encompassing the territories currently in contention between Israelis and Arab Palestinians), which the British continued to call “Palestine.” MARTIN GILBERT, THE ROUTLEDGE ATLAS OF THE ARAB ISRAELI CONFLICT 8 (9th ed. 2008). Thus, the original British Mandatory Palestine, which Hamas seeks to control, included all of present day Israel and Jordan.
25 Cohen, supra note 20, at 24.
26 Id.
27 Id.
and a harbor for terrorists who have relentlessly threatened civilian life throughout southern Israel.

Hamas’s purpose in its attacks has been to paralyze Israeli civilian life.28 On November 26, 2006, Hamas issued a press statement saying, “We will not stop firing on the Zionist settlement Sderot until the last citizen of Sderot leaves.”29 Furthermore, in an interview with the former Hamas “foreign minister,” Mahmoud A-Zahar said, “Rockets against Sderot will cause mass migration, greatly disrupt daily lives and government administration . . . . We are using the methods that convince the Israelis that their occupation is costing them too much.”30 The Hamas Charter specifically states that there can be no peaceful negotiation with Israel and that “[t]here is no solution for the Palestinian problem except through Jihad.”31 Moreover, the Hamas Charter states that “Israel will exist and will continue to exist until Islam will obliterate it, just as it obliterated others before it.”32 It is evident that Hamas is unwilling to reach any peaceful solution and has no intention of ending its attacks on Israeli civilians. A-Zahar further states, “We are succeeding with the rockets. We have no losses and the impact on the Israeli side is so much.”33

The attacks by Hamas have forced businesses to close; caused deaths, injuries, and immense property damage; and terrorized tens of thousands of residents into abandoning their homes.34 In response to this ongoing threat, Israeli authorities have made significant efforts to establish public bomb shelters and fortify public institutions.35 In the weeks leading up to Operation Cast Lead, the Israeli Government cre-

28 MFA, OPERATION IN GAZA, supra note 5, ¶ 37.
31 Hamas Charter, supra note 23, art. 13. Jihad is defined as “a holy war waged on behalf of Islam as a religious duty.” WEBSTER’S NEW COLLEGIATE DICTIONARY 622 (1974).
32 Hamas Terror War, supra note 30.
33 MFA, OPERATION IN GAZA, supra note 5, ¶ 3.
34 Id. ¶ 42.
ated a special budget of ₪327 million NIS [New Israeli Shekels] ($83 million) to fortify shelters for all residents, businesses, and public buildings within 4.5 kilometers of the Gaza border. It is estimated that between the years 2005 and 2011, Israel’s investment in shielding and protecting schools and civilian houses will amount to approximately ₪1,798 million NIS ($461 million). “In 2008 alone, 260.5 million NIS ($66.79 million) were invested in such shielding, while 630 million NIS ($161.5 million) were further allocated for civilian shielding projects during 2009, 277 million NIS ($71 million) during 2010, and 200 million NIS ($51.3 million) during 2011.”

Protecting its citizens is a duty of the Israeli government. The necessary precautions and preventative steps that the Israeli government has been forced to take has had an overwhelming economic impact. There has been significant economic loss as a result of businesses, within range of the rocket attacks, that have been forced to close due to damaged property.

For more than eight years, Israel endured these attacks, searching for alternative solutions to a military operation. During the years preceding Operation Cast Lead, Israel sent dozens of letters each year to the Secretary General of the United Nations and the President of the Security Council describing the Hamas rocket attacks on Israeli cities and suicide attacks on Israeli citizens. Israel sent twenty-nine letters

36 Id. ¶ 43.
37 Id. ¶ 43 n.23.
38 Id.

Based on information currently available, due to the incessant deliberate rocket and mortar attacks on Southern Israel, between 2006 and July 2009, approximately 13,000 compensation claims due to property damage were submitted to the Israel Tax Authority, and approximately 410 million NIS ($105 million) was granted, of which approximately 290 million NIS ($74.3 million) was a direct result of the Gaza Operation. It is estimated that the damages will amount to approximately 500 million NIS ($128.2 million). As for direct damage caused to buildings or property as a result of a rocket or mortar attacks, 2,400 claims, amounting to a total of approximately 31 million NIS ($7.95 million) were submitted in 2008, in addition to 2,300 additional claims between January and July 2009, of which a total of approximately 25 million NIS ($6.4 million) was granted thus far.

39 Id. ¶ 48 n.27.
40 Id. ¶ 52 (emphasis added).

peaceful solution, while also emphasizing that Israel would not indefinitely tolerate the escalating violence.\textsuperscript{42} Diplomatic attempts to reach a solution are an unequivocal indication of Israel’s desire to exhaust every possible alternative short of a military operation in Gaza.\textsuperscript{43} Unfortunately, none of Israel’s diplomatic overtures, pleas to the international community, or economic sanctions against Hamas, were able to stop the rockets from coming.\textsuperscript{44} According to a study conducted in Sderot before Operation Cast Lead, “ninety per cent of residents had seen or heard a rocket fly overhead, 92\% had experienced a rocket falling nearby, 56\% had experienced shrapnel hitting their home, and 65\% knew someone who had been injured.”\textsuperscript{45}

After eight long years of unrelenting attacks by Hamas and its terrorist allies in the Gaza Strip and international indifference to the situation, Israel was forced to take military action against the terrorists. Israel operated under the Law of Armed Conflict (LOAC) and took all necessary precautions in its military operation in Gaza. Yet, Israel has been criticized for its use of force during Operation Cast Lead.

II. ISRAEL HAS AN INHERENT RIGHT TO SELF-DEFENSE

“[I]t being reasonable and just, I should have a right to destroy that which threatens me with destruction: for, by the fundamental law of nature, man being to be preserved as much as possible, when all cannot be preserved, the safety of the innocent is to be preferred: and one may destroy a man who makes war upon him, or has discovered an enmity to his being, for the

\textsuperscript{42} MFA, OPERATION IN GAZA, supra note 5, ¶ 53.
\textsuperscript{43} Id. ¶ 54.
\textsuperscript{44} Id. ¶ 58. Israel, accompanied by other members of the international community, instituted economic sanctions against Hamas, while at the same time endeavoring to provide the Palestinian population in Gaza with humanitarian relief. Canada, the European Union, and the United States all have recognized Hamas as a terrorist organization for purposes of sanctions. Id. ¶ 57.
\textsuperscript{45} Toni O’Loughlin, Children of Conflict: Stress Takes its Toll on Both Sides of Border, GUARDIAN (July 14, 2008) [hereinafter Children of Conflict] (emphasis added), http://www.guardian.co.uk/world/2008/jul/15/israelandthepalestinians.middleeast.
same reason that he may kill a wolf or a lion . . .

John Locke

The right of a state to defend itself against an attack is a fundamental principle prevailing throughout international law and is specifically recognized by the UN Charter. Although the UN Charter explicitly forbids "aggressive war," article 51 of the UN Charter clearly recognizes a state’s inherent right of self-defense against another state: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations . . ." As a sovereign state, Israel has the moral and legal obligation to protect its population from armed attacks whether by another state or a non-state actor like Hamas. No sovereign state is expected to submit to continuous terrorist attacks.

Notably, article 51 does not create the right of self-defense. Under customary international law, every state has an inherent right of self-defense:

Article 51 neither creates, nor abolishes, a right of self-defense. Nor, for that matter, does it purport to define one. In fact, by its own terms it appears to be nothing more than a rule of construction—making clear that nothing else in the Charter pur-

46 JOHN LOCKE, SECOND TREATISE OF CIVIL GOVERNMENT, Ch. III (1690).
48 See, e.g., U.N. Charter art. 2(4) (requiring all members to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."). In this case, it is Hamas who is engaging in aggressive war.
49 U.N. Charter art. 51 (such self-defense is conditioned in the Charter as follows: self-defense is recognized as legitimate under the Charter "until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.").
ports to eliminate the right of self-defense in the face of armed attack. . . .

Further, the inherent right of self-defense "does not require a defender to limit itself to actions that merely repel an attack; a state may use force in self-defense to remove a continuing threat to future security." Thus, Israel has an inherent right to self-defense and it alone must determine when it is necessary to "use force" to remove the "continuing threat to future security."

The right to self-defense is more traditionally applied between two sovereign states. However, as the Appeals Chamber of the Special Court for Sierra Leone held, "[I]t is well-settled that all parties to an armed conflict, whether state or non-state actors, are bound by international humanitarian law [also known as LOAC], even though only states may become parties to international treaties." Moreover, the UN Security Council recognized the right of self-defense against non-state actors in the wake of the September 11 attacks. Given the incessant rocket attacks from the Gaza Strip, Israel has clearly faced an "armed attack" within the meaning of both customary law and article 51 of the UN Charter and, thus, has the right to respond in self-defense. The right to self-defense applies even when the attacks are by irregular forces such as Hamas.

53 Id.
54 Prosecutor v. Sam Hinga Norman, Case No. SCSL-2004-14-AR72(E), Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment), ¶ 22 (Special Ct. for Sierra Leone May 31, 2004) (emphasis added), available at http://www.unhcr.org/refworld/publisher,SCSL,,,49abc0a220.0.html; see also Christopher Greenwood, Scope of Application of Humanitarian Law, in THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW OF MILITARY OPERATIONS 45, 76 (Terry Gill & Dieter Fleck eds., 2d ed. 2008) (explaining that "the obligations created by international humanitarian law apply not just to states but to individuals and to non-state actors such as a rebel faction or secessionist movement in a civil war."); Reconsidering the Goldstone Report, supra note 12 (commenting that "the laws of armed conflict apply no less to non-state actors such as Hamas than they do to national armies.").
56 In the advisory opinion of the International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the court asserted, ipse dixit, that the Palestinian attacks against Israel do not qualify as an armed attack under article 51 of the UN Charter. Legal Consequences of the Con-
III. LOAC GOVERS THE CONDUCT OF BOTH PARTIES IN THE CONFLICT BETWEEN HAMAS AND ISRAEL

"Modern warfare has only made General Sherman's declaration that 'war is hell' all the more true. However, true descriptions of the horrors inherent in all warfare should not be confused with evidence of unlawful behavior or war crimes."^{58}

The first inquiry is to determine what law applies to this irregular situation in Gaza. At the time of Operation Cast Lead, Israel had completely pulled out of Gaza, and Hamas was in complete control of Gaza.

If Gaza was under Israeli military occupation prior to the campaign, then Israel should have simply arrested the Hamas rocket firing teams.

Occupation, however, requires effective control; only then do the laws of occupation apply. Clearly there was not sufficient Israeli control, if control at all, to allow police type actions. The legal status of Gaza is not clear and in the absence of effective control and ability to carry out police type actions, Israel correctly invoked its right to use force in self defense against attacks emanating from Gaza. The applicable law is thus the law of armed conflict.^{59}

^{57} Sabel, supra note 47.

^{58} Asher Fredman, Precision-Guided or Indiscriminate?: NGO Reporting on Compliance with the Laws of Armed Conflict, NGO MONITOR, 7 (June 2010), http://www.ngo-monitor.org/data/images/File/LOAC_web.pdf.

^{59} Sabel, supra note 47.
The Israeli High Court of Justice found that "since September 2005 Israel no longer has effective control over what happens in the Gaza Strip."\(^{60}\) Furthermore, the International Criminal Tribunal for the former Yugoslavia decided in the Tadić case that "an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State."\(^{61}\) Hamas is an organized and well-armed group that fits squarely within this definition. Thus, LOAC is the applicable legal framework for evaluating the Gaza conflict.\(^{62}\)

At its core, LOAC aims to avoid needless casualties and damage during an armed conflict. As such, three fundamental principles govern: the principles of necessity, distinction, and proportionality. Each of these principles will be discussed in the following paragraphs.


\(^{62}\) MFA, OPERATION IN GAZA, supra note 5, ¶ 28.

The core documents of LOAC are the Geneva Conventions of 1949 and their two Additional Protocols completed in 1977. Additional Protocols I and II (AP-I and AP-II), which deal with the laws of international and non-international armed conflicts respectively, give expression to the laws of targeting that lie "at the very core of the balance between military necessity and humanitarian interests on which international law is based." These documents contain the most relevant rules for determining whether Israel complied with LOAC. However, while Israel signed the Geneva Conventions, it is not a party to the Additional Protocols and is therefore not bound by their rules.

Nevertheless, many of the principles expressed in the Additional Protocols are generally considered to be part of [Customary International Law], and, like most [Customary International Law], they are binding on all parties to an armed conflict. In order to demonstrate that Israel failed to comply with LOAC, it must be shown that Israel either violated a provision of a treaty to which it is party or a principle actually established as [Customary International Law]. It is not enough to rely upon a possible interpretation of the language in the Additional Protocols.

Fredman, supra note 58, at 10–11(emphasis added) (citations omitted).
A. Principle of Necessity

Generally, "necessity" requires actors in war only to attack targets that are necessary to accomplish their military objective. Anything beyond this will result in a war crime. According to article 147 of the Fourth Geneva Convention of 1949, a war crime is defined as: "wilful killing, torture, or inhuman treatment, including . . . wilfully causing great suffering or serious injury to body or health, . . . taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."63

Article 52(2) of Additional Protocol I states, "In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage."64 Therefore, the evaluation of a military objective can never be a judgment made on the basis of hindsight, but is always determined by examining the knowledge of the commanding officers and the circumstances at the time of the attack.65

The UK, upon ratifying [Additional Protocol I], insisted that "military commanders and others responsible for planning, deciding upon, or executing attacks necessarily have to reach decisions on the basis of their assessment of the information from all sources which is reasonably available to them at the relevant time." Canada added, "Such decisions cannot be judged on the basis of information which has subsequently come to light."66

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64 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, art. 52(2), 8 June 1977, 1125 U.N.T.S. 3 [hereinafter Additional Protocol I] (emphasis added).
66 Fredman, supra note 58, at 24 (emphasis added). Further, "[e]leven other countries (Belgium, Germany, Australia, Ireland, Italy, the Netherlands, New Zealand, Egypt, Switzerland, Spain, and Austria) made similar declarations." Id.
What is "necessary" must be determined at the time the decision was made. The U.S. Army International Intelligence Officer Advanced Course explains, "All battlefields require commanders to make and execute decisions faster than the enemy."\textsuperscript{67} Decisions of military necessity are determined by commanders often in the heat of battle, not by NGOs after the fact. Additionally, "[I]n the heat of battle, not by NGOs after the fact. Additionally, "[I]n the heat of battle, not by NGOs after the fact. Additionally, "[I]n the heat of battle, not by NGOs after the fact. Additionally, "[I]n the heat of battle, not by NGOs after the fact. Additionally, "[I]n the heat of battle, not by NGOs after the fact. Additionally, "[I]n the heat of battle, not by NGOs after the fact. Additionally, "[I]n the heat of battle, not by NGOs after the fact. Additionally, "[I]n the heat of battle, not by NGOs after the fact. Additionally, "[I]n the heat of battle, not by NGOs after the fact. 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spread terror among the civilian population are prohibited."\(^{72}\) Instead, "[a]ttacks shall be limited strictly to military objectives."\(^{73}\)

The principle of distinction, by its very nature, forbids indiscriminate attacks. Article 51(4) of Additional Protocols I states:

Indiscriminate attacks are:

(a) those which are not directed at a specific military objective;
(b) those which employ a method or means of combat which cannot be directed at a specific military objective; or
(c) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.\(^{74}\)

The principle of distinction requires only that civilians not be deliberately and directly targeted.\(^{75}\) "LOAC recognizes that in attacking legitimate military targets, there may be incidental civilian losses, and only requires that these not be 'excessive in relation to the direct and concrete military advantage anticipated from attack.'\(^{76}\) The mere presence of a civilian will not shield an otherwise permissible military target from attack.\(^{77}\) The American Red Cross recognizes that:

\(^{72}\) Additional Protocol I, supra note 64, art. 51(2) (emphasis added). Though Israel is not a party to the Additional Protocols to the Geneva Conventions, it does accept this principle to reflect customary international law. See HCJ 769/02 Public Committee against Torture in Isr. v. Gov't of Isr., ¶ 20 [2005] (Isr.), available at http://elyon1.court.gov.il/files_eng/02/690/007/a34/02007690_a34.pdf.

\(^{73}\) Additional Protocol I, supra note 64 (emphasis added).

\(^{74}\) Id. art. 51(4). As an example of an indiscriminate attack, Article 51(5)(b) defines indiscriminate as "an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated." Id. art. 51(5)(b).

\(^{75}\) Australia, Canada, France, Italy, New Zealand and the United Kingdom all expressly stated upon ratification that Article 52(2) of Additional Protocol I did not address the incidental or collateral damage that might result from an attack aimed at a military objective. See INT'L COMM. RED CROSS, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOL. II: PRACTICE, Part 1, ¶¶ 86–91 (Jean-Marie Henckaerts & Louise Doswald-Beck eds., 2005) available at http://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-ii-icrc-eng.pdf.

\(^{76}\) Fredman, supra note 58, at 26. "If a steeple of a church or a minaret of a mosque is used as a snipers nest . . . the enemy is entitled to treat it as a military objective.' Certainly the civilians themselves would not be legitimate targets and the attack would have to pass the proportionality test . . . " Id. at 27.

not all civilian deaths are unlawful during war. [LOAC] does not outlaw armed conflict, but instead attempts to balance a nation’s acknowledged legal right to attack legitimate military targets during war with the right of the civilian population to be protected from the effects of hostilities. In other words, given the nature of warfare, [LOAC] anticipates a certain amount of “collateral damage,” which sometimes regrettably, may include civilian casualties.

The principle of distinction focuses on the commander’s knowledge at the time of attack and emphasizes that a commander must distinguish between civilian and military targets. The International Committee of the Red Cross Commentary to Additional Protocol I states, “[i]n combat areas it often happens that purely civilian buildings or installations are occupied or used by the armed forces and such objectives may be attacked, provided that this does not result in excessive losses among the civilian population.” Thus, collateral damage, resulting in civilian losses is not ipso facto illegitimate. Instead, in anticipation of such an attack and with the knowledge that a commander has at the time, the anticipated civilian losses must not exceed the military objective.

C. Principle of Proportionality

In general, the principle of “proportionality” requires that a combatant only use the force necessary to achieve the military objective.

(providing that “[t]he presence of a protected person may not be used to render certain points or areas immune from military operations”). The Office of the Prosecutor at the International Tribunal for the Former Yugoslavia reached the same conclusion, and the Committee Established to Review the 1999 NATO Bombing Campaign Against the Federal Republic of Yugoslavia reported to the Prosecutor “that where individual (and legitimate) attacks on military objectives are concerned, the mere accumulation of such instances, all of which are deemed to have been lawful, cannot ipso facto be said to amount to a crime.” INT’L CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY), FINAL REPORT TO THE PROSECUTOR BY THE COMMITTEE ESTABLISHED TO REVIEW THE NATO BOMBING CAMPAIGN AGAINST THE FEDERAL REPUBLIC OF YUGOSLAVIA para. 52 (2000), available at http://icty.org/x/file/Press/nato061300.pdf (emphasis added).


Use of force must be in proportion to the initial attack when claiming the right of self-defense. While a minor incident would not warrant a full armed conflict, proportionality is measured by the accumulation of attacks if they are recurring. This principle of proportionality, reflected in Additional Protocol I, prohibits attacks “which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.” The Rome Statute of the International Criminal Court reflects this same balancing test as it “lists the launching of an attack in which the anticipated civilian losses are ‘clearly excessive’ to the anticipated military advantage as a war crime.”

IV. A COMPARISON OF THE ACTIONS TAKEN BY ISRAEL AND Hamas IN OPERATION CAST LEAD UNDER THE LAW OF ARMED CONFLICT

During the three-week military operation, known as Operation Cast Lead, Sderot was struck by eighty-four rockets exploding within the municipal boundaries of the city and was the subject of 140 warning sirens—averaging seven alerts and four explosions each day. Although rocket attacks escalated during Operation Cast Lead, the reality was nothing new for the city of Sderot, which had already learned to cope with indiscriminate rocket attacks for the past eight years.

Throughout the course of Operation Cast Lead, Israel went out of its way—and even compromised its own military advantage by taking elaborate precautions—to warn the Gaza civilian population before many attacks. The IDF implemented strategies that sought to cause the least amount of destruction possible while still achieving legitimate military objectives. The IDF developed a system of warnings, with the express purpose of minimizing civilian death. Furthermore, the

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80 Sabel, supra note 47.
81 Id.
82 Additional Protocol I, supra note 64, 51(5)(b) (emphasis added).
83 Fredman, supra note 58, at 18 (emphasis added). See also Rome Statute of the International Criminal Court, art. 8(2)(b)(iv), July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002) (stating that a war crime requires the “intentional launching” of an attack “in the knowledge that such attack will cause incidental loss of life or injury to civilians … which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.”).
84 Sderot Media Report, supra note 4.
85 Id.
86 MFA, OPERATION IN GAZA, supra note 5, ¶ 8.
IDF used media broadcasts and leaflets as general warnings to civilians to alert them to areas of impending conflict.\footnote{Id.}

Local radio broadcasts were used to convey instructions and warnings to Gaza residents.\footnote{Id.} The leaflets were used to warn civilians to distance themselves from military targets.\footnote{Id.} Additionally, through direct telephone calls to residents at risk, the IDF urged evacuation, informing them of impending attack.\footnote{Id.} Following the phone calls, warning shots were often fired upon rooftops to communicate to the civilians which buildings were targeted for attack.\footnote{Id.} In total, the IDF dropped more than 2.5 million leaflets and made more than 165,000 telephone calls to civilians, warning them to keep away from military targets.\footnote{Id.}

While Israel was making immense efforts to warn the civilian population and avoid civilian death, Hamas was taking the opposite approach. In Israel’s post-Operation Cast Lead report, \textit{The Operation in Gaza: Factual and Legal Aspects}, Hamas’s clear violations of international law are summarized:

Hamas chose deliberately and systematically to exploit Palestinian civilians as shields for military targets in the IDF’s Gaza Operation. It did not provide any protection for the civilian population. Instead, it exposed the Palestinian civilian population of Gaza to additional harm. With the intent of exploiting the civilian population, Hamas stored explosives and weapons in and around schools, mosques, U.N. facilities and homes, even though other storage sites were available. It used medical facilities and ambulances for military purposes, exploiting the protected status of medical sites and restricting effective care for civilians. It repeatedly fired mortars and other weapons from locations adjacent to U.N. schools and medical facilities, and from the roofs of residential apartment buildings. It used

\footnote{Id.}{\textit{Id.} ¶ 264.}
\footnote{Id.}{For example, leaflets were dropped in Rafah which stated, “[t]he IDF is conducting operations against groups who are engaged in acts of terrorism against the State of Israel. The IDF will strike and destroy any location or building containing weapons, ammunition or a tunnel. As of the distribution of this notice, the life of anyone present in a building containing weapons, ammunition or a tunnel is in danger and he should leave the location immediately for his own and his family’s safety!” \textit{Id.} ¶ 264 n.224.}
\footnote{Id.}{\textit{Id.} ¶ 264.}
\footnote{Id.}{\textit{Id.}}
individual civilians as human shields to protect Hamas terrorists. And it turned civilian neighbourhoods into battlefields, by digging warrens of tunnels lined with explosives and booby-trapping residential buildings in order to cause their collapse at the outset of any IDF incursion. In short, Hamas made the likelihood of harm to the citizens and homes of Gaza the centerpiece of its defensive strategy, to inhibit Israeli attacks and to score propaganda coups and vilify Israel when Israel tried to attack a legitimate military objective and unintended civilian casualties resulted.\footnote{Id. \textsection 23.}

There is no question that Hamas has violated customary international law. Hamas operatives admitted, for example, that rockets were frequently fired from schools (such as the Sakhnin school in Abu Halima), with the knowledge that Israeli jets would not attack a school.\footnote{See Selected Examples of Interrogations Following Operation Cast Lead, \textit{Israel Security Agency} [hereinafter \textit{Interrogations Following Operation Cast Lead}], \url{http://www.shabak.gov.il/English/EnTerrorData/Archive/Operation/Pages/cast-lead-Interrogations.aspx} (last visited Mar. 6, 2013).} Moreover, Hamas operatives have described occasions when children were used to wheel carts laden with rockets, in order to avoid IDF attack.\footnote{Id.} One Hamas legislator even boasted on television that he had encouraged women, children, and the elderly to form human shields to protect military sites from Israeli attack.\footnote{Fathi Hamad, Statement of Hamas Member of Palestinian Legislative Council (Nov. 20, 2012), available at \url{http://www.youtube.com/watch?feature=player_embedded&v=agfdabyjb1e}.} The Secretary General of the UN confirmed receiving reports of Hamas' using children as shields to prevent Israeli attacks on military targets.\footnote{U.N. Secretary-General, \textit{Children and Armed Conflict: Rep. of the Secretary-General}, ¶¶ 86–87, U.N. Doc. A/63/785-S/2009/158 (Mar. 26, 2009).}

Additional Protocol I requires parties to a conflict to take "feasible" precautions in an effort to minimize the harm to innocent civilian life.\footnote{See Additional Protocol I, supra note 64, art. 57(2)(a)(i), (ii).} This obligation requires an attacker to "do everything feasible to verify that the objectives to be attacked ... are military objectives"\footnote{Id. art. 57(2)(a)(i).} and, further, "take all feasible precautions in the choice of means and methods of attack with a view of avoiding, and in any event to minimizing, incidental loss or civilian life."\footnote{Id. art. 57(2)(a)(ii).} As just one example of many, out of concern for civilian harm, Israel refrained from attacking...
the Shifa Hospital in Gaza City, despite the use of an entire wing by Hamas as its headquarters. Hamas’s military strategy to intermingle military operations with civilians made avoiding civilians next to impossible for Israel. However, as noted, Israel took significant precautions to protect innocent civilian life.

Israel acknowledges that, despite the precautions taken during Operation Cast Lead, there were still many civilian deaths and injuries, along with significant property damage in Gaza. At the close of the Gaza conflict, then-Prime Minister Olmert addressed the citizens of Gaza: “Your suffering is terrible. . . . On behalf of the Government of Israel, I wish to convey my regret for the harming of uninvolved civilians, for the pain we caused them, for the suffering they and their families suffered as result of the intolerable situation created by Hamas.” While loss of innocent civilian life is always a tragedy, that fact alone does not necessarily equate to a violation of international law.

Many NGOs were quick to condemn Israel’s role in the death of innocent civilians, concluding that the civilian casualties ipso facto demonstrate Israel’s violation of international law. It is a fundamental precept of the rule of law that conclusions not be drawn for legal inquiries concerning events occurring throughout an armed conflict.

101 A Hamas activist confirmed, in an interrogation by IDF forces, that senior members of Hamas were hiding in Shifa Hospital during Operation Cast Lead. See Interrogations Following Operation Cast Lead, supra note 94; see also Amir Mizroch, Dichter: Hamas Salaries Paid at Shifa Hospital, JERUSALEM POST, Jan. 12, 2009, available at http://www.jpost.com/Israel/Article.aspx?id=128914. This action by Hamas directly conflicts with Additional Protocol I, which provides that “[u]nder no circumstances shall medical units be used in an attempt to shield military objectives from attack.” Additional Protocol I, supra note 64, art. 12(4).

102 MFA, OPERATION IN GAZA, supra note 5, ¶ 9.

103 Id. ¶ 18.


105 Cf. Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia, ¶ 51 (Int’l Crim. Trib. for the Former Yugoslavia June 14, 2000), available at
The death of innocent civilians is frequently a collateral consequence of an armed conflict and nearly inevitable. The Canadian Judge Advocate General, Kenneth Watkin explained, "[A]lthough civilians are not to be directly made the object of an attack, humanitarian law accepts that they may be killed or civilian property may be damaged as a result of an attack on a military objective." Thus, the mere fact of civilian harm does not result in a conclusion of wrongdoing. Accusing Israel of international law violations, solely on the basis of civilian deaths and destruction of civilian property, is not in accordance with the rule of law.

Israel aimed only to target military objectives, which was made very difficult in light of Hamas’s strategy to intermingle its military facilities and operations with civilians. On the other hand, Hamas’s rocket attacks are "indiscriminate" and make no differentiation between illegitimate, Israeli, civilian targets and legitimate military targets. In fact, rockets are often fired at times with the specific intent to terrorize schoolchildren during the morning and afternoon hours. Further, Hamas’s "command, control, communication, manufacturing, and storage sites are deeply embedded within the civilian infrastructure of the Gaza Strip, including within mosques, schools, hospitals, public buildings, and private homes."

The international community has severely criticized the Israeli military response to Hamas’s attacks, claiming that Israel’s response was out of proportion to Hamas’s provocations. Although a fully armed attack is not proportional to a minor incident, the rule of proportionality does not require exclusive use of equal force or reaction. In fact, a party who has been subject to attack is "entitled to use superior force to destroy the enemy’s armed forces and military capabilities and not only to respond in kind."

http://www.icty.org/x/file/About/OTP/otp_report_nato_bombing_en.pdf ("Much of the material submitted to the OTP consisted of reports that civilians had been killed, often inviting the conclusion to be drawn that crimes had therefore been committed.” Yet, “[c]ollateral casualties to civilians and collateral damage to civilian objects can occur for a variety of reasons.”).


According to Additional Protocol I, an indiscriminate attack is an attack that is not targeted at a specific military objective and of a nature to strike both military and civilian targets without distinction. Additional Protocol I, supra note 64, art. 51(4).

MFA, OPERATION IN GAZA, supra note 5, ¶ 3.

Fredman, supra note 58, at 25.

Sabel, supra note 47.
International law "does not require a defender to limit itself to actions that merely repel an act; a state may use force in self-defense to remove a continuing threat to future security."\(^{111}\) For eight years, Israel endured the Hamas rocket attacks and exhausted every conceivable diplomatic option.\(^{112}\) The Hamas rocket attacks forced them to take military action and make strategic moves to eliminate Hamas’s military capabilities.

Despite the precautionary measures taken by the IDF, Israel still managed to upset the international community, which saw its response to Hamas as disproportionate. Perhaps a more "proportional" reaction might be to equip the population of southern Israel with thousands of rockets to send indiscriminately into the Gaza Strip. Although there is no one who seriously believes this would be a better solution, Israel has been highly criticized for its limited actions taken in self-defense during Operation Cast Lead.

The incessant terrorist attacks by Hamas for the eight years leading up to Operation Cast Lead have not been properly addressed by the international community, which criticizes Israel. For example, the Goldstone Report heavily criticized Israel, yet failed to adequately address the Hamas attacks that created the need for the strong Israeli response.

After the release of the Goldstone Report and international criticism over its obvious anti-Israel bias, Judge Goldstone retracted some of his conclusions, saying,

I was, and continue to be, utterly disgusted by Hamas’s cynicism; its use of civilian population as a hiding place for weapons and terrorists; its booby-trapping of buildings with civilian inhabitants. Hamas even exploited the relative weakness of the rockets that it sent into Israel: because they inflicted little actual damage, the world never realised how deeply the Qassam attacks terrorised the population in Israel’s south, and it made the extent of Israel’s retaliation look disproportionate.\(^{113}\)

The actual damage done to Israel, specifically in towns like Sderot, is even larger than Judge Goldstone acknowledges. The economic and property damage has been monumental, but Judge Goldstone is correct

\(^{111}\) MURPHY, supra note 52.

\(^{112}\) See supra note 40.

when he notes that the deepest infliction of the rocket attacks has been the sheer terror that they inflicted on the Israeli population. The impact of these terrorist acts cannot be measured, counted, or captured in a statistic. The international community must view the Israeli response through the eyes of the people of Sderot themselves. The international community is obliged to accept that the proportionality of Israel’s response should and must factor in the eight years of terror that towns like Sderot have experienced.

In a visit to Sderot, President Obama said, “If somebody was [sic] sending rockets into my house where my two daughters sleep at night, I’m going to do everything in my power to stop that, and would expect Israel to do the same thing.”\(^\text{114}\) What sovereign state would act any differently than the way Israel did? Perhaps the significant distinction is that most sovereign states would have taken military action much sooner.

For example, if California were the “Gaza Strip” vis-à-vis the United States, harboring internationally recognized terrorists whose main objective was to terrorize the United States by firing rockets into bordering towns in Nevada and Oregon, there would be no hesitation by the United States to quickly and thoroughly eliminate the threat with military force. The United States would not delay an attack for twenty-four hours, let alone, eight years. After facing eight years of rocket attacks, Israel could no longer negotiate with Hamas, but was forced to take strong military action to frustrate Hamas terrorists. In consideration of the persistent terrorism by Hamas, Israel was completely justified in its response to the Hamas rockets during Operation Cast Lead. Every nation has the right to self-defense.

V. “QASSAM CHILDREN”: THE AFTERMATH IN SDEROT

In the aftermath of the eight years of Hamas rocket fire, more than 6,000 patient files have been opened in the Sderot Mental Health Center.\(^\text{115}\) Incredibly, this number represents more than a quarter of the population of this small town.\(^\text{116}\) Children exhibit anxiety symptoms which include sleeping difficulties, nightmares, sweating, development regressions, bed wetting, and fear of the outside.\(^\text{117}\) A study re-

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114 Sderot Media Report, supra note 4.
115 Sderot Media Report, supra note 4.
116 MFA, OPERATION IN GAZA, supra note 5, ¶ 46.
leased on June 29, 2009, by the Israel Center for the Treatment of Psychotrauma at Herzog Hospital in Jerusalem found that forty-five percent of Sderot children under the age of six suffer from post-trauma syndrome.\(^\text{118}\) Furthermore, the same study discovered that forty-one percent of mothers and thirty-three percent of fathers reported that they too suffered from post trauma stress disorder.\(^\text{119}\) Dr. Ruth Pat-Horenczyk, author of the aforementioned study, commented that "[f]or parents who suffer from symptoms of fears and post-trauma, their children have more distress and developmental problems and therefore the most important mission is to strengthen the parents who struggle with this constant threat and build strength for them and their children."\(^\text{120}\)

Dr. Adriana Katz, director of the Sderot Mental Health Center, refers to the children of Sderot as the "Qassam children."\(^\text{121}\) She refers to the generation of children who have grown up in the midst of the terror that spreads through Sderot with each and every rocket explosion. According to Dr. Pat-Horenczyk, "There is no doubt, that the most effective way to help toddlers is by strengthening their parents . . . ."\(^\text{122}\) Under the constant threat of rocket attack, how is it possible to strengthen parents? This problem in Sderot is not new.

Over the last decade, Israel has taken many different measures to find creative solutions to the problems that residents of Sderot face. Millions of dollars have gone towards the fortification of school buildings and public institutions against the threat of rocket attacks.\(^\text{123}\) There have also been several playgrounds retrofitted with reinforced concrete play areas that also serve as bomb shelters.\(^\text{124}\) The Jewish National Fund helped to fund a $5 million project in Sderot to provide a safe recreation center for children.\(^\text{125}\) The recreation center opened on March 10, 2009, and "is located in a secure industrial zone in an old textile warehouse," featuring "recreational and exercise facilities for children ages 16 and under, including jungle gym equipment, a

\(^{118}\) Sderot Media Report, supra note 4.

\(^{119}\) Id.

\(^{120}\) Id.

\(^{121}\) Sderot Residents Fed Up, supra note 15.

\(^{122}\) Sderot Media Report, supra note 4.

\(^{123}\) Id.

\(^{124}\) Id.

soccer field and volleyball court, a rock climbing wall, a snack area, a movie and television area, a disco, swing sets and more.\textsuperscript{126} The center is nearly 2,000 square meters (21,000 square feet), allowing for a capacity of 500 people.\textsuperscript{127} Along with a half dozen shelters, anti-shockwave walls surround the center.\textsuperscript{128} There is an emergency broadcast system that alerts the children to the danger of incoming rockets.\textsuperscript{129}

According to the Jewish National Fund, the purpose of this project was to give children "[a] place to feel strong and free, away from their daily helplessness and anxiety."\textsuperscript{130} Further, "parents will have peace of mind knowing that their children are playing and learning in an environment that is safe and secure."\textsuperscript{131} Pesah Hajbi, a father of three living in Sderot, added, "It's cold comfort. If they don't stop firing, at least there is a safe place to play."\textsuperscript{132} The mayor of Sderot, David Buskila, states: "Today we bring back the childhood to the children of Sderot, and let them feel like other children all over the world."\textsuperscript{133}

Childhood for some of these children has been lived largely within the walls of their own homes, due to the quick access to a bomb shelter. Devora Biton, a mother living in Sderot, commented, "Out on the street you are tense all the time and can’t let our kids go far . . . . The house is like a prison. We try to make it nice, but it still feels like a prison."\textsuperscript{134} Hamas has effectively imprisoned the Sderot population. The play center gives Sderot’s children a chance to play in a safe area outside of their own homes and is a creative solution that helps to overcome the fear behind the looming Hamas rocket attacks. The recreation center is a symbol of hope for residents of Sderot.

Sderot has also built hundreds of concrete bunkers throughout the town to give residents the best chance at finding safety within fifteen seconds.\textsuperscript{135} Furthermore, residents have had thousands of live drills

\textsuperscript{127} Sderot Opens Playground, supra note 125.
\textsuperscript{128} Id.
\textsuperscript{129} Id.
\textsuperscript{131} Id.
\textsuperscript{132} Sderot Opens Playground, supra note 125.
\textsuperscript{133} Id.
\textsuperscript{134} Id.
\textsuperscript{135} Sderot Media Report, supra note 4.
over the many years to help prepare them for attack. Yet, the funds are not unlimited in Sderot and due to budget cuts following Operation Cast Lead, many therapy facilities in Sderot are on the verge of closing. The Sderot Mental Health Center has focused primarily on children, treating 620 trauma patients (80% of whom are children). Unfortunately, the Sderot Mental Health Center has only been able to treat the tip of the iceberg. According to Dr. Katz, there is not enough staff at the center to accommodate the care of over 6,000 trauma victims.

According to the files on record at the Sderot Hosen Center, the generation of children living with constant threat of rockets has shown some major problems. The clinical psychologists noticed that the children’s speaking skills are not developing at a rate appropriate to their age. While a normal child learns to speak around the age of one, many children in Sderot do not begin to speak until the age of three or four. Dalia Yosef, director of the Sderot Hosen Center, attributed the developmental problems to the state of stress and panic that the Sderot children are subjected to. Yosef commented, “The world, as it appears to [the Sderot children], is unsafe and scary, full of insecurity and chaos. Their sense of security has been shattered by the continuous rocket attacks.” According to Yosef, this reality has created an unhealthy relationship within the family unit.

Yosef explained that “[o]nly a permanent long term quiet will help these children and their parents recover . . . . The moment there is a siren alert and a rocket explosion, all the progress we have made in the treatment is destroyed.” While treatment centers in Sderot are doing their best to treat both children and adults, the reality is that rockets are still falling. Positive progress is incredibly difficult when there is certainty that another rocket will fall.

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136 Id.
137 Id.
138 Id.
140 Id.
141 Id.
142 Id.
143 Id.
144 Id.
145 Id.
The Qassam children are a generation deeply affected by the Hamas terror. Livnat Shaubi, a resident of Sderot and the oldest in a family of eleven children, has seen firsthand the effect the rockets have had on her siblings. She commented, “Like other Sderot kids, my mom cannot allow my younger siblings to play outside during these periods of rocket attacks. We stay inside in the bomb shelter, but my brothers are desperate for things to do.” Parents are afraid to let their children play outside. Many children are forced to find things to do within the walls of a bomb shelter. Many children have been born into the reality of war. Along with “daddy” and “mommy,” the first words of Hananel, Livnat’s five-year-old brother, were “Tzeva Adom” (the siren alert in Sderot).

Raziel Sasson, a thirteen-year-old child in Sderot, has taken to sleeping in a reinforced steel box, built by his brother to provide additional shelter from the rocket attacks. In the wake of escalating rocket attacks, Raziel first retreated to his parents’s bed. The whole family then eventually moved to the living room to all sleep together in the same room, which is where Raziel now sleeps in the steel box.

Dr. Ronny Berger conducted a study in Sderot for the Israel Trauma Centre for the Victims of Terror and War which revealed that “[c]hildren aged 7 to 12 suffered most, with 74% percent experiencing extreme fear, 67% percent refusing to talk or visit places that remind them of an attack, and 57% enduring nightmares and other sleep difficulties.” Dr. Berger noted the extent of the damage is not captured by the statistics.

The police station in Sderot has hundreds of rockets on display, a somewhat depressing exhibit. Creatively, the inhabitants of Sderot have collected fallen rockets and pieced together poignant sculptures displayed throughout the city. Though the town is pockmarked with rocket holes, the Sderot police do the best they can to act quickly after
a rocket attack to clean up the scene and repair the damage so that residents will not have to walk by rocket destruction as a constant reminder.\footnote{155}

Unfortunately, memories and experiences cannot be cleaned up quite so easily as repairing a wall or repaving a road. Dr. Berger notes, "Children need a calm environment to develop, they need security, they need parents who are available and sensitive, and if they don’t have it[,] it changes the way in which they see reality and the way in which they protect themselves."\footnote{156} The reality for a child living in Sderot is a nightmare that no child should have to endure. Raziel described this reality, saying, "You can never know what will be in another year. You can never know if you can survive this day, or the day after, or the next week."\footnote{157}

**CONCLUSION**

_Three little ones, three options – the oldest just celebrated his fourth birthday yesterday – and he is so heavy to lift from the bed and race to shelter. After him our princess. I sat for hours getting her to sleep, hours of stories and songs, she just fell asleep an hour ago – how will she go back to sleep? . . . and the soft breaths of our youngest, five months old – and I have only two hands, and only seven seconds . . ._

. . . .

_I put them on the bed – and in the meantime close the iron door and window shades – the handle has not yet turned and the explosion comes . . . the house trembles._\footnote{158}

This Israeli mother recalls this memorable night and explains the impossible situation that her children must grow up in.\footnote{159} Fortunately, on this night, with the help of her husband, the family was able to take shelter safely without injury.\footnote{160} Yet, unfortunately, the events occurring on this night are nothing new for Israeli families.\footnote{161}

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\begin{itemize}
  \item \footnote{155} Id.
  \item \footnote{156} Children of Conflict, supra note 45.
  \item \footnote{157} Id.
  \item \footnote{158} Life in the South: A Mother’s Dilemma, supra note 2.
  \item \footnote{159} Id.
  \item \footnote{160} Id.
  \item \footnote{161} Id.
\end{itemize}
One may ask why, under these circumstances, people are still living in Sderot? That answer may be unique for each family, but one reason is certainly because families feel they must.162 “For years, the government and others thought of Sderot not as a national problem but a local one,” said Sderot Mayor Eli Moyal.163 “They now understand that if Sderot falls, Israel falls.”164

Every year, the scope of the Hamas rockets increases.165 In 2008, Hamas could target nearly one million Israeli civilians living in southern Israel (about fifteen percent of the total population in Israel).166 Among the cities in range of Hamas rockets is the city of Ashdod, with a population of 208,900 people.167 How soon might it be before Hamas has the capability to target civilians in Bethlehem or even Jerusalem? With this possibility in the near future, Israel correctly took decisive action toward the Hamas terrorists during Operation Cast Lead.

The Hamas terrorism demanded a response. Sderot residents could have abandoned the city and moved to an area beyond the reach of the Hamas rockets. But what sovereign nation could argue that the correct response is to flee? The city of Sderot is not only the platform for Israelis to stand for peace, but also a city where Israelis can stand united in defiance of terrorism. “Sderot is us, all of us. We rise and fall with Sderot.”168

Most recently, Hamas rockets escalated in November of 2012.169 A number of Hamas’s rockets have now reached Tel Aviv,170 thus en-

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162 Dave Balson, Speaking from the City of Bomb Shelters, SDEROT MEDIA CTR. (Feb. 24, 2011), http://sderotmedia.org.il/bin/content.cgi?ID=761&q=1.
163 Bronner, supra note 153.
164 Id.
165 Amos Harel, ‘Hamas Weapons Capability Increased Four-fold Over Last Five Years’, HAARETZ (Apr. 5, 2011), http://www.haaretz.com/print-edition/news/hamas-weapons-capability-increased-four-fold-over-last-five-years-1.354097 (noting that the range of Hamas rockets has increased incredibly over the last five years).
167 Id.
170 Id.
dangering an even greater percentage of the Israeli population. This escalation forced Israel to launch Operation "Pillar of Defense" on November 14, 2012. Only four days into the operation, an astounding 800 rockets had been fired into Israel by Hamas. Operation "Pillar of Defense" concluded on November 21, 2012. With longer range rockets in Hamas's hands, this issue becomes one of direct significance for much more of the Israeli population than just the city of Sderot. Families in Tel Aviv must now think twice before allowing their children to play outside.

Sderot, in particular, has been subject to and continues to be the recipient of Hamas rockets that are fired indiscriminately in clear violation of international law.

_They're shooting at me, at my children – this is war – they're shooting at our soft underbelly, at the mothers . . . I don't understand politics. I am just a mother of three children. . . . a mother with two hands and a few seconds and a terrible decision to make every two or three days._

_... . . .}_

_And you? Did you know? There's a war here – the Qassams are not being fired at soldiers or at an army, they are aimed at me – [a] Jewish mother._

This is one Jewish mother’s testimony. This is the testimony of every mother in Sderot. This is the testimony of every family in Sderot. This is the perspective through the eyes of Sderot.

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172 Id.; see also al-Mughrabi, supra note 169.
173 Life in the South: A Mother’s Dilemma, supra note 2.