

**NGO Monitor Submission to the UN Human Rights Council
Commission of Inquiry on the 2014 Gaza Conflict**

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NGO Monitor is a Jerusalem-based research institution that tracks the activities, campaigns, and funding of NGOs operating in the Arab-Israeli conflict. For more than a decade (following the NGO Forum of the 2001 UN World Conference Against Racism in Durban, South Africa), NGO Monitor has published numerous detailed and systematic research studies on the issues of NGO transparency, accountability, international law, human rights, humanitarian aid, and the laws of armed conflict. These works include *Best Practices for Human Rights and Humanitarian NGO Fact-Finding* (Nijhoff 2012), “IHL 2.0: Is there a Role for Social Media in Monitoring and Enforcement” (*Israel Law Review* 2012), and *The Goldstone Report “Reconsidered”: A Critical Analysis* (2011).*

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NGO Monitor has prepared this submission for the UN Human Rights Council Commission of Inquiry on the 2014 Gaza Conflict (“the COI”) to provide background information and context that may not be known, as well as to remind the COI of the obligation to maintain ethical standards and to adhere to the requirements of transparency, impartiality, and independence in conducting its work. We hope that this information will aid in the preparation of the final report. Unfortunately, we have no evidence or reason to expect that this COI will be any different from its predecessors in these core dimensions.

* A copy of “*Reconsidered*” is attached as Annex 1 to this submission.

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Summary

Previous UN Human Rights Council (HRC) fact-finding inquiries related to Israel have been of limited value due to their lack of due process and their disregard for legal standards and ethical principles. The continued failure by the HRC fact-finding mechanisms to employ clear benchmarks for ethical standards vis-à-vis their relations with non-governmental organizations (NGOs), as well as their failure to adhere to the principles of objectivity, non-selectivity, balance, and universality, are among the reasons for the HRC's failures during its first eight years, including the sweeping criticism of the Goldstone mission, among other initiatives. In some cases, their findings and conclusions have been manifestly dangerous and have contributed to civilian harm, bolstering the impunity of groups like ISIS, the Taliban, Hamas, Hezbollah, and Boko Haram.

A key indicator of impartiality is choice of subject by the fact-finders. Previous HRC inquiries have focused almost exclusively on the actions of Israel. Violations committed by Palestinian actors and against Israeli civilians were all but ignored. Israeli sources providing exculpatory evidence of Israel actions or evidence of Palestinian abuses were discounted or dishonestly twisted. In some cases, such as the Goldstone mission, Palestinian sources were always credited while Israeli sources only were valued if they were disparaging of Israel.

This lack of impartiality by missions like Goldstone is a primary reason why Israel has not cooperated with the current COI and is completely justified in making that decision. No person or country is obligated to engage with a process that is “employed not to discover evidence of real probity, but to . . . re-enforce predetermined political conclusions” to be used for “propaganda purposes.”¹

At a minimum, and in order to avoid, the gross failures of the past, the COI must strictly adhere to the principles of impartiality and objectivity, identify all individuals involved in its work, adopt transparency standards governing all interactions with NGOs, in particular groups that promote antisemitism, and implement guidelines as to how the credibility and factual claims of NGOs will be assessed.

It will also not be a credible excuse for the COI to claim, as Goldstone did, that it is highlighting the Palestinian narrative due to a lack of Israeli cooperation. Much of the information previous commissions have claimed they have lacked is available on public and open source material. If they do not have particular information, it is because the COI has failed to seek out Israeli sources that can provide it.

Unfortunately, we have no evidence or reason to expect that this COI will be any different from its predecessors in these core dimensions.

¹ Franck, Thomas M. and H. Scott Fairley, *Procedural Due Process in Human Rights Fact-Finding by International Tribunals*, 74 AM. J. INT'L L. 308 (1980).

Introduction and Historical Background

For more than 65 years, the State of Israel has been subjected to violence, warfare, and a relentless campaign of terror attacks deliberately targeting its civilians. Thousands have been murdered and injured in suicide bombings, mass shootings, stabbings, rocket attacks, car bombings, kidnappings, and hijackings. Today, these attacks are spearheaded by states including Iran and Syria, and terror organizations – Hamas, Islamic Jihad, Hezbollah, Fatah’s Al Aqsa Martyrs Brigade, the PFLP, and even Al Qaeda and ISIS. They not only outwardly reject the existence of a Jewish state within any borders, but their ideology is marred by overt antisemitism and calls for genocide of the Jewish people. Many so-called Palestinian moderates and supporters also refuse to recognize Israel as a Jewish state and the right of self-determination for the Jewish people. Instead, they seek to reverse the November 1947 UN decision calling for two states, which was accepted by the Jewish nation and rejected by the Arabs.

This “hard power” terror war has been bolstered by a corresponding “soft power” political war aimed at delegitimizing and demonizing the State of Israel. For decades, this “soft power” war has sought to maintain the stance of Arab rejectionism in order to circumvent the process of peace negotiations and to avoid the difficult compromises necessary for a peaceful resolution to the Arab-Israeli conflict. In addition to States, these political attacks are often led by civil society or non-governmental organizations (NGOs) that claim the mantle of universal human rights and humanitarian goals. Many powerful organizations have joined this effort, organizations whose budgets and influence rival that of large multinational corporations, such as Amnesty International, Human Rights Watch, and Oxfam International.

The co-opting of UN frameworks and other international institutions has been central to this strategy. In the 1970s, by exploiting Cold War politics and an alliance with the Soviet Union, Palestinians and their supporters launched several efforts at the UN to undermine Israel’s legitimacy and eliminate Jewish self-determination rights. These initiatives included numerous declarations and resolutions adopted by the Security Council and the General Assembly, the establishment of several committees and legal commissions, as well as actions by the UN human rights and treaty bodies. For instance, Palestinians sought to have Zionism codified as a form of “apartheid” in the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid—a document initiated by the Soviet Union that defined apartheid so broadly

as to apply to all Western states. In 1975, the Arab and Islamic blocs gained passage of the infamous 1975 UN General Assembly “Zionism is Racism” declaration. The UN Committee on the Exercise of the Inalienable Rights of the Palestinian People, one of the primary vehicles for Israeli demonization, was also created on that day. This campaign has also exploited the International Court of Justice and the International Criminal Court.

Indeed, Palestinian Authority (PA) President Mahmoud Abbas admitted in his May 2011 *New York Times* op-ed that the Palestinian statehood bid would not be used to peacefully end the conflict, but rather:

Palestine’s admission to the United Nations would pave the way for the internationalization of the conflict as a legal matter, not only a political one. It would also pave the way for us to pursue claims against Israel at the United Nations, human rights treaty bodies and the International Court of Justice.

Sadly, the co-opting of UN institutions has been most evident within the framework of the Human Rights Council, and its predecessor, the Commission on Human Rights. The Commission created the framework for the infamous NGO Forum of the 2001 UN World Conference Against Racism in Durban, South Africa, in which 1,500 NGOs adopted a final declaration that singled-out Israel and launched a political war based on soft-power and false accusations. The HRC was established in part to rectify the overt politicization and bias against Israel by the Commission of Human Rights. As noted by former UN Secretary General, Kofi Annan, “the Commission’s ability to perform its tasks has been . . . undermined by the politicization of its sessions and the selectivity of its work.”² Yet, as noted by French academic Antonia Dürnsteiner, “[a]s far as the principle of non-selectivity is concerned . . . the Human Rights Council’s selectivity . . . is greater than it was in the Commission.”³

Israel is the only country with its own permanent agenda item at the HRC, and it has been the focus of more than 80% of the resolutions issued.⁴ Six of the first twelve special sessions

² Office of the Spokesperson (U.N.), Secretary-General's Address to the Commission on Human Rights, 7 April 2005, available at <http://www.un.org/apps/sg/sgstats.asp?nid=1388>.

³ Antonia Dürnsteiner, “The Debate on the New Human Rights Council,” Peace Center, Sciences-Po, available at http://www.peacecenter.sciences-po.fr/journal/issue8/hsj_antonia.pdf

⁴ As noted by *Washington Post* columnist, Jackson Diehl, “[w]hile ending the scrutiny of those dictatorships, the council chose to establish one permanent and special agenda item: the ‘human rights situation in Palestine and other occupied Arab territories.’ In other words, Israel (or ‘Palestine,’ in the council's terminology), alone among the nations of the world, will be subjected to continual and open-ended examination. That's in keeping with the record

were devoted to one-sided condemnations of the Jewish state. The “Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967” is the only country-themed mandate that never expires and is typically chaired by extreme anti-Israel ideologues.⁵ Since 2002, the HRC (and its predecessor) has appointed at least seven “fact finding” committees targeting Israel, including Jenin (2002), Lebanon War (2006), Beit Hanoun (2008), Gaza (2009), the IHH Flotilla (2010), settlements (2012), and now Gaza again – more than any other country.

Many prominent scholars have analyzed these previous initiatives and have demonstrated that they have been marred by bias, double standards, factual inaccuracies, a lack of transparency and independence, and a failure to adhere to ethical standards and best practices for fact-finding.⁶ A significant factor contributing to the failures of past HRC fact-finding inquiries was the excessive reliance of these committees on political advocacy organizations with little to no independent verification or corroboration of their claims.

Undoubtedly, like previous missions, the COI will meet with many NGOs in the region and receive a significant amount of NGO documentation and reports. While often providing

of the council's first year: Eleven resolutions were directed at the Jewish state. None criticized any other government.” Jackson Diehl, “A Shadow on the Human Rights Movement,” *The Washington Post*, 25 June 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/24/AR2007062401373.html>

⁵ The current Rapporteur has been reprimanded for highly offensive comments about the 9/11 terror attacks and for posting antisemitic material on his personal blog. See, e.g., Betwa Sharma, US Wants UN Human Rights Expert Fired for 9/11 Comments, *AolNews*, 25 January 2011, available at <http://www.aolnews.com/2011/01/25/us-wants-un-human-rights-expert-richard-falk-fired-for-9-11-comm/>; UN Watch, Richard Falk endorses 9/11 “inside job” theory, interviewed in his official UN capacity, March 21, 2011, available at <http://blog.unwatch.org/index.php/2011/03/21/richard-falk-endorses-911-inside-job-theory-interviewed-in-his-official-un-capacity/>; Jeremy Sharon, “Pillay says Falk's cartoon was anti-Semitic, objectionable,” *Jerusalem Post*, 14 July 2011, available at <http://www.jpost.com/JewishWorld/JewishNews/Article.aspx?id=229422>.

⁶ See, e.g., Moshe Halbertal, “The Goldstone Illusion,” *The New Republic*, 6 November 2009, available at <http://www.tnr.com/article/world/the-goldstone-illusion>; Report of an Expert Meeting which Assessed Procedural Criticisms made of the U.N. Fact-finding Mission on the Gaza Conflict (The Goldstone Report), Chatham House, (27 November 2009), available at http://www.chathamhouse.org.uk/files/15572_il271109summary.pdf; Ed Morgan, “The UN Book of Judges,” *Global Governance*, April-June 2010, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1622307; Nigel S. Rodley, “Assessing the Goldstone Report,” *Global Governance*, April-June 2010, available at http://findarticles.com/p/articles/mi_7055/is_2_16/ai_n55407196/?tag=content:col1; Laurie Blank, “The Application of IHL in the Goldstone Report: A Critical Commentary,” 12 *Y.B. of Int'l Hum. L.* (2009); Peter Berkowitz, “The Goldstone Report and International Law,” Stanford University Hoover Institution, 1 August 2010, available at <http://www.hoover.org/publications/policy-review/article/43281>; Avi Bell, “A Critique of the Goldstone Report and its Treatment of International Humanitarian Law,” *American Society of International Law Proceedings*, Vol. 104, March 2010, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1581533; Trevor Norwitz, “Open Letter to Judge Goldstone,” 19 October 2009, available at <http://www.goldstonereport.org/pro-and-con/critics/316-trevor-norvitz-open-letter-to-judge-goldstone-191009>.

valuable humanitarian assistance, the NGO network in the region also often plays a counterproductive role in the Arab-Israeli conflict. As NGO Monitor and others have documented, established human rights NGOs often produce reports and launch campaigns that stand in sharp contradiction to their own mission statements claiming to uphold universal human rights values. They regularly obscure or remove the context of terrorism, provide incomplete statistics and images, and disseminate gross distortions of the humanitarian and human rights dimension of the Arab-Israeli conflict. Violations of human rights and international humanitarian law committed by Palestinian actors or terror groups are ignored or minimized. And in several cases, information has been fabricated. As a result, NGO publications and campaigns provide an incomplete and often grossly distorted narrative.

Moreover, many NGOs, including Human Rights Watch and Amnesty International, do not adhere to required standards for fact-finding and do not possess any of the necessary expertise required to credibly report on armed conflict. Few, if any, mechanisms exist within the HRC (and other UN) frameworks to verify and evaluate the allegations proffered by these organizations, in violation of best practices and ethical standards for fact-finding. The resulting credibility deficit therefore implicates several of the principles in the HRC's and the COI's ostensible mandate, including universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, transparency, accountability, and balance.⁷ As will be detailed in Part I of this submission, without adherence to these principles, the COI itself cannot be considered a credible exercise. Similarly, as will be shown in Part II, incorporating the unverified claims of NGOs that in turn do not adhere to fact-finding standards also greatly mars the credibility of any output by the COI.

⁷As a organ of the HRC the COI is also required to follow the guiding principles of the Council as specified in General Assembly Resolution, [60/251](#)(3 April 2006), mandating that the work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation . . ." GA Res. 60/251, U.N. Doc. A/RES/60/251 (3 April 2006); See also, HRC Res. 5/1, UN Doc. A/HRC/RES/5/1, 18 June 2007. The HRC's *Institution-building package* elaborated on the principles to include "transparency, accountability, [and] balance . . ."

Part I: Ethical Standards and Fact-finding “Best Practices”

To be considered credible, any fact-finding effort must adhere to the principles of “do no harm,” independence, impartiality, objectivity, discretion, transparency, confidentiality, integrity, and professionalism. Moreover, all work under the Council’s auspices must be guided by “universality,” “non-selectivity,” and “balance.”

In 2009, the Human Rights Institute of the International Bar Association issued the Lund-London⁸ Guidelines on international Human Rights Fact Finding Visits elaborated on these norms. In particular, the Lund-London guidelines state:

- Reports must be **clearly objective and properly sourced**, and the conclusions in them reached in a **transparent** manner. ... In making their findings the delegation should try to verify alleged facts with an independent third party or otherwise. Where this is not possible, it should be noted.
- The **terms of reference must not reflect any predetermined conclusions** about the situation under investigation.
- The mission’s delegation must comprise individuals **who are and are seen to be unbiased**. The NGO should be confident that the delegation members have the competence, experience and expertise relevant to the matters pertaining to the terms of reference.

Despite these clear standards, NGO Monitor has several concerns regarding the establishment and working methodologies of the COI:

Impartiality and Objectivity

The core principles for any fact-finding investigation are that of impartiality and objectivity. Without adherence to these standards, the investigation cannot be considered credible, is of no lasting value (except as an example of what not to do), and is essentially a waste of time and money.

⁸ See London-Lund Guidelines, *available at* www.factfindingguidelines.org

HRC Mandate

The COI's mandate was established by HRC Resolution S/21-1. This resolution, however, is neither impartial nor objective.⁹ The mandate calls for the appointment of an international commission of inquiry “to investigate all violations of international humanitarian law and international human rights law in the Occupied Palestinian Territory, including East Jerusalem, particularly in the occupied Gaza Strip, in the context of the military operations conducted since 13 June 2014.”

In contrast to the principle of impartiality, the mandate has a singular focus on alleged violations (which the mandate has already pre-assumed) by Israel, while doing its utmost to exclude Palestinian violations against Israelis. The resolution itself does not mention Hamas, Palestinian rocket fire on Israeli civilians, or terror attack tunnels dug into Israeli territory within meters of homes, kindergartens, and dining halls. The mandate of the COI explicitly excludes investigation of violations on most of the territory of Israel. The date of the mandate was chosen to specifically exclude investigation of the kidnap, murder, and mutilation of three Israeli teenagers by Hamas. The resolution similarly makes prejudicial and pre-determined legal conclusions about Israel including “*Deploing* the massive Israeli military operations in the Occupied Palestinian Territory, including East Jerusalem, since 13 June 2014, which have involved disproportionate and indiscriminate attacks and resulted in grave violations of the human rights of the Palestinian civilian population, including through the most recent Israeli military assault on the occupied Gaza Strip, the latest in a series of military aggressions by Israel, and actions of mass closure, mass arrest and the killing of civilians in the occupied West Bank”.¹⁰

Due to the manifest bias in the resolution and the mandate, the United States voted against and seventeen countries abstained including Austria, Benin, France, Germany, Ireland, Japan, South Korea, and the UK. In refusing to vote for the biased document, Italy, speaking on behalf of the EU in an agreed-upon statement, remarked that the resolution “fails to condemn explicitly the indiscriminate firing of rockets into Israeli civilian areas as well as to recognize Israel’s legitimate right to defend itself.” Unsurprisingly, the resolution was enthusiastically

⁹ One of the most heavily criticized aspects of the Goldstone Mission was the one-sided mandate from the HRC. See, e.g. note 6, *supra*.

¹⁰ <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/092/50/PDF/G1409250.pdf?OpenElement>

adopted by the world's leading dictators and abusers, such as China, Cuba, Pakistan, Russia, Saudi Arabia, and Venezuela.

Joseph Weiler, one of the international community's leading and most respected scholars has written about Resolution S/21-1:

It serves neither the interests of justice nor the credibility of the bodies charged in administering such to reach these categorical conclusions before the body set up, in the same breath, to investigate purported violations has investigated and reported. Careful factual and legal analyses are needed before any definitive conclusions may be reached. One might think that the appointing body, already sticking the arrow and drawing the target around it, may put undue pressure on the independent investigating body to reach certain conclusions. Even if these were the views of Members of the Council, they should have been withheld when the Council, a political body, exercised its investigative and judicial authority. The dissonance jars and is compromising. The same is true for the failure of the Council explicitly to make Hamas, the effective government of Gaza, alongside Israel an object for investigating purported violations of IHL and HR.

Appointments

Unlike other UN appointments, the process for HRC commissions of inquiry is secretive and lacking in transparency. It is unclear who provides input to the HRC President and carries the most influence regarding selection of mission members. The HRC has a dismal track record when it comes to appointing members for fact-finding missions on Israel. In fact, it appears that a public record of animus directed at Israel is a requirement for at least one member of every team. As noted by legal scholar and former member of the Inter-American Commission on Human Rights, Christina Cerna:

In my view Israel has a unique status in the UN Human Rights Council. Impartiality is not a requirement sought by the Council for the appointment of experts when it comes to Israel. I was selected as the consensus candidate of the Consultative Committee for the post of UN Special Rapporteur on the Occupied Palestinian Territories earlier this year, but the Organization of Islamic Cooperation and the League of Arab States both officially opposed me, which killed my candidacy. They opposed me for "lack of expertise," although my entire professional life has been involved with human rights, but because I had never said anything pro-Palestinian and consequently was not known to be "partial"

enough to win their support. The candidate that they officially supported was considered to be partial in their favor. No other special procedures mandate is similarly biased. At the end of the day, neither I nor the OIC candidate was appointed, but the Indonesian diplomat, Makarim Wibisono, who was appointed, was considered sufficiently “pro-Palestinian” to be acceptable to the OIC. Consequently, I don’t think Bill Schabas could have been selected to lead the “independent” inquiry if he hadn’t made the comments he had made about Netanyahu.

Unfortunately, as noted by Cerna, the appointment of William Schabas to the COI is a continuation of long-standing HRC practice and demonstrates that from its outset, the COI has already failed to uphold the requirements of objectivity and impartiality. While Schabas has claimed that he can carry out his duties on the COI in an objective fashion, as noted by an expert meeting at Chatham House examining the Goldstone Report, “fact-finding missions should avoid any perception of bias.”¹¹

Many international scholars and human rights leaders have pointed out the problems associated with Schabas’ appointment and that he should have recused himself for his prejudicial comments about Israeli Prime Minister Benjamin Netanyahu. Professor Weiler comments:

The impartiality of Professor Schabas has been called into question in the light of an answer he gave to the Netanyahu comment. He explained, if press reports are to be trusted, that it was a comment made in view of the findings of the Goldstone Report. It has been pointed out that Netanyahu was in the Opposition during the Cast Lead operation and would have had *ipso facto* and *ipso jure* no responsibility for any findings in the Goldstone Report – a fact which could point to unacceptable animus by Schabas. There is another Youtube video in which Professor Schabas addresses Netanyahu in derogatory terms, again cited as indicating animus. I express no position on this.

But it is hard for me to accept that his pronouncement on Netanyahu as being his favourite to be in the dock of the ICC – regardless of the context of the comment – is consistent with ensuring ‘the appearance of impartiality’. That very question – whether there is evidence to indict Netanyahu for violation of international criminal law, might, directly or indirectly, be before the Commission. In my view, this is a self-evident case where an appearance of impartiality might be created. For the

¹¹<http://www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/il271109summary.pdf>

Commissioner, the UN Council, the Commission of Inquiry and William Schabas himself to dig in is, in my view, unwise and counterproductive. When the appearance of justice is compromised, so is justice itself.¹²

Mordechai Kremintzer, Israeli scholar, member of the Public Council of the Israeli NGO, B'Tselem, and noted critic of the government, admonished:

The best way to give meaning and force to the norms set by the laws of war is for political leaders and senior military commanders the world over to internalize them. To achieve this, it is essential that any proceedings that could lead to the assignment of criminal liability should be fair and just, and also appear as such. It seems that the committee headed by Prof. William Schabas does not meet this standard . . . The damage to the inquiry is redoubled when its chair has already declared his desire to see the prime minister of Israel in the dock . . . that is, the committee's chair has already formed a negative judgment about the head of the political system that oversees the military whose conduct is to be investigated. He cannot be perceived as an unbiased investigator...

The partiality of the inquiry will inevitably lead to biased findings devoid of real value. The conclusions based on these findings, too, will necessarily be worthless, as happened with the Goldstone Commission. Such a report will only undermine the credibility of international criminal law.¹³

Even Aryeh Neier, former head of the ACLU, Human Rights Watch, and George Soros' Open Society Institute, told a group at Paris' SciencesPo that "any judge who had previously called for the indictment of the defendant would recuse himself."¹⁴

Not only is it troubling that Schabas made the prejudicial comments he did about Netanyahu, but the forum in which he made them suggests not just hostility towards Israel's Prime Minister, but the country as a whole. Schabas made his infamous remarks about Netanyahu at the "Russell Tribunal on Palestine," a kangaroo court organized by extreme anti-Israel BDS (boycott, divestment, and sanctions) campaigners to put Israel and its allies "on trial." During his presentation, not only did Schabas proclaim that Netanyahu would be his favorite candidate for the ICC dock, he also suggested that "genocide" could be applied to the Palestinian

¹² <http://www.ejiltalk.org/after-gaza-2014-schabas/>

¹³ <http://www.jpost.com/Opinion/A-betrayal-of-international-law-376520>

¹⁴ <http://blog.unwatch.org/index.php/2014/10/01/exclusive-schabas-own-colleague-human-rights-icon-aryeh-neier-calls-for-him-to-leave-un-gaza-probe/>

situation and repeated that Israel's operations against Palestinian rocket attacks and terrorism were simply to teach Palestinians a "lesson" for supporting Hamas. It is hard to imagine that anyone sincerely committed to the principles of fairness and justice would participate in such an inflammatory and tendentious event.

Similarly, Schabas penned the forward to a 2012 book, *Is There a Court for Gaza*. In the piece, he calls the ICJ and the ICC tools to "nourish" Palestinian "advocacy strategies." He also opines that the "core of the Goldstone Report dealt with the planned destruction of the entire infrastructure of a community, aimed at punishing Palestinians in Gaza for their support of Hamas" and that "it was a strategy that had already been used [by Israel] in Lebanon in 2006." These remarks indicate Schabas' deeply prejudicial views of the Arab-Israeli conflict and that he is incapable of objectively evaluating events during the 2014 Gaza war. In fact, it appears he would use his position on the COI to craft a report that fellow activists can then "operationalize" for anti-Israel campaigning.

In a September 2009 interview discussing the Goldstone Report and the effort to have Israeli indicted at the ICC, for instance, Schabas tellingly admits:

When we look at all the crimes committed in Gaza during the conflict... they are probably not, on a Richter scale of atrocity, at the top. And there are many places in the world where worse crimes have been committed. Sri Lanka, for example, in March or April of 2009 was much more serious in terms of the atrocities and loss of life that was committed... I think the reason why many people in the world are so upset...is not because of the bombardment of facilities in Gaza... but because of our unhappiness about the general political situation there... And so, we mix our dissatisfaction with the situation of the Palestinian people in Gaza and the West Bank.¹⁵

In other words, Schabas is not interested in fairly adjudicating whether actual crimes were committed on the battlefield in Gaza. Rather, it appears he wishes to exploit legal frameworks in order to achieve political objectives unrelated to alleged crimes that may be at issue.

Given this record, it is no surprise Schabas was selected by 65 fringe NGOs, including Al

¹⁵http://www.intellectum.org/articles/issues/intellectum7/en/Int'l%20Protection%20of%20Human%20Rights%20and%20Politics_English%20co-edited%20WS%20&%20VT3.pdf

Haq, Badil, ICAHD, EAFORD, and many Islamic organizations, as the most “capable candidate” to replace Richard Falk as the HRC’s Special Rapporteur on the Situation of Human Rights in the Palestinian Territories occupied since 1967.¹⁶

Limited Resources

As we are sure the COI is aware, there are dozens of human rights crises on-going globally at the present time, and as even Schabas has admitted, events in Gaza are “probably not, on a Richter scale of atrocity, at the top.” Far more grave armed conflicts in terms of scale, scope, and impact on civilians are currently underway in Syria, Iraq, Yemen, the Ukraine, Libya, Nigeria, Somalia, Central African Republic, Sudan, Uganda, Pakistan, Afghanistan, and the DRC. Other catastrophic situations include the horrific systematic repression and wholesale violation of rights in North Korea; the occupations of Tibet, Western Sahara, West Papua, and Northern Cyprus; genocide and denial of self-determination for the Kurdish people; the massive restrictions on free expression and movement in Cuba and China; mistreatment of the Roma throughout Europe; and the system of gender and religious apartheid in Saudi Arabia.

Yet, this COI is at least the seventh HRC investigation directed at Israel in the past decade. In a time of severe economic uncertainty and restricted budgets, it would appear that UN funding should be directed to the most urgent human rights situations. NGO Monitor expresses grave concern at the apparent waste of resources on yet another politically motivated and one-sided “fact-finding” mission against Israel, whose only likely impact will be to further delay peace negotiations and make reaching an agreement that much harder to achieve.

Prior to adopting Resolution S/21-1, the UN Programme Planning and Budget Division (UPPBD) reported that in order to implement the resolution, the General Assembly would need to authorize additional expenses from the UN Contingency Fund, as there was no funding for the COI currently allotted in the HRC or UN budget.¹⁷ According to the UPPBD, the Mission would require a staggering \$2,359,800 appropriation, including \$566,900 for “simultaneous interpretation” and “pre-session documentation”; 1,125,300 for staffing, plus an additional \$124,200 for unnamed “consultants”; \$273,000 for commission and staff travel; and \$18,000 for

¹⁶ <http://www.badil.org/files/65-International-NGOs-Call.pdf>. It is notable that this group of NGOs alternatively endorsed Christine Chinkin who was also severely criticized for being included on the Goldstone mission in light of here extremely prejudicial comments regarding Israel prior to her appointment.

¹⁷ Copy of the statement on file with NGO Monitor

office equipment and supplies. There is no explanation as to why the proposed salaries are so grossly excessive, or why such large amounts are needed for “simultaneous interpretation” and travel.

The excessive funding allocated to the COI could be put to much better use such as towards reconstruction efforts in Gaza. In December 2014, the World Food Program announced it would have to suspend food assistance to Syrian refugees (including many Palestinians) due to lack of funding. To continue the aid, the WFP required \$64 million. Instead of spending \$2,359,800 on a politicized report that will be of little value as a result, this money could have gone a long way towards rebuilding homes and infrastructure and providing food for many refugees facing a cold winter.¹⁸

Transparency

As mentioned, the COI is required to operate in a transparent manner. Unfortunately, it does not appear this will be the case.

Unidentified staffing and meetings: The Lund-London Guidelines emphasize that in order for a fact-finding mission to comply with its obligations, the people involved must be individuals “**who are and are seen to be unbiased.**” The UNPPBD report notes that in addition to the three commission members appointed by the HRC President, the COI will require:

- Coordinator
- Reporting Officer
- Legal Advisor
- Investigation Team Leader
- Two Human Rights Investigators
- Child Protection Advisor
- Gender Advisor
- Forensic Pathologist
- Administrative assistant
- Archivist
- Local Security Officer
- Military Advisor consultant
- Media expert consultant
- Two media monitoring consultants

¹⁸ <https://www.wfp.org/news/news-release/wfp-forced-suspend-syrian-refugee-food-assistance-warns-terrible-impact-winter-nea>

While the three commissioners of the COI have been identified, the sixteen members of the support staff remain secret. The failure to disclose these names makes it impossible for outside sources to independently evaluate whether these individuals are objective, free from conflicts of interest, and have the requisite expertise. Given that these unnamed individuals will likely do the bulk of the information collection, compiling of data, witness interviews, and drafting of the report, this failure to disclose is a clear violation of fact-finding standards and ethical principles.

Moreover, the COI has not been transparent in the meetings that have already taken place. In a 20 January 2015 press release, COI announced it concluded its second visit to Amman where it “held private meetings with a number of witnesses from the region.” Moreover, the release noted that “In the course of their work the Commissioners and their team of investigators have already spoken to a wide range of witnesses and victims.”¹⁹ None of these witnesses and victims was identified, nor did the COI disclose others it may have met with. The COI has not disclosed how individuals or organizations were selected for meetings and no procedure is found on the COI’s website. We understand that a few Israeli witnesses approached the COI to provide testimony and the COI did meet with them, but it is unclear that the COI on its own initiative has contacted any Israeli victims or NGOs that are not identified with promoting the Palestinian narrative of the conflict.

It is also of concern that the COI is to engage a “media expert”. It is unclear why the COI needs specialized media advice and services that goes above what the UN normally provides. Utilizing such an individual suggests that the COI is operating with underlying political objectives that stand in contrast to it being a supposedly impartial inquiry. At the very least, the COI should identify this individual and detail precisely in what way the “media expert” assisted the COI.

Expertise

A serious concern relating to the workings of the COI is the lack of expertise in military operations and the laws of armed conflict (LOAC) and international humanitarian law (IHL). None of the Commission members have this expertise, yet it is impossible to conduct an inquiry or issue a report that is supposed to examine violations of international humanitarian law without

¹⁹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15496&LangID=E>

this knowledge. It is unknown the extent to which the COI has retained individuals with the requisite expertise. Moreover, due to the lack of transparency in the workings of the COI, it is impossible to evaluate the qualifications of those consulted.

Leading scholar and military advisor Professor Michael Schmitt describes why military experience is critical to report on armed conflict:

An investigator who does not understand, for example, weapons options, fuzing, guidance systems, angle of attack, optimal release altitudes, command and control relationships, communications capabilities, tactical options, available intelligence options, enemy practices, pattern of life analysis, collateral damage estimate methodology, human factors in a combat environment, and so forth, will struggle to effectively scrutinize an air strike.²⁰

Similarly, lack of expertise regarding LOAC/IHL is just as problematic as a lack of military experience. Knowledge of human rights law and international criminal law is insufficient to carry out the work of the HRC mandate. According to Professor David Kaye, IHL has become “highly technical, susceptible to different legal interpretations and embodied in a complicated inter-woven network of conventions as well as entrenched in general international law.”²¹ Key IHL provisions are often difficult to interpret and are undermined by a lack of consensus. Many concepts have been hotly debated and involve much controversy, including the very relevant and applicable principles of proportionality and direct participation of civilians in hostilities. Customary international law is even less well understood: There is considerable disagreement on state practice and how it is to be measured;²² in many cases, a customary rule will be claimed even though a significant number of states do not abide by it.²³ Often the necessary conditions of state practice and *opinion juris* are conflated. Furthermore, those invoking customary law often rely upon tendentious and selective sources.

The lack of military and legal expertise was apparent in the Goldstone Commission, and its final report was replete with legal errors on critical matters such as proportionality, warnings, and targeting. Due to the lack of expertise in LOAC/IHL in the COI, NGO Monitor has annexed

²⁰ Schmitt, Michael N., *Investigating Violations of International Law in Armed Conflict*, 2 HARV. NAT’L SEC. J. 31, 84 (2011).

²¹ David Kaye, ‘Complexity in the Law of War’ in Russell A Miller and Rebecca M Bratspies (eds), *Progress in International Law* (Martinus Nijhoff 2008) 681

²² Eric Posner & Jack Goldsmith, *The Limits of International Law* (Oxford 2006) at 23.

²³ *Id.* at 24.

to this submission a copy of its book, *The Goldstone Report 'Reconsidered'*, which has several chapters written by leading IHL experts detailing the applicable law on the relevant issues.

Balance and Non-Selectivity

The HRC Guiding Principles require that all work done under the Council's auspices must demonstrate "balance" and "non-selectivity." A significant problem with previous HRC "fact-finding" initiatives targeting Israel, however, was severe bias and advancement of partisan objectives. According to scholars Franck and Fairley, fact-finding often rests on a "fragile assumption of fairness and credibility" and is "employed not to discover evidence of real probity, but to amass whatever evidence there may be -- even of doubtful probity -- to re-enforce predetermined political conclusions."²⁴ There is often difficulty in distinguishing "between objective facts and slanted information provided for partisan purposes."²⁵ In order to prevent fact-finding from being just a "chimera," therefore, strictly applied standards of due process must apply. These standards are not just "desirable but a functional prerequisite."²⁶ Otherwise, fact-finding will "solely [] be used for propaganda purposes and to support generally pre-conceived political views on the situation investigated."²⁷

A key indicator of impartiality is choice of subject by the fact-finders. Previous HRC inquiries have focused almost exclusively on the actions of Israel. Violations committed by Palestinian actors and against Israeli civilians were all but ignored. Israeli sources providing exculpatory evidence of Israel actions or evidence of Palestinian abuses were discounted or dishonestly twisted. In some cases, such as the Goldstone mission, Palestinian sources were always credited while Israeli sources only were valued if they were disparaging of Israel.

This lack of impartiality by missions like Goldstone is a primary reason why Israel has not cooperated with the current COI and is completely justified in making that decision. No person or country is obligated to engage with a process that is "employed not to discover evidence of real probity, but to ... re-enforce predetermined political conclusions" to be used for "propaganda purposes."

²⁴ Franck, Thomas M. and H. Scott Fairley, *Procedural Due Process in Human Rights Fact-Finding by International Tribunals*, 74 AM. J. INT'L L. 308 (1980).

²⁵ Id.

²⁶ Id.

²⁷ Id.

It will also not be a credible excuse for the COI to claim, as Goldstone did, that it is highlighting the Palestinian narrative due to a lack of Israeli cooperation. Much of the information previous commissions have claimed they have lacked is available on public and open source material. If they do not have particular information, it is because the COI has failed to seek out Israeli sources that can provide it.²⁸

The following topics represent issues that clearly fall within the mandate of the COI and are always ignored by UNHRC “investigations” involving Israel. If these aspects are not addressed by the COI, it will be clear indicator that the COI has been unable to shed the failings of its predecessors and will be entirely lacking in credibility:

Context: The HRC and fact-finding missions relating to Israel are fixated on the alleged “siege” of Gaza and the Israeli “occupation,” and then using this “context” as an excuse to justify Hamas attacks on Israeli civilians. In contrast, they rarely provide an analysis of Hamas – its ideology, structure, financing, tactics, governance role, and weaponry. No HRC fact-finding mission has bothered to examine the Hamas charter, which calls for the destruction of Israel and genocide of the Jewish people. Given that COI member Schabas considers himself to be a genocide expert, one would hope he would focus particular attention on this aspect of Hamas’ ideology and how it motivates the actions of the terrorist organization (although given Schabas’ previous statements exonerating former Iranian President Ahmedinejad (discussed below), we do not expect much from him in this regard either). Similar inquiry regarding other terror groups operating in Gaza has also been missing from previous fact-finding missions.

International law regarding terrorism: A key aspect missing from previous HRC missions has been analysis of global terrorism and the legal framework aimed at stopping it. Information on the role of Iran, Turkey, Qatar, North Korea, and Syria in supporting, financing, and supplying weaponry to Gaza has been ignored. Moreover, the myriad of international laws aimed at stopping support and financing for terror groups including Security Council Resolution 1373 (Chapter VII) and the International Convention for the Suppression of Financing Terrorism are not included into the legal analyses.

Weapons smuggling: Following Disengagement, with Israeli forces now positioned only outside Gaza, Israel instituted security measures, in accordance with the international legal

²⁸ Unfortunately, we do not have high hopes that this COI will be any different from its predecessors who nevertheless distorted or ignored Israeli information even when they had access to it.

standards, aimed at monitoring the flow of goods and materials in order to prevent weapons from reaching terrorist organizations. These measures were influenced, in large part, by previous attempts to smuggle advanced weaponry into Gaza. In January 2002, Israel seized the Gaza-bound Karine A cargo ship, which was carrying more than 50 tons of rockets, mines, and anti-tank missiles, as well as Kalashnikov rifles and ammunition.²⁹ The seizure of the Karine A did not deter Hamas from attempting to acquire large quantities of advanced weapons. In both 2011 and 2014, Israel seized ships laden with advanced weapons bound for Gaza.³⁰ The Victoria carried more than 50 tons of military equipment, including six anti-ship missiles, hundreds of mortar shells, and thousands of bullets; the Klos-C carried dozens of Syrian-made advanced rockets, hundreds of mortar shells, and 400,000 bullets.

In addition to these attempts, Hamas has successfully smuggled weapons into Gaza using tunnels underneath the border with Egypt. Until the overthrow of Egyptian President Mohammed Morsi in July 2013, Hamas took advantage of chaos in the Sinai, where a minimal Egyptian presence allowed for a flourishing weapons trade, providing Hamas with a supply of bullets, rifles, explosives and RPGs.³¹

Years in power have allowed Hamas and other terror groups to build up significant arsenals of advanced weaponry with which to attack Israeli civilians and soldiers. The IDF has estimated that approximately 11,000 rockets were present in Gaza at the start of Operation Protective Edge.³² These included a variety of rockets with range capabilities of up to 160 kilometers. Hamas and Islamic Jihad are believed to possess thousands of rockets in the 40 km

²⁹ James Bennet, Joel Greenberg, "Israel Seizes Ship it Says was Arming Palestinians", *New York Times*, 5 January, 2002, available at <http://www.nytimes.com/2002/01/05/world/israel-seizes-ship-it-says-was-arming-palestinians.html> (accessed: 13 January 2015)

³⁰ Isabel Kershner, "Ship Bound for Egypt is Seized by Israel" *New York Times*, 15 March 2011, available at <http://www.nytimes.com/2011/03/16/world/middleeast/16israel.html?action=click&module=Search®ion=searchResults%230&version=&url=http%3A%2F%2Fquery.nytimes.com%2Fsearch%2Fsite%2Fsearch%2F3Faction%3Dclick%26contentCollection%3DDining%2520%2526%2520Wine%26region%3DtopBar%26module%3DsearchSubmit%26pgtype%3Darticle%23%2Fmarch%2B2011%2Bturkey%2Bisrael%2F> (accessed: January 13, 2015) ; el Kershner, "Israel Says it Seized Iranian Shipment of Rockets Headed for Gaza" *New York Times*, March 5, 2014, available at http://www.nytimes.com/2014/03/06/world/middleeast/israel-says-it-seized-iranian-shipment-of-rockets-headed-for-gaza.html?_r=0 (accessed: January 13, 2015)

³¹ "Weapon Smuggling Tunnels in Rafah- Operation Rainbow", *Ministry of Foreign Affairs*, 17 May 2004, available at <http://www.mfa.gov.il/mfa/foreignpolicy/terrorism/palestinian/pages/weapon%20smuggling%20tunnels%20in%20rafah%20may%202004.aspx> (accessed: January 13, 2015)

³² M.J.S., "While Stocks Last", *The Economist*, 16 July 2014, available at <http://www.economist.com/blogs/pomegranate/2014/07/gazas-rockets> (accessed: January 13, 2015)

range, hundreds more that reach distances of 80 km, in addition to longer ranges of to 160 km.³³ Hamas is also in possession of advanced anti-tank missiles such as the Kornet, Concourse, and the RPG-29. These missiles have been used in thousands of attacks on Israeli civilians.³⁴

Hamas has also expanded its tunnel operations, including offensive tunnels in addition to those used for smuggling. Gilad Shalit's abduction from Israeli territory to Gaza via tunnel highlights the threat. The zeal that Hamas has demonstrated in using these tunnels to kidnap and kill has made the discovery of many more tunnels leading into Israel extremely worrisome. In total, the IDF successfully destroyed 32 such tunnels during Operation Defensive Edge.³⁵ The relevance of these tunnels to the topic of humanitarian aid cannot be understated. They were built with large amounts of concrete and metal, heightening Israeli fears, as noted, that the import of such materials into Gaza will only serve to bolster the offensive terrorist capabilities of Hamas. Moreover, the kidnapping of an Israeli was the main strategic goal of Hamas' military operations during the 2014 fighting. In fact, Hamas launched its rocket offensive on Israel in late June as a result of its kidnapping of the three Israeli teenagers.

Humanitarian aid: Attacks by Palestinian terror groups and diversion of humanitarian aid has been largely absent from the UN reports regarding Gaza. Yet, Hamas commandeers and profits from aid in various ways, simultaneously neglecting the basic needs of the civilian population under its control and further contributing to any humanitarian difficulties in Gaza. The cost of this aid diversion for Gaza's civilians has been exacerbated by political infighting between Hamas and Fatah, leading to a waste of public funds and delays in the transfer of funds needed for critical institutions, such as Gaza's Ministry of Health.³⁶ Few mention that Hamas has used aid to construct fortified bunkers for its own fighters while leaving its civilian population without proper shelters.

³³ Elhanan Miller, "From Tunnels to R-160s, a Primer on Hamas and its Deadly Capabilities", *Times of Israel*, 31 July 2014, available at <http://www.timesofisrael.com/from-tunnels-to-r-160s-a-primer-on-hamas-and-its-deadly-capabilities/> (accessed: January 13, 2015)

³⁴ Christa Case Bryant, "Why Hamas is a More Formidable Foe in Gaza This Time", *Christian Science Monitor*, 25 July 2014, available at <http://www.csmonitor.com/World/Middle-East/2014/0725/Why-Hamas-is-a-more-formidable-foe-in-Gaza-this-time> (accessed: January 13, 2015); Judy Siegel-Itzkovich, "Beit Shemesh Youth Dies 10 Days After Gaza Missile Attack", *Times of Israel*, 17 April 2011, available at <http://www.jpost.com/National-News/Beit-Shemesh-youth-dies-10-days-after-Gaza-missile-attack> (accessed: January 13, 2015)

³⁵ "מטרה אחר מטרה: האירועים המרכזיים של צוק איתן", דובר צה"ל, 29 אוגוסט, 2014, <http://www.idf.il/1133-21154-2014> (accessed: January 14, 2015) <http://www.dover.gov.il/News/News/2014/08/29/2014082901.htm>

³⁶ Mohammed Omer, "Gaza Health Ministry Declares State of Emergency," *Middle East Eye*, 4 December 2014, available at <http://www.middleeasteye.net/news/gaza-health-ministry-struggles-manage-worsening-crisis-1558325215> (accessed: January 14, 2015)

Hamas engages in active theft of aid components such as food, medicine, and blankets. Hamas couples this theft with a taxation policy applied to all items entering Gaza, including humanitarian supplies and is the primary way in which Hamas funds its activities at the expense of the civilian population in Gaza. The transfer of any aid into Gaza provides the terror organization with more money with which to procure and develop weapons, as well as carry out terrorist attacks. The international aid, however well-meaning, also absolves Hamas of the need to provide basic services for the local population, thus freeing the organization to use its ill-gotten gains to plan and execute acts of terror.

Hamas has used brute force to commandeer aid, by raiding convoys and warehouses. In one instance in January 2009, Hamas forces raided an aid convoy of 100 trucks bringing humanitarian aid into Gaza during Operation Cast Lead.³⁷ One month later, a spate of incidents saw Hamas steal humanitarian aid from convoys and UNRWA warehouses, causing the UN organization to temporarily suspend aid operations in Gaza.³⁸ There have also been instances in which Hamas stole from Palestinian humanitarian groups, including from a convoy of food and medicine belonging to the Palestinian Red Crescent Society (PRCS), the local Palestinian branch of the International Committee of the Red Cross.³⁹

In January 2011, the PA accused Hamas of stealing the majority of the 1,600 tons of medical aid that had been sent by the PA to Gaza over the course of that month. The PA also alleged that thousands of tons of medical supplies were stolen and sold to private pharmacies during 2010. Allegations of medical aid being diverted by Hamas and then sold to private pharmacies have also been made by Gaza residents.⁴⁰ The PA accused Hamas of stealing \$700

³⁷ Yaakov Katz, "Hamas Raids Aid Truck, Sells Supplies," *Jerusalem Post*, 12 January 2009, available at <http://www.jpost.com/Israel/Hamas-raids-aid-trucks-sells-supplies> (accessed: January 14, 2015)

³⁸ "UN, Hamas Meet to Discuss Stolen Gaza Aid," *Ha'aretz*, 6 February 2009, available at <http://www.haaretz.com/news/un-hamas-meet-to-discuss-stolen-gaza-aid-1.269602> (accessed: January 14, 2015)

³⁹ "Hamas Seizes Convoy of Food, Medicine Mean for Palestinian Red Crescent," *Ynet*, 7 February 2008, available at <http://www.ynetnews.com/articles/0,7340,L-3504211,00.html> (accessed: January 14, 2015)

⁴⁰ "PA Accuses Hamas of Selling Donated Medicine," *Ma'an*, 31 January 2011, available at <http://www.maannews.net/eng/ViewDetails.aspx?ID=355739> (accessed: January 14, 2015); Mitchell Prothero, "Under the Gun: How the People of Gaza Feel About Hamas," *The National*, 17 September 2010, available at <http://www.thenational.ae/news/world/middle-east/under-the-gun-how-the-people-of-gaza-feel-about-hamas#full> (accessed: January 14, 2015); Yaakov Katz, "Hamas Raids Aid Truck, Sells Supplies," *Jerusalem Post*, 12 January 2009, available at <http://www.jpost.com/Israel/Hamas-raids-aid-trucks-sells-supplies> (accessed: January 14, 2015)

million of aid during “Operation Protective Edge” alone.⁴¹ It has similarly claimed that medical supplies sent from the PA to Gaza during this period were stolen.⁴²

In addition to these tactics, Hamas also employs more sophisticated schemes for skimming aid from international donors. In a December 2014 article published by *Forbes*, Hamas is ranked as the second wealthiest terrorist organization in the world, with an estimated annual income of \$2 billion, out-earning Hezbollah, Al-Qaeda, and the drug trafficking FARC in Colombia.⁴³ According to this report and allegations made by the PA, Hamas’ income is mainly derived from forcibly levying taxes on all items and materials in Gaza, including those that are brought in by foreign NGOs as part of aid projects.⁴⁴ Such payments may violate both international and national laws regarding material support for terrorism. In addition, by taxing smuggled goods into Gaza through the smuggling tunnels under the Egyptian border, Hamas was able to make a monthly profit estimated at \$50 million.⁴⁵

In addition to theft, Hamas and other Palestinian terror groups have perpetrated dozens of attacks on Israeli border crossings with Gaza, the primary routes for the delivery of humanitarian aid.

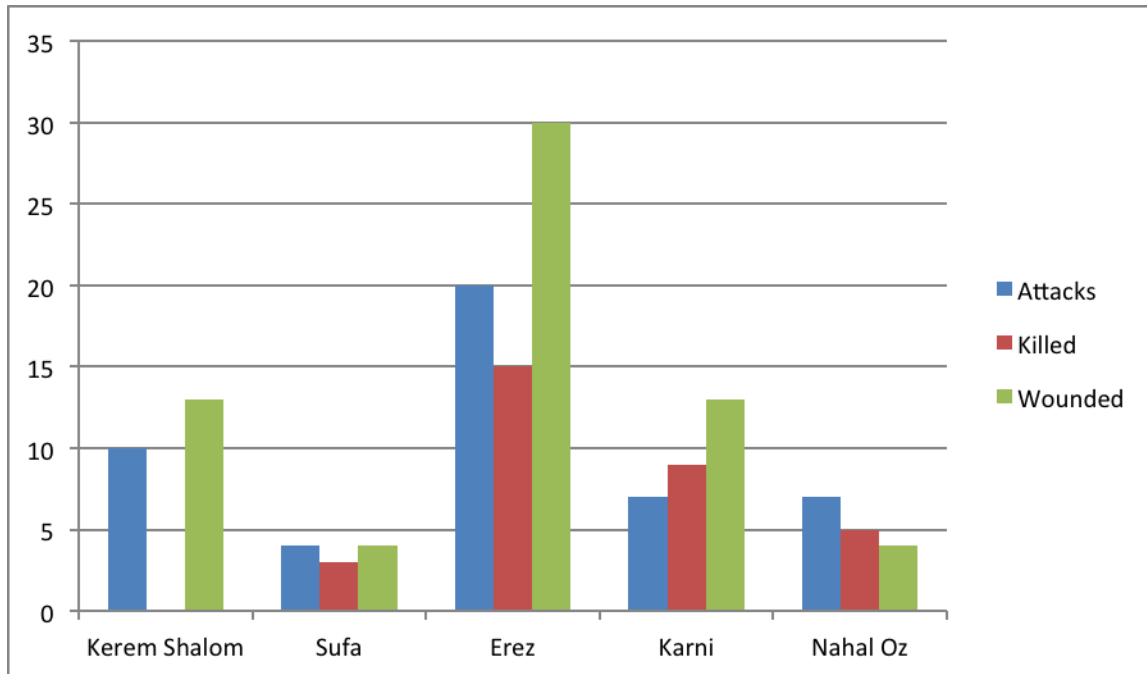
⁴¹ Stuart Winer, “Fatah Official Accuses Hamas of Stealing \$700M From Gazans,” *Times of Israel*, 1 October 2014, available at <http://www.timesofisrael.com/fatah-official-accuses-hamas-of-stealing-700m-from-gazans/> (accessed: January 14, 2015)

⁴² Marissa Newman, “PA: Gaza Health Ministry Stole Medical Aid During Summer Conflict,” *Times of Israel*, 8 December 2014, available at <http://www.timesofisrael.com/pa-gaza-health-ministry-stole-medical-aid-during-summer-conflict/> (accessed: January 14, 2015)

⁴³ “The World’s 10 Richest Terrorist Organizations,” *Forbes*, 12 December 2014, available at <http://www.forbes.com/sites/forbesinternational/2014/12/12/the-worlds-10-richest-terrorist-organizations/3/> (accessed: January 14, 2015)

⁴⁴ Marissa Newman, “PA: Gaza Health Ministry Stole Medical Aid During Summer Conflict,” *Times of Israel*, 8 December 2014, available at <http://www.timesofisrael.com/pa-gaza-health-ministry-stole-medical-aid-during-summer-conflict/> (accessed: January 14, 2015)

⁴⁵ Shuki Sadeh, “Behind Hamas’ Guns, a Serious Problem of Dough”, *Ha’aretz*, 1 August 2014, available at <http://www.haaretz.com/news/diplomacy-defense/.premium-1.608344> (accessed: January 14, 2015)



Despite the commandeering of aid and attacks on border crossings, according to Israel’s Coordinator of Government Activities in the Territories Unit (COGAT), 277 aid projects were implemented or scheduled to begin between 2010 and 2013. The UN’s Office for the Coordination of Humanitarian Affairs (OCHA) listed 577 projects as of September 2014.⁴⁶ Funding for these projects is provided by over a dozen governments, and about half are approved by and coordinated with Israeli authorities.

In addition to the facilitation of aid projects, Israel has also invested NIS 80 million in order to improve infrastructure at the Kerem Shalom border crossing. Israel renovated and expanded the terminal to five times its previous size, making the terminal more efficient and allowing a larger flow of materials.⁴⁷

Israel has also allowed large amounts of materials to enter Gaza through the border crossings that it controls. From 2012 through July 2014, 124,444 trucks entered Gaza from Israel, carrying a total of 3,274,125 tons of materials.⁴⁸ These trucks transported a variety of items, including building materials such as cement and iron, humanitarian aid in the form of

⁴⁶ “Gaza Strip: Who Does What,” *OCHA*, 4 September 2014, available at http://www.ochaopt.org/documents/3w_final_9september2014.pdf (accessed: January 14, 2015)

⁴⁷ “The Civilian Policy Towards the Gaza Strip: The Implementation of the Cabinet Decision,” *COGAT*, June 2010, available at http://mfa.gov.il/MFA_Graphics/MFA%20Gallery/Documents/COGATCivilianPolicyGazaStrip.pdf p. 11 (accessed: January 14, 2015)

⁴⁸ Based on monthly and annual COGAT reports

medicines, and consumer products such as electrical appliances and agricultural products. During this time period, nearly 4,000 truckloads of cement entered Gaza through Israel. This was complemented by more than 6,600 truckloads of ceramics and plumbing materials, more than 3,100 truckloads of glass, aluminum, and wood profiles, and approximately 900 truckloads of iron.

Israel also provides much of Gaza's basic infrastructure, including 125/MW of power per day, despite the fact that the Rutenberg power plant in Ashkelon, which supplies this electricity, is under threat of Hamas rocket barrages. Israel is the main supplier of electricity in Gaza and as of September 2013, Israeli provided electricity accounted for 63% of the electricity in Gaza.⁴⁹ Israel also provides Gaza with 5 million cubic meters of water per year, in addition to natural gas used for heating and cooking.⁵⁰

The large amount of humanitarian activity in Gaza, which is intended to address the needs of Gaza's civilian population, belies the NGOs' "humanitarian crisis" narrative. As noted by the deputy head of the Red Cross (ICRC) in Gaza, Mathilde De Riedmatten: "There is no humanitarian crisis in Gaza. If you go to the supermarket, there are products. There are restaurants and a nice beach. The problem is mainly in maintenance of infrastructure and in access to goods, concrete for example."⁵¹

Over the past decade, Israel has adapted its policies to meet the changing security and political situation in Gaza, and seeking to balance security and humanitarian needs. Israel has calibrated its policies on Gaza aid to reflect the dynamic security threat from Gaza. Israel's overall approach regarding the entry of materials into the area has been to allow into Gaza the items and materials necessary to meet humanitarian needs, but to prevent the entry of materials that can enhance Hamas' arsenal, such as materials that aid in the production of rockets and explosives.

The lists of dual-use items were based on the Wassenaar Arrangement, an international export control regime that seeks to promote responsible trade policies vis-à-vis conventional

⁴⁹ "The Civil Policy Towards the Gaza Strip: 2012-2013," *COGAT*, September 2013, available at http://www.cogat.idf.il/Sip_Storage/FILES/7/4207.pdf, pp. 10-18 (accessed: January 14, 2015)

⁵⁰ "Gaza Crossing- Weekly Report: June 30th to July 6th, 2013," *COGAT*, available at http://www.cogat.idf.il/Sip_Storage/FILES/5/4075.pdf (accessed: January 14, 2015)

⁵¹ Yaakov Lappin, "There is no Humanitarian Crisis in Gaza," *Jerusalem Post*, 21 April 2011, available at <http://www.jpost.com/Middle-East/Red-Cross-There-is-no-humanitarian-crisis-in-Gaza> (accessed: January 14, 2015)

arms and dual-use items,⁵² as well as on the 2008 Defense Export Control Order that defines what types of materials, substances, and items are considered “combat equipment” by Israeli law.⁵³ The Wassenaar and Defense Export lists contain various dual-use materials that can be used in either civilian or military applications such as fertilizers, drilling equipment, and various chemicals. Since publishing the restrictions in 2010, Israel has updated them periodically, maintaining a total ban on munitions, missile technology, and certain kinds of dual-use materials, but permitting other dual-use materials that can be brought into Gaza as part of PA-approved and internationally supervised humanitarian projects.⁵⁴ Among the items on the IDF dual-use items list that can be imported as part of these aid projects are cement, concrete, various steel elements, building materials, and vehicles,⁵⁵ even though these could be (and have been) used in the building of explosive devices, rockets, and tunnels.

Israeli suffering: Previous HRC missions have focused in depth on Palestinian suffering during war, but have largely ignored the thousands injured, the hundreds of thousands of internally displaced Israelis, the massive property damage, and severe economic costs to Israel as a result of the fighting. Hamas conducted attacks on Israel’s airport and attempted to strike Israel’s nuclear installations, potentially causing catastrophic damage. There has been no detailed analysis on the numbers of rocket strikes, the location of impacts, and damage assessments. No previous HRC missions have attempted to ascertain the impact on the Israeli economy. Just because Israel is wealthier and more developed country than Gaza does not mean that the fighting did not have tremendous impact.

Intimidation of journalists: HRC missions like Goldstone have been completely silent regarding Hamas operations in Gaza, including how control of information and propaganda play

⁵² “Introduction,” *Wassenaar Arrangement*, available at <http://www.wassenaar.org/introduction/index.html> (accessed: January 22, 2015)

⁵³ צו הפיקוח על היצוא הביטחוני (ציווד להימה), התשס"ח-2008, http://www.exportctrl.mod.gov.il/NR/rdonlyres/273A94F6-BBE4-415C-B3A0-D793FFABC4F0/0/tsav_pikuah_tsiyud_lehima.pdf ;
צו הפיקוח על היצוא הביטחוני (ציווד טילים), התשס"ח-2008, http://www.exportctrl.mod.gov.il/NR/rdonlyres/B9DF110D-5177-4E83-B3E1-0D09334BC446/0/tsav_pikuah_mtrc.pdf

⁵⁴ “Update Concerning the List of Controlled Items to the Gaza Strip,” *COGAT*, October 2012, available at http://www.cogat.idf.il/Sip_Storage/FILES/8/3558.pdf (accessed: January 14, 2015) ;

“Restricted Import List: Gaza Strip- 2013,” *COGAT*, available at http://www.cogat.idf.il/Sip_Storage/FILES/4/4014.pdf (accessed: January 14, 2015)

⁵⁵ “The Civilian Policy Towards the Gaza Strip: The Implementation of the Cabinet Decision,” *COGAT*, June 2010, available at http://mfa.gov.il/MFA_Graphics/MFA%20Gallery/Documents/COGATCivilianPolicyGazaStrip.pdf p. 11 (accessed: January 14, 2015)

a major role in Hamas' war strategy. One of the key components of this tactic is the systematic intimidation of journalists in Gaza by the terrorist organization.

For instance, Hamas blamed Israel for a strike on a park near the Al Shati refugee camp that killed many Palestinians. Many NGOs and journalists reported the Hamas narrative without question, even though the IDF provided documentation that the attack was caused by a misfired rocket. Once out of Gaza, an Italian journalist confirmed the IDF account and reported he had not been free to tell the truth while in Gaza:

“Out of #Gaza far from #Hamis retaliation: misfired rocket killed children yday [yesterday] in Shati. Witness: militants rushed and cleared debris.”

“@IDFSpokesperson said truth in communique released yesterday about Shati camp massacre. It was not #Israel behind it.”

Many other journalists reported similar harassment once out of Hamas control. The situation became so serious that the Foreign Press Association released a statement that

The FPA protests in the strongest terms the blatant, incessant, forceful and unorthodox methods employed by the Hamas authorities and their representatives against visiting international journalists in Gaza over the past month.

The international media are not advocacy organizations and cannot be prevented from reporting by means of threats or pressure, thereby denying their readers and viewers an objective picture from the ground.

In several cases, foreign reporters working in Gaza have been harassed, threatened or questioned over stories or information they have reported through their news media or by means of social media.

We are also aware that Hamas is trying to put in place a 'vetting' procedure that would, in effect, allow for the blacklisting of specific journalists. Such a procedure is vehemently opposed by the FPA.

During the war, Hamas propaganda materials were also discovered that detail the group's human shields strategy and ways to manipulate casualty figures.⁵⁶ Any fact-finding inquiry that doesn't take this information into account is not properly executing its duties.

⁵⁶ <http://www.idfblog.com/blog/2014/07/21/hamas-teaches-gazas-facebook-users-secret-spinning-terror/>;
<http://www.terrorism-info.org.il/en/article/20711>

Role of UN in aiding Palestinian attacks and propaganda: During the war, Hamas rockets were found in at least three UNRWA schools. Upon discovery, UNRWA reportedly handed the weapons back to Hamas. Other reports detailed UN materials located in attack tunnels and tunnel entrances in UN facilities. Rockets were launched from within or near UN installations. In one of the few existing media photos of Hamas combat activity, a rocket launcher is shown right outside an UNRWA building. In addition, UNRWA officials, most notably Chris Gunness, and UN agencies like OCHA were instrumental in disseminating worldwide Hamas propaganda. The COI is required to examine these violations falling within its mandate.

Violations of international treaties and agreements by the Palestinians: On April 1, 2014, the “State of Palestine” unity government (Hamas and Fatah) purported to join more than fifteen international treaties, including the Fourth Geneva Convention and the First Additional Protocol, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of Discrimination Against Women.⁵⁷ By joining these treaties, the Palestinians accepted upon themselves responsibility for dozens of human rights and humanitarian law obligations, not only for its own population but for anyone else under its jurisdiction. The COI’s mandate calls for the investigation of all violations of international human rights and humanitarian law. Since April and in particular during the war, there have been thousands of violations that the COI must take into account including:

⁵⁷ http://nad-plo.org/userfiles/file/fact%20sheets/Q&A_Accession.pdf The treaties include: the Four Geneva Conventions of 12 August 1949 and the First Additional Protocol, the Vienna Convention on Diplomatic Relation, the Vienna Convention on Consular Relations, the Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in armed conflict, the Convention on the Elimination of All Forms of Discrimination against Women, the Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land, the Convention on the Rights of Persons with Disabilities, the Vienna Convention on the Law of Treaties, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Convention against Corruption, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.

Chart Detailing Violations of Treaty Obligations by “Palestine”

Treaty	Article Violated	Action
Additional Protocol I	Arts. 48, 51(2), 52(1)	Deliberate rocket attacks directed at Israel’s civilian population centers
Additional Protocol I	Art. 51(7)	Staging attacks from residential areas and protected sites
Additional Protocol I	Art. 51(7)	Use of civilian homes and protected sites, and public institutions as bases of operation
The 1907 Regulations annexed to the Hague Convention IV respecting the Laws and Customs of War on Land	Art. 23(f)	Misuse of medical facilities and ambulances
Additional Protocol I	Art. 51(7)	Booby-trapping of civilian areas
ICRC rule	Rule 97	Blending in with Civilians and Use of Human Shields
Additional Protocol I	Art. 77(2)	Exploitation of children, child soldiers
Fourth Geneva Convention	Arts. 59-60	Interference with humanitarian relief efforts
Fourth Geneva Conventions	Art. 34	Hostage-taking
Additional Protocol I	Art.39(2)	Using the uniform of the enemy
ICC Rome Statute	Art. 8(2)(b)(vii)	
Additional Protocol I	Art. 51(2)	Violence aimed at spreading terror among the civilian population
Additional Protocol I	Arts. 48, 52(2)	Targeting civilian objects, such as airports or nuclear power plants
Additional Protocol I	Art. 51(4)	Indiscriminate attacks
Additional Protocol I	Art. 57(2)(c)	Failure to provide advance warning of attacks which may affect the civilian population
Additional Protocol I	Art. 58(c)	Failure to protecting civilians
1899 and 1907 Hague Regulations	Art. 27	Attacking medical units
First Geneva Convention	Art. 19	
Additional Protocol I	Art. 12	
Additional Protocol I	Art. 79	Failure to protect journalists
Hague Convention (X)	Art. 16	Mistreating the dead

Treaty	Article Violated	Action
Fourth Geneva Convention	Art. 16	
Additional Protocol I	Art. 34(1)	
Convention on the Rights of the Child (CRC)	Art. 3	Recruitment and use of child soldiers, staging attacks from residential areas, schools; hiding weaponry in schools; forcing children to riot and engage in attacks in West Bank and East Jerusalem
CRC	Art. 17	Subjecting children to mass media campaigns of anti-Jewish incitement and racism; creation of children’s programming glorifying terrorism, violence, and genocide; naming schools and public sites after terrorists
CRC	Art. 24	Denial of clean water and health care by diverting humanitarian assistance to Hamas war effort; conducting military activities from within medical facilities; denial of permits to obtain medical treatment in Israel and elsewhere; attacks on border crossings to prevent humanitarian assistance and medical treatment
CRC	Art. 32	Conscription of children to build Hamas attack tunnels and other war infrastructure
CRC	Art. 36	Conscription children for Palestinian war effort; forcing children to riot and engage in other harmful activities
CRC	Art. 38	Conscription of child soldiers under age 15
Convention on Elimination of Discrimination Against Women (CEDAW)	Art. 1	Discriminatory laws directed at women including dress codes; failure to provide legal recourse to women for domestic violence, honor killings, and rape
CEDAW	Art. 9	Restrictions on transmission by women of nationality to children
CEDAW	Art. 16	Permitting polygamy and child marriage
Convention Against Torture (CAT)	Art. 2	Failure to take action to prevent torture; summary executions of “collaborators”
CAT	Art. 14	Failure to provide system of redress for torture victims
Convention Against Genocide (CAG)	Art. 1	Failure to prevent and punish crime of genocide
CAG	Art. 2	Engaging in acts of genocide – killing and causing harm with intent to destroy national and religious group
CAG	Art. 3	Engaging in genocide, conspiracy to commit genocide, public incitement to genocide, attempts to commit genocide, and

Treaty	Article Violated	Action
		complicity in genocide
CAG	Art. 5	Failure to enact legislation to prevent acts of and incitement to genocide
International Covenant on Civil and Political Rights (ICCPR)	Art. 3	Violations of equal rights for women, particularly in Gaza
ICCPR	Art. 6	Violation of the right to life by deliberate attacks on Israeli civilians, use of human shields, and summary executions
ICCPR	Art. 7	Torture, execution and degrading treatment in prisons and on street
ICCPR	Art. 10	Failure to provide persons deprived of liberty with humanity and respect
ICCPR	Art. 18, 19	Denial of freedom of thought conscience and religion - jailing bloggers critical of Palestinian Authority, harassment and attacks on Christians, punishment for blasphemy and conversion out of Islam
ICCPR	Art. 20	Mass system of war propaganda including manipulation of casualties, covering up crimes, and intimidation of journalists
ICCPR	Art. 20	Advocacy of national and religious hatred against Israelis and Jews to incite discrimination, hostility, and violence
ICCPR	Art. 23	Allowance of child marriage and polygamy

Shockingly, even after the fighting and the devastation for both Palestinian and Israeli civilians, Palestinian violations continue apace. For instance, in January 2015, more than 10,000 Palestinian teens graduated from a Hamas terror camp training them for tunnel infiltrations and to be snipers.⁵⁸

⁵⁸ <https://twitter.com/IsraelHatzolah/status/560259977319682048>

Part II: The Role of Non-Governmental Organizations

This latest HRC fact-finding mission appears to be the direct result of a lobbying campaign by several NGOs in conjunction with the OIC, the Arab League, Cuba, and Venezuela.

These NGOs include Al Haq, Al Mezan, BADIL, Human Rights Watch, Amnesty International, International Federation for Human Rights Leagues (also on behalf of Palestinian Centre for Human Rights),⁵⁹ and the Norwegian Refugee Council. These NGOs frequently utilize highly offensive and one-sided rhetoric in their advocacy campaigns. In some cases, these NGOs have even promoted antisemitism and/or justified war crimes on Israel civilians as “resistance.”

Not only did NGOs play a significant role in the establishment of the COI, but based on past precedent, they will likely prominently feature in all aspects of the COI’s work. In order to comply with its mandate and prevent violations of fact-finding standards, it is imperative that the COI immediately enact specific transparency guidelines regarding NGO participation and its reliance on NGO source material.

NGO Submissions and Witnesses

The significant participation of NGOs in the Mission raises several concerns regarding the adherence to transparency. In most HRC frameworks, certain selected NGOs are prominent fixtures at HRC sessions and working groups, while other groups appear to be excluded. Few, if any, criteria are disclosed regarding the selection of NGO participation. Often, no public record exists of NGO interaction, creating the perception of improprieties or conflicts of interest.

NGO submissions will likely constitute the vast majority of the source material for the COI’s final report. Judging by the practices of previous HRC fact-finding initiatives, large portions of the final report will simply be “cut and pasted” from NGO submissions without any verification of NGO claims. Moreover, past missions relating to Israel have failed to publicly disclose these submissions, making it impossible to independently verify materials that will undoubtedly form the bulk of the COI’s report. In contrast, the HRC’s fact-finding mission to Syria has stated that “[u]nless otherwise indicated by the author, the Mission will assume that

⁵⁹ See NGO Monitor’s NGO Index *available at* http://ngo-monitor.org/ngo_index.php?letter=A

submissions can be made public.”⁶⁰ There is no reason why submissions related to the horrific situation in Syria, where there have been more than 200,000 killed or disappeared and where participants may likely face retribution, can be disclosed, yet submissions to this COI must remain secret. If there is a rationale for confidentiality regarding specific submissions, it should be explicitly stated.

In addition to making NGO submissions public, the COI should also provide a list of all meetings the COI has had with NGO representatives, documentation provided by NGOs to the COI, and any oral testimony provided by NGOs.

Conflicts of Interest

It appears that several members of the Mission have significant prior links to political advocacy NGOs, including the International Commission of Jurists (ICJ), Al Haq, Amnesty International, and the BDS NGO network, groups that have routinely demonstrated a one-sided approach to the Arab-Israeli conflict.⁶¹ These conflicts of interest call into question whether the members of the COI can objectively evaluate information provided by these organizations.

For example, Judge Davis is on the Board of the American Association for the International Commission of Jurists. More concerning, however, is Prof. Schabas's long-standing connections with NGOs involved in extreme anti-Israel advocacy. Schabas has served as legal counsel to Amnesty International's Ireland branch and has deep ties with Al Haq and its director, Shawan Jabarin, an alleged senior activist in the PFLP terrorist organization. Schabas has referred to Jabarin as a “great friend” and “my dear friend.”⁶² He has also participated in a number of Al Haq conferences, including a July 2012 conference titled: “Annexation Wall: Lessons Learned and Future Strategy”⁶³ and a November 2005 panel, “From Theory to Practice:

⁶⁰ Call for submissions (A/HRC/RES/S-16/1), available at <http://www.ohchr.org/EN/Countries/MENARegion/Pages/SyriaFactFindingMission.aspx>

⁶¹ See, e.g., Anne Herzberg, “NGO ‘Lawfare’: Exploitation of Courts in the Arab-Israeli Conflict,” NGO Monitor Monograph Series (2d ed. 2010), available at <http://www.ngo-monitor.org/data/images/File/lawfare-monograph.pdf>; NGO Monitor, “FIDH: Prioritizing Politics Over Protection,” 28 September 2006, available at http://www.ngo-monitor.org/article/fidh_prioritizing_politics_over_protection; NGO Monitor File, ICCO, available at http://www.ngo-monitor.org/article/interchurch_organization_for_development_cooperation_icco; NGO Monitor File, Amnesty International, http://www.ngo-monitor.org/article/amnesty_international.

⁶² <http://humanrightsdoctorate.blogspot.co.il/2010/01/shawan-jabarin-and-canadas-rights-and.html>;

<http://humanrightsdoctorate.blogspot.co.il/2009/03/shawan-jabarin-denied-right-to-travel.html>

⁶³ <http://www.alhaq.org/component/content/article/73-events/597-al-haq-and-diakonia-seminar-annexation-wall-lessons-learned-and-future-strategy>

Upholding International Humanitarian Law in the Occupied Palestinian Territory.”⁶⁴

Troublingly, Schabas has also defended⁶⁵ Iran’s Mahmoud Ahmadenijad, stating that his repeated calls to “wipe Israel off the map” do not constitute a “call for genocide,” but are simply “political views,” and defended Human Rights Watch and its director Kenneth Roth for neglecting to take any action on this issue.⁶⁶

As mentioned, Schabas participated in the Russell Tribunal on Palestine, a fringe event organized by NGOs opposed to the existence of Israel as the nation state of the Jewish people, and featuring many anti-Israel demagogues. One of the “Jurors”⁶⁷ for the New York session, in which Schabas participated, was Cynthia McKinney, a former member of the US Congress and “9/11 Truther” who claimed that President Bush had advance knowledge⁶⁸ of the September 11 attacks and blamed her electoral loss on “the Israel lobby” (video, 6:50).⁶⁹ Other “witnesses” included Shawan Jabarin; Israeli MK Haneen Zoabi, who declared⁷⁰ that “I would say, there was no justification for Zionist projects and to have a Jewish state in my homeland”; Alice Walker, who narrated a documentary film about Israel entitled “Roadmap to Apartheid”⁷¹; Ronnie Kasrils, who published an op-ed entitled “Israel 2007: Worse than Apartheid”⁷²; José Antonio Martín Pallín, who stated⁷³, “Everyone knows that the State of Israel is an artificial ad hoc creation” (translated from original Catalan); and Mairead Maguire, a participant in the May 2010 flotilla.

Because the COI has not disclosed the names of its staff members and consultants, it is impossible to evaluate whether additional conflicts exist. Based on past experience, however, these conflicts are not only likely to exist but highly probable.

⁶⁴ http://asp.alhaq.org/zalhaq/site/eDocs/Expert%20Seminar/Bios/bio_ws.htm

⁶⁵ <http://humanrightsdoctorate.blogspot.co.il/2012/12/dancing-around-genocide.html?m=1>

⁶⁶ <http://humanrightsdoctorate.blogspot.co.il/2012/12/dancing-around-genocide.html?m=1>

⁶⁷ <http://www.russelltribunalonpalestine.com/en/sessions/future-sessions/jury>

⁶⁸ http://usatoday30.usatoday.com/news/nation/2002-08-21-ga-candidates_x.htm

⁶⁹ https://www.youtube.com/watch?v=fuwglMSx_q0&feature=related

⁷⁰ <https://groups.google.com/forum#!topic/communist-university/TXhR71TmvWE>

⁷¹ <http://warincontext.org/2011/07/29/roadmap-to-apartheid/>

⁷² <http://mg.co.za/article/2007-05-21-israel-2007-worse-than-apartheid>

⁷³ http://icip.gencat.cat/web/.content/continguts/linstitut/sala_de_prensa/enllacos/2011/abril-set_11/entrev_mart_n_pall_n.pdf

NGO Credibility

The COI will undoubtedly heavily rely on NGO claims. Yet, this reliance is highly problematic, particularly in the context of armed conflict. According to the founder (and now critic) of HRW, Robert Bernstein, NGOs

have waded into the muddle of trying to become experts in the laws of warfare, deciding what constitutes a legitimate act of war and what does not, what should be considered a war crime and what should not. The result is that human rights organizations are trying to act like a referee at a sports event, calling war crimes of both sides. They come across like a group of litigator lawyers playing a game of “Gotcha!”

Similarly, Professor Kenneth Anderson has determined that, when reporting on armed conflict, NGOs “focus to near exclusion on what the attackers do, especially in asymmetrical conflicts where the attackers are Western armies,” and the reports tend “to present to the public and press what are essentially lawyers’ briefs that shape the facts and law toward conclusions that [they] favor... without really presenting the full range of factual and legal objections to [their] position.”⁷⁴

Few, if any, mechanisms exist within the HRC (and other UN) frameworks to verify and evaluate the credibility of allegations proffered by NGOs. As Chair of the University of Essex Human Rights Centre, Nigel Rodley has commented, “[r]egrettably, the United Nations has not provided comprehensive criteria for the guidance of fact-finding missions to be carried out under its auspices.”⁷⁵ The COI has not elaborated on how it will assess relevance and credibility, nor does it specify how it will aim to verify NGO information. In order for the COI to be credible and be seen as credible, the Mission must immediately develop and disclose standards for assessing materials provided by NGOs.

The failure to develop standards led to the publishing of false claims in the Goldstone Report, and which ultimately led to Judge Goldstone’s retraction of his own report.⁷⁶ For

⁷⁴ Anderson, Kenneth, Questions re: Human Rights Watch’s Credibility in Lebanon Reporting, Kenneth Anderson Laws of War Blog, 23 August 2006, *available at* <http://kennethandersonlawofwar.blogspot.com/2006/08/questions-re-human-rights-watches.html>.

⁷⁵ Nigel S. Rodley, “Assessing the Goldstone Report,” *Global Governance*, April-June 2010, *available at* http://findarticles.com/p/articles/mi_7055/is_2_16/ai_n55407196/?tag=content;coll

⁷⁶ Richard Goldstone, “Reconsidering the Goldstone Report on Israel and War Crimes,” *Washington Post*, 2 April 2011, *available at* http://www.washingtonpost.com/opinions/reconsidering-the-goldstone-report-on-israel-and-war-crimes/2011/04/01/AFg111JC_story.html

example, one of the “thirty-six” incidents reviewed by the Goldstone mission was an alleged Israeli airstrike on the al-Bader flour mill. This alleged event was described in an Amnesty International publication entitled, “22 Days of Death and Destruction,” which accused Israel of engaging in “wanton destruction” and deliberately “targeting” the mill on 10 January 2009. It further claimed that the mill’s “owners are adamant that the site was neither a launch pad for rockets nor a weapons cache, and the Israeli army has provided no evidence to the contrary.”⁷⁷ As a result, this incident featured prominently during the Goldstone public hearings. When issued, the Goldstone Report claimed the mill had been “hit by a series of air strikes on 9 January 2009,” that “its destruction had no military justification,” and that the attack was “carried out to deny sustenance to the civilian population” of Gaza.⁷⁸

Notably, however, this incident was not contemporaneously reported anywhere in the Arabic media. Moreover, documentary evidence, including photographs of the mill released by both the UN (UNITAR)⁷⁹ and the IDF, refuted Amnesty’s and Goldstone’s version of events. These materials clearly showed that the mill was damaged by artillery during a firefight with Hamas combatants more than a week after 9 January, and not by an F-16 airstrike as Goldstone claimed. Of seven airstrikes conducted by the IDF within that area, all were more than 300 meters from the mill. Indeed, during the Goldstone hearings, the mill’s owner never testified to seeing the remains of an aerial bomb or damage caused by an air strike. Rather, he stated that “[w]hat I did see are the empty bullets in the factory, on the factory roof, that’s what I saw,” corroborating the UNITAR and IDF findings. Goldstone also never explained the logic of its bizarre claim that Israel wanted to “deny sustenance to the civilian population” of Gaza when it was completely contradicted by the thousands of tons of humanitarian aid and other assistance provided by Israel.

In another example, the Goldstone mission relied almost entirely on NGO claims, without independent analysis, regarding the number of Palestinian civilians killed during the Gaza War.

⁷⁷ *Israel/Gaza: Operation “Cast Lead”: 22 days of death and destruction*, Amnesty International, July 1, 2009, available at <http://www.amnesty.org/en/library/info/MDE15/015/2009/en>.

⁷⁸ Goldstone Report, at para. 50

⁷⁹ UNITAR, *Satellite Image Analysis in Support to the United Nations Fact Finding Mission to the Gaza Conflict*, 31 July 2009, at 33, available at http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNITAR_UNOSAT_FFMGC_31July2009.pdf. The UNITAR report notes that most of the damage it found to the mill appears to have occurred between 16-18 January 2009 (not January 9 and 10 as claimed by Amnesty and Goldstone) and was a result of “ground fire.”

These NGO figures were cited by the mission as “proof” of disproportionate or indiscriminate attacks carried out by Israel and as the basis for war crimes accusations. Citing to NGOs PCHR, Al Mezan, and B’Tselem (pages 90-91), the Goldstone Report claims that:

Statistics alleging that fewer than one out of five persons killed in an armed conflict was a combatant, such as those provided by PCHR and Al Mezan as a result of months of field research, raise very serious concerns about the way Israel conducted the military operations in Gaza. The counterclaims published by the Government of Israel fall far short of international law standards (paragraph 361).

In a November 2010 interview⁸⁰ given by Hamas Interior Minister Fathi Hamad to the *Al-Hayat* newspaper, however, Hamad acknowledged that **600-700 Hamas members were killed in the Gaza fighting**. This more than doubles the number of combatants published by the NGOs’ and Goldstone’s unreliable version of events, and closely matches the numbers issued by the Israeli government. This example highlights the unreliability of NGO claims, and reinforces the need for careful and skeptical evaluation.

There are dozens of similar examples found in NGO publications on the 2014 Gaza war. The following are just three illustrative examples:

July 8, 2014 strike in Khan Yunis: On July 8, the IDF targeted the home of Odeh Kaware, a senior member in Hamas’ al-Qassam Brigades because it was being used as a Hamas headquarters by a company commander. Prior to the strike, the IDF warned the Kaware family by telephone, telling them to leave the house, and then delivered a “knock on the roof.” According to a preliminary investigation, the family reportedly left the house, but returned too early, as the missile was being fired; by that point, it was technically impossible for the bomb to be recalled.⁸¹ Odeh’s brother told the *New York Times* that after the warning missile, neighbors came to the house to form a human shield. Palestinian media also reported that voluntary human

⁸⁰ “Hamas admits 600-700 of its men were killed in Cast Lead” *Ha’aretz*, 9 November 2010, available at <http://www.haaretz.com/news/diplomacy-defense/hamas-admits-600-700-of-its-men-were-killed-in-cast-lead-1.323776>

⁸¹ <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/Operation-Protective-Edge-Investigation-of-exceptional-incidents-7-Dec-2014.aspx>

shields went to the house, and a Hamas spokesman confirmed it.⁸² Seven people were reportedly killed.⁸³

Despite the facts, B'Tselem, called the attack “a breach of international law” even if combatants were present and the IDF provided warnings prior to the strike: “Bombing the homes of senior activists in armed groups violates international humanitarian law, which provides a narrow definition of what constitutes a legitimate target and permits aiming attacks only at targets that effectively assist military efforts, when damaging them can provide a military advantage. Treating these homes as legitimate targets is an unlawful, distorted interpretation of the concept, resulting in harm to civilians, whom this body of law is intended to protect.”⁸⁴

Contrary to B'Tselem's claims, IHL provides a broad list of objects that are legitimate targets during armed conflict, with combatants being a primary example. Moreover, B'Tselem does not explain why targeting a Hamas command center would not fall within that definition, nor why destroying it would not “effectively assist military efforts” or “provide a military advantage” when it is clear that is precisely what it would do. B'Tselem also fails to mention that under the laws of war, the presence of civilians does not render military objectives immune from attack (Art. 51). Contrary to B'Tselem's claims, humanitarian law does not prohibit harm to civilians, but rather prescribes when such harm is lawful.

Similarly, HRW's Ken Roth tweeted the B'Tselem statement, along with a snarky comment that “Retroactively calling family home of Hamas militant a command center doesn't justify #Israel attacking it.”⁸⁵ Yet, Roth provides no evidence that Kaware was not a Hamas commander, nor that the home was not used as a command center. He offers no legal justification why these are not legitimate military objectives. He also ignores the Hamas call for the voluntary human shields and the photographic evidence documenting it.

July 8, 2014 strike in Beit Hanoun: False factual claims, distortion of law, and research failures were also found in NGO reporting regarding another strike taking place on July 8. The IDF targeted Hafez Hamad, commander of Palestinian Islamic Jihad (PIJ) military operations in

⁸² http://www.terrorism-info.org.il/Data/articles/Art_20669/E_111_14_2032155167.pdf

⁸³ http://www.nytimes.com/2014/07/09/world/middleeast/by-phone-and-leaflet-israeli-attackers-warn-gazans.html?_r=1

⁸⁴ http://www.btselem.org/press_releases/20140709_bobming_of_houses_in_gaza

⁸⁵ <https://twitter.com/KenRoth/status/487101270671761408>

Beit Hanoun, and a group of other terror operatives conducting an operational meeting outside Hafez's home.⁸⁶

Seven people were killed in the strike, at least three of whom were combatants. According to an IDF investigation, at the time of the operation there were no other persons seen in the vicinity of the terror group, and it was unclear where others had come from or how civilians had been harmed. In addition to confirming that Hafez Hamad was a PIJ commander, the International Terrorism and Intelligence Center identified Ibrahim Hamad as a member of Hamas' al-Qassam Brigades and Mahdi Hamad as a member of the PFLP; both were killed in the attack.⁸⁷

In its account, B'Tselem erased the complex reality surrounding the strike.⁸⁸ Instead, the NGO published an emotive account by a family member of the Islamic Jihad commander stating, "The missile fell on my family with no warning. I assume they wanted to hit 'Abd al-Hafez, but what did the rest of the family do wrong? Why did they kill an entire family?" In its infographic depiction of the event, B'Tselem identified Hafez as a combatant but did not mention that a meeting of terror operatives was taking place at the home, nor did it indicate that two other combatants were killed in the strike.

Al-Mezan⁸⁹ published the following: "In another attack on a house at approximately 11:45pm on Tuesday, 8 July 2014, IOF ["Israel Occupation Forces"] warplanes fired two missiles at the home of Mohammed Hamad; the house is located on Hamad Street in the northern Gaza Strip town of Beit Hanoun. As a result, 6 people, including 5 civilians (and 3 women) were killed and 5 were injured, including 4 children."⁹⁰ The NGO also called the strike a "criminal act." In order to promote its claim that the strike was "indiscriminate," the NGO does not disclose the presence of combatants at the home or the operational meeting – clear military objectives.

⁸⁶ <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/Operation-Protective-Edge-Investigation-of-exceptional-incidents-7-Dec-2014.aspx>

⁸⁷ http://www.terrorism-info.org.il/Data/articles/Art_20711/E_158_14_1902322402.pdf; http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf

⁸⁸ http://www.btselem.org/testimonies/20140709_gaza_protective_edge_muhammad_hamad

⁸⁹ http://www.mezan.org/en/details.php?id=19197&ddname=IOF&id2=9&id_dept=9&p=center

⁹⁰ http://www.mezan.org/en/details.php?id=19197&ddname=IOF&id2=9&id_dept=9&p=center

Similarly, PCHR admits that Hafez Hamad is a “leader of Islamic Jihad,” but then calls him a civilian to bolster its false charges of “war crimes.”⁹¹ The NGO does not identify the other terrorists killed in the strike, either because their research capabilities are inadequate to determine casualty status or they were deliberately falsifying the record to pad the number of civilian casualties.

Within hours of the operation and before it could have possibly conducted any sort of “investigation,” Human Rights Watch⁹² levied legal charges that this strike (and others that took place on July 8) was “collective punishment” and “indiscriminate.”⁹³ Highlighting the NGO’s lack of research capability, HRW did not mention the presence of combatants at the location of the attack or that an operational meeting was taking place. Both details clearly discredit HRW’s false accusation of an “indiscriminate” attack and bizarre claim of “collective punishment.”

Gaza power plant July 29: Palestinian officials alleged that on July 29 an Israeli airstrike hit Gaza’s power plant.⁹⁴ A spokesman for the Gaza Electric Company, Jamal Dardasawi (links to Hamas unclear), claimed the plant was forced to shut down after being hit by two Israeli tank shells.⁹⁵ Still others claimed the plant would be inoperable for at least a year.⁹⁶

In contrast to the wildly different Palestinian versions (Israeli airstrike, Israeli tank shells), the IDF responded that the plant had not been a target and there was no indication that the IDF was operating in the area at the time of the alleged attack.⁹⁷ Based on IDF intelligence, it appeared that a misfired Hamas rocket hit the plant instead. Nevertheless, the IDF opened an investigation into the circumstances.⁹⁸ In addition, the plant was operational again in September 2014, only a few weeks after it was damaged.

Despite the disputed circumstances of the event and without any first-hand knowledge of what happened, HRW, Amnesty, and other NGOs immediately issued lengthy statements accusing Israel of “war crimes.” Despite the fact that more than 10% of Palestinian rockets

⁹¹ http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10456:israeli-offensive-on-gaza-continues-for-the-second-consecutive-day-houses-destroyed-while-residents-inside-palestinian-deaths-rise-to-22-including-6-children-3-women-and-255-wounded-including-107-children-and-64-women-and-29-houses-destroyed&catid=36:pchrpressreleases&Itemid=194

⁹² <http://www.hrw.org/news/2014/07/09/palestineisrael-indiscriminate-palestinian-rocket-attacks>

⁹³ <http://www.hrw.org/news/2014/07/09/palestineisrael-indiscriminate-palestinian-rocket-attacks>

⁹⁴ <http://edition.cnn.com/2014/08/01/world/meast/gaza-life/>

⁹⁵ <http://www.haaretz.com/news/video/1.607832>

⁹⁶ <http://edition.cnn.com/2014/08/01/world/meast/gaza-life/>

⁹⁷ http://www.nytimes.com/2014/07/30/world/middleeast/gaza-israel-violence.html?_r=0

⁹⁸ <http://www.timesofisrael.com/idf-general-israel-did-not-target-gazas-power-plant/>

landed within Gaza during the fighting, NGOs did not address errant rocket fire as a possible explanation for the strike. Moreover, NGO did not consider the absence of logic in alleging the IDF purposely targeted the power plant when Israel provides Gaza with food, water, and electricity.

For instance, Philip Luther, Amnesty's Middle East and North Africa Director, alleged "the strike on the power plant, which cut off electricity and running water to Gaza's 1.8 million residents and numerous hospitals, has catastrophic humanitarian implications and is very likely to amount to a war crime... The scales of the consequences of this attack are devastating and could amount to collective punishment of Gaza's population."⁹⁹

HRW condemned the "apparent Israeli shellfire that knocked out the Gaza Strip's only electrical power plant," claiming that "damaging or destroying a power plant, even if it also served a military purpose, would be an unlawful disproportionate attack under the laws of war, causing far greater civilian harm than military gain."¹⁰⁰ While HRW admits that it has no idea what actually happened and acknowledges that the IDF denied it struck the plant, the NGO still goes on to provide a lengthy exposition on how Israel "violated" international law in the attack.

Civilian Casualties

As mentioned, a key propaganda weapon for Palestinians, and Hamas in particular, is to inflate the number of Palestinian casualties in order to generate sensational media coverage and global outrage against Israel. This strategy is accomplished by co-locating fighters, weapons, and tunnels within Gaza's civilian infrastructure in order to maximize civilian harm and by manipulating casualty counts.

In manipulating casualty figures, Hamas' main strategy consists of concealing deaths of its fighters in order to inflate the alleged number of civilian casualties and in order to project an image of "victory" (i.e. the fewer combatant deaths, the more "successful" the war effort).¹⁰¹ Guidelines issued by Hamas during the war prohibited the publication of names, affiliations,

⁹⁹ <http://www.amnesty.org/en/news/israelgaza-attack-un-school-gaza-potential-war-crime-must-be-investigated-2014-07-30>

¹⁰⁰ <http://www.hrw.org/news/2014/08/10/gaza-widespread-impact-power-plant-attack>

¹⁰¹ http://www.terrorism-info.org.il/Data/articles/Art_20711/E_158_14_1902322402.pdf

photos, and details of combatant deaths. This policy was enforced not only on Palestinians, but on the international media via threats and intimidation.¹⁰²

Despite the myriad of evidence documenting Hamas' efforts to manipulate the coverage of the war and its casualties, NGOs used unsupported casualty claims as the sole basis for charges of "disproportionate" or "indiscriminate" Israeli attacks against Gaza civilians, even though under international law, the number of casualties is not a dispositive factor in determining whether war crimes have been committed.¹⁰³

NGOs issued dozens of publications purporting to document the number of Palestinian civilian casualties. Yet, these figures appeared to be solely based upon unreliable information released by Hamas. While some NGOs claimed to rely on UN statistics, the UN's data also originated from Hamas, and it does not appear UN agencies have done any independent analysis. No group questioned the Palestinian figures, nor did they present alternative data that pointed to potential discrepancies in the Palestinian claims.

NGOs frequently compared Palestinian casualty figures to the number of Israeli casualties, which were lower. To pursue their political objectives and to heighten the emotional exploitation, NGOs often deliberately and grossly inflated the Palestinian count, mislabeling combatants as civilians or "children." Child casualties were a particular focus for the NGOs, yet their publications ignored that rather than proof of malicious intent by Israel, the presence of child casualties might also be evidence of Palestinian use of child soldiers or human shielding.

Statistics on Israeli casualties always distinguished between combatants and civilians, while no distinctions were made when presenting Palestinian casualty claims. The numbers of Palestinians killed by the misfiring of Hamas rockets or premature/secondary explosions of Palestinian weaponry were not provided, and NGOs made no efforts to extract this data. Hamas also reportedly executed over 30 alleged collaborators and killed others in fights at a food line and antiwar protests, but again, this data was not presented separately.¹⁰⁴

¹⁰² http://www.terrorism-info.org.il/Data/articles/Art_20699/E_141_14_1634181847.pdf

¹⁰³ Judicial bodies such as the ICTY have taken note of this phenomenon. For instance, the Committee appointed by the ICTY Prosecutor to review alleged wrongdoing by NATO forces during the 1999 Kosovo campaign, concluded that "much of the material submitted to the Office of the Prosecutor consisted of reports that civilians had been killed, often inviting the conclusion to be drawn that crimes had therefore been committed."

¹⁰⁴ <http://www.i24news.tv/en/news/international/middle-east/38508-140728-hamas-executes-30-suspected-collaborators-report>; <http://www.algemeiner.com/2014/07/29/hamas-police-shoot-kill-starving-gazans-a-day-after-executing-protesters/>; <http://news.nana10.co.il/Article/?ArticleID=1072361>

The figures also did not distinguish between those who may have died of natural causes or accidents unrelated to the war. It is unknown if these deaths are included in the lists issued by Hamas and repeated by the UN and NGOs.

Another factor when examining casualties is the demographic breakdown. According to an analysis conducted by the *New York Times*, more than 34% of the casualties were men between the ages of 20 and 29, the demographic most likely to be associated with combatants, even though they comprise only 9% of Gaza's population.¹⁰⁵ An analysis conducted on the casualty list issued by Al Jazeera found that 80% of those killed were male and nearly 70% were aged 18-38.¹⁰⁶ A study conducted by Hebrew University reviewing B'Tselem's casualty figures of the 2008-09 fighting found similar results.¹⁰⁷ These studies, documenting the high proportion of deaths for fighting-age males, suggest that the strikes in Gaza were highly discriminate.

Oxfam's summary of civilian casualties in the 2014 Gaza fighting is representative of almost all NGO reporting:

The most recent escalation in violence in the Gaza Strip and southern Israel has resulted in the deaths of at least 2,100 Palestinians, with at least 85 per cent of those identified thought to be civilians. Six civilians in Israel and 64 Israeli soldiers have been killed. 10,000 Palestinians, the vast majority civilians, and more than 500 Israelis, of whom 101 are civilians, have been injured. With 43 per cent of the population in Gaza below the age of 14, children have paid a terrible price: 493 children have been killed, which is higher than the number of Palestinian armed militants killed in the fighting. In Gaza, residential buildings, hospitals, health clinics, schools and UN shelters have been directly hit; 17,200 homes have been completely destroyed or severely damaged... Approximately 100,000 persons have been made homeless as a consequence, with up to 520,000 people displaced by the fighting.¹⁰⁸

As mentioned, Oxfam conflates Palestinian combatant and civilian casualties while taking care to separate the Israeli figures. The NGO claims that 85% of Palestinians are "thought

¹⁰⁵ http://www.nytimes.com/2014/08/06/world/middleeast/civilian-or-not-new-fight-in-tallying-the-dead-from-the-gaza-conflict.html?_r=0. See also <http://www.bbc.com/news/world-middle-east-28688179>
<http://www.gatestoneinstitute.org/4570/gaza-civilian-casualties>

¹⁰⁶ <http://www.israellycool.com/2014/07/20/analysis-of-gazans-killed-so-far-in-operation-protective-edge/>

¹⁰⁷ http://www.ngo-monitor.org/data/images/File/btselem_castlead_richter_stein.pdf

¹⁰⁸ http://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-cease-failure-gaza-failing-policies-270814-en.pdf

to be civilians” based upon Hamas sources provided to the UN. Oxfam’s presentation of injuries is similar, where Israeli civilian injuries are specifically separated out from soldiers, while the Palestinian combatant and civilian figures are presented together and are again based upon Hamas data. No effort is made to document Gaza civilians killed by other Palestinians via rocket misfires or summary executions. The claim that 17,200 homes have been “completely destroyed or severely damaged” is provided with no source and appears exaggerated.¹⁰⁹ The paragraph emphasizes that “in Gaza residential buildings, hospitals, health clinics, schools and UN shelters have been directly hit” and that thousands have been displaced, even though the same is true for Israel. The context of Hamas embedding in civilian areas and launching rockets on population centers, which is the primary cause for the damage, is erased completely.

UN OCHA NGO Protection Cluster

NGOs, as part of the UN OCHA NGO Protection Cluster, played a central role in allegations regarding civilian casualties during the 2014 war in Gaza. The NGO Protection Cluster framework, like similar “clusters” in other regions, is linked to the United Nations Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territory (OCHA-OPT).¹¹⁰ Three NGOs were designated to provide data: B’Tselem, Al-Mezan, and PCHR. OCHA then acted as a “humanitarian coordination mechanism,” and “consolidate[d]” the NGO figures. As the Israeli member of the UNOCHA NGO “Protection Cluster,” B’Tselem provided the appearance of credulity to the casualty claims disseminated by UNRWA/OCHA officials and repeated widely by journalists, political leaders, and others.¹¹¹

Despite the façade of independence, the primary source for the casualty claims was the Hamas Ministry of Health in Gaza. B’Tselem presented what it terms “initial” and “preliminary” data, but these are inherently unverifiable and based solely on information from Palestinian

¹⁰⁹ According to a November 2014 UNDP publication, a survey of infrastructure damage conducted in Gaza after the war indicates that “there is a decrease in the number of the totally and severely damaged houses and an increase in the partially damaged ones (houses with minor or major damage) compared with preliminary estimates.” <http://www.ps.undp.org/content/dam/papp/docs/Publications/UNDP-papp-research-damageassessment2014.pdf> This claim also harkens to the phenomenon noted by Arkin during the 2006 Lebanon War that “even in cases where Israel did attack or damage many objects, the Lebanese government, news media, and many nongovernmental organizations (NGO) consistently described things as having been ‘destroyed’ when they were not destroyed or only peripherally damaged.”

¹¹⁰ http://www.lacs.ps/documentShow.aspx?ATT_ID=6742

¹¹¹ <http://fivethirtyeight.com/features/determining-the-body-count-in-gaza/>

sources in Hamas-controlled Gaza.¹¹² B'Tselem has no independent sources of information in Gaza, and as an Israeli organization, is unable to send personnel or verify information, particularly during major conflicts. Its only source of independent information is from telephone interviews with Gaza residents (details below), whose claims cannot be verified.

On July 27, B'Tselem posted a “Note concerning testimonies about the ‘Protective Edge’ campaign,” acknowledging that “With the current military campaign ongoing, B'Tselem is taking testimony from Gaza residents, mainly by telephone.¹¹³ B'Tselem verifies, to the best of its ability, the reliability and precision of the information reported; nevertheless, **in these circumstances, reports may be incomplete or contain errors. Given the urgency of informing the public about events in Gaza, B'Tselem has decided to publish the information now available.** When the military campaign ends, B'Tselem will supplement these reports as needed” (emphasis added). B'Tselem does not explain how “informing the public about events in Gaza” is served by publishing unverified and faulty casualty information. And as of January 31, 2015, B'Tselem has yet to update its original reports as promised, even though there are many mistakes.

Moreover, these errors remain on highly inflammatory graphics produced by B'Tselem used to generate international outrage against Israel. During the war, B'Tselem produced a slick infographic purporting to show “families bombed at home” by Israel.¹¹⁴ The NGO presents the data by individual home and claims to list all casualties from each strike. Some individuals are identified as “military branch operatives,” while the rest are presented by B'Tselem as innocent civilians and intended to convey a message that Israel was engaging in indiscriminate and disproportionate attacks. Independent studies, however, have shown that B'Tselem failed to identify at least 14 combatants. Nevertheless, the NGO has not taken steps to correct the graphic, continuing to disseminate a false narrative of Israeli venality rather than accurate information.

¹¹² <http://fivethirtyeight.com/features/determining-the-body-count-in-gaza/>

¹¹³ http://www.btselem.org/gaza_strip/20140727_al_burej

¹¹⁴ http://www.btselem.org/gaza_strip/201407_families

Combatants Misidentified by B'Tselem as Civilians

Date	Attack	B'Tselem Identified as Civilian	Affiliation	Link
July 8, 2014	Kaware family	Muhammad Ibrahim Kaware	PIJ's Al-Quds Battalions	http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf
July 8/9, 2014	Hamad Family	Ibrahim Mohammed Ahmad Hamad	al-Qassam	http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf
July 8/9, 2014	Hamad Family	Mahdi Mohammed Ahmad Hamad	PFLP	http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf
July 10, 2014	Al Haj Family	Omar al-Haj	al-Qassam	http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf
July 12, 2014	Al-Batsh family	Nahed Na'im al-Batsh	al-Qassam	http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf
July 12, 2014	Al-Batsh family	Bahaa Majed al-Batsh	al-Qassam	http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf
July 12, 2014	Al-Batsh family	Jalal Majed al-Batsh	al-Qassam	http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf
July 16/18, 2014	Al-Astal family	Hussein Abd al-Nasser al-Astal	al-Qassam	http://www.terrorism-info.org.il/Data/articles/Art_20695/E_134f_14_1598950107.pdf
July 19, 2014	A-Zweidi family	Mohammad Khaled Jamil al-Zweidi	Al-Quds	http://www.terrorism-info.org.il/Data/articles/Art_20704/E_147_14_1542981406.pdf
July 20, 2014	al-Hayah family	Osama Khalil Isma'il al-Hayya	al-Qassam	http://www.terrorism-info.org.il/Data/articles/Art_20704/E_147_14_1542981406.pdf
July 20, 2014	Ziyadah family	Omar Sha'ban Hassan Ziada	Terrorist operative	http://www.terrorism-info.org.il/Data/articles/Art_20708/E_151_14_1970189202.pdf
July 21, 2014	Siyam family	Mohammad Mahrous Salam Siam	National Resistance Battalions	http://www.terrorism-info.org.il/Data/articles/Art_20708/E_151_14_1970189202.pdf

Date	Attack	B'Tselem Identified as Civilian	Affiliation	Link
July 20/21, 2014	Siyam family	Kamal Mahrous Salam Siam	al-Qassam	http://www.terrorism-info.org.il/Data/articles/Art_20708/E_151_14_1970189202.pdf
July 29, 2014	Dheir famliy	Izat Dheir	PIJ Al-Quds Battalions operative.	http://www.terrorism-info.org.il/Data/articles/Art_20734/E_191_14_1801441599.pdf

In parallel, B'Tselem repeats claims from PCHR and Al Mezan – both Gaza-based NGOs that are closely linked to the Hamas agenda. PCHR and Al-Mezan are political organizations without credible methodologies for analysis of casualty claims, as shown in the January 2009 conflict (Cast Lead). During the 2008-09 conflict, PCHR's civilian casualty claims were very similar to those initially provided by Hamas (via the Gaza Health Ministry), and later shown to be entirely unreliable. At the time, PCHR claimed that Gaza casualties were “1,167 non-combatants (82.2%) and 252 resistance activists (17.8%).” In fact, as confirmed by the IDF and Hamas itself in 2010, more than half of the total were combatants.

As in 2008-09, PCHR and Al Mezan claim that more than 80% of those killed were civilians (84% and 82%, respectively).¹¹⁵ They say they distinguish between civilians or combatants by visiting Gaza hospitals and morgues. If there is no clear evidence (i.e., casualties with weapons), these NGOs claim to quiz family, neighbors, and terror organizations (Hamas, PIJ, etc.) on whether individuals were affiliated. Independent review of PCHR and Al Mezan lists have found, however, dozens of combatants listed as civilians.¹¹⁶

For instance, one study, reviewing PCHR's casualty claims, found nearly 40 individuals were misidentified as civilians by the NGO.

Palestinian Combatants Misidentified by PCHR as Civilians¹¹⁷

Date	Name	Terrorist organization he belonged to
7/12/2014	Haitham Ashraf Zo'rob	Hamas, Al Qassam Brigades

¹¹⁵ http://www.nytimes.com/2014/08/06/world/middleeast/civilian-or-not-new-fight-in-tallying-the-dead-from-the-gaza-conflict.html?_r=0. See also <http://www.bbc.com/news/world-middle-east-28688179>

¹¹⁶ <http://www.newrepublic.com/article/politics/numbers-game>

¹¹⁷ <http://elderofziyon.blogspot.co.il/search/label/Fake%20Civilians%202014>

Date	Name	Terrorist organization he belonged to
7/12/2014	Anas Kandil	Islamic Jihad's Al Quds Brigades
7/14/2014	Adham Mohammed 'Abdul Fattah 'Abdul 'Aal	Fatah's Al Nidal Brigades
7/15/2014	Jihad al-'Eid	Islamic Jihad's Al Quds Brigades
7/19/2014	Alaa' Jamal Barda	Al Qassam Brigades
7/20/2014	Mohammed 'Abdul Rahman Mahmoud Abu Hamad	Fatah's Al Nidal Brigades
7/20/2014	Mohammed Mahmoud al-Maqadma	Al Qassam Brigades
7/21/2014	Ali Mahmoud Jundiya	Qassam Brigades
7/22/2014	Aadel Mohammed Abu Hwaishel	Commander in the Qassam Brigades
7/23/2014	Na'im Jum'a Abu Mizyed	Islamic Jihad's Al Quds Brigades
7/24/2014	Abdul Qader Jameel al-Khaldi	Hamas
7/24/2014	Mohammed Barham Abu Draz	Al Qassam Brigades
7/25/2014	Ashraf Ibrahim Al Najjar	Hamas
7/26/2014	Abdul Majeed Abdullah Abdul Majeed Aidi	Islamic Jihad
7/26/2014	Ghassan Taher Abu Kamil	Al Qassam Brigades
7/26/2014	Mohammed Fayez al-Shareef	Hamas
7/26/2014	Nasser 'Abdu Shurrab	Islamic Jihad's Saraya terror division
7/27/2014	Ayman Akram Ismail al-Ghalban	Al Qassam Brigades
7/27/2014	Mohammed Mahmoud Rajab Hajjaj	Hamas
7/27/2014	Wassim Nasser 'Abdu Shurrab	Islamic Jihad's Saraya terror division
7/29/2014	Ibrahim Ahmed al-Hashash	Al Qassam Brigades
7/29/2014	Mohammed Ahmed al-Hashash	Al Qassam Brigades
7/29/2014	Mas'oud Ahmed al-Hashash	Al Qassam Brigades
7/29/2014	Sa'id Ahmed al-Hashash	Al Qassam Brigades
7/30/2014	Mohammed Mahmoud al-Astal	Fatah's Al Nidal Brigades
7/30/2014	Ahmed Mohammed al-Majadia	Islamic Jihad's Al Quds Brigades
8/1/2014	Abdul Karim al-Louh in Deir al-Balah	Islamic Jihad's Al Quds Brigades
8/1/2014	Mahmoud Dahlan	Islamic Jihad's Al Quds Brigades
8/1/2014	Ismail Zuhair Mohammadain	Qassam Brigades
8/1/2014	Mo'ammam Fadel Shamali	Leader of elite Qassam Brigades unit
8/2/2014	Ussama 'Abdul Malek Abu Mu'alla	Islamic Jihad's Al Quds Brigades Nusseirat

Date	Name	Terrorist organization he belonged to
		Battalion
8/2/2014	Aatef Saleh al-Zameli	Islamid Jihad
8/3/2014	Mohammed Khattab	Islamic Jihad's Al Quds Brigades
8/3/2014	Yousef Ejmai'an al-Zameli	Islamid Jihad
8/4/2014	Yousef Jaber Darabih	Islamid Jihad
8/23/2014	Hayel Shihda Abu Dahrouj	Islamic Jihad's Al Quds Brigades
11/17/2014	Eyad Radi Abu Raida	Islamic Jihad

Al Mezan has also frequently mislabeled combatants as civilians in its publications. In one prominent example, Al Mezan blamed the “IOF” for killing civilian “journalist” Abdullah Murtaja on August 25, 2014. Murtaja reportedly worked for Hamas’ Al Aqsa TV, a designated terrorist entity, by the US Treasury department.¹¹⁸ Despite the questionable status of those working for Al Aqsa TV as “civilian journalists,” a video posted on YouTube also showed Murtaja giving a “martyr” statement and revealed him to be a member of Hamas’ Al Qassam Brigades.¹¹⁹

On November 14, UNESCO issued an update on the case, noting that “information has been brought to the attention of UNESCO that Mr Murtaja was a member of an organized armed group -- an active combatant, and, therefore, not a civilian journalist.”¹²⁰ Consequently, UNESCO withdrew an August 29 statement condemning his killing, and Irina Bokova, UNESCO’s Director General “deplore[d] attempts to instrumentalize the profession of journalists by combatants.” Al Mezan, however, did not retract its earlier statements labeling Murtaja as a “civilian.”

In contrast to these and other NGO claims that more than 80% of the casualties in Gaza were civilian, independent analysis conducted by the ITIC of more than 75% of the casualties claimed by Palestinian sources demonstrates that the actual breakdown is approximately 55% combatant to 45% civilian.¹²¹ Of the civilian casualties, it is not yet known how many were killed in military strikes and how many died of natural causes or accidents. Colonel Richard

¹¹⁸ <http://www.treasury.gov/press-center/press-releases/Pages/tg594.aspx>

¹¹⁹ https://www.youtube.com/watch?v=X9_FvBCaYeU#t=127

¹²⁰ <http://www.unesco.org/new/en/media-services/single->

[view/news/unesco_director_general_statement_regarding_abdullah_murtaja/#.VImBGTGUd1Y](http://www.unesco.org/new/en/media-services/single-view/news/unesco_director_general_statement_regarding_abdullah_murtaja/#.VImBGTGUd1Y)

¹²¹ http://www.terrorism-info.org.il/Data/articles/Art_20753/E_200_14_172393803.pdf

Kemp has also remarked that civilian casualties in the Gaza war were only one-fourth of the global average in warfare.¹²² Kemp stated that while there was approximately one civilian death for every combatant in Gaza, in other global conflicts, there were generally four civilian deaths for every fighter.

Witness Testimony

NGO reporting on the Gaza War relied almost entirely upon interviews with residents of the territory. NGO publications overwhelmingly comprised emotive accounts and anecdotes with “survivors.” These “witnesses” almost always claimed that there were no combatants or war objectives anywhere in the vicinity of military strikes (usually those by Israel) and that there was no possible justification for attacks. These claims were then used as “proof” that the strikes lacked “military necessity” and were therefore “indiscriminate” and “disproportionate” and a violation of international humanitarian law.

The NGOs failed to disclose many key issues related to witness statements. For instance, they did not provide information as to how witnesses were selected for interview, who translated the interviews, whether members of Hamas were present, and whether interviewees were contacted by Hamas prior to or following the NGO meetings. This information is critical in areas like Gaza that are tightly controlled by terrorist organizations.

Eric Meldrum, a former staffer with the International Criminal Tribunal’s Prosecutor’s Office, describes the lack of quality he and colleagues encountered in terms of “accuracy, clarity, and neutrality” of witness statements taken by NGOs.¹²³ For instance, he notes that the taking of full detailed statements by NGOs hampered prosecutions at the international level because of the low “quality of the information contained within the statements” and “the level of training [minimal] of NGO staff.” Also of concern was NGO “neutrality” and whether the statements “reflected the actual words of witnesses.” He also notes that hearsay was a problem because the “NGO statements were not making clear what the witness actually saw or heard as opposed to what they had been told or had overheard.”¹²⁴ As a result, he remarks that senior ICTY staff

¹²² <http://www.jpost.com/Arab-Israeli-Conflict/Former-British-commander-in-Afghanistan-No-army-acts-with-as-much-discretion-as-IDF-does-374382>

¹²³ <http://architecture.brookes.ac.uk/research/cendep/dissertations/EricMeldrum.pdf>

¹²⁴ Id. at 30.

noticed “a clear difference between the standards adopted by ‘professional police or criminal prosecutors’ and that of the NGOs.”¹²⁵

In his independent analysis of the 2006 Lebanon War, William Arkin discusses the problems stemming from the excessive reliance of HRW, Amnesty, and other NGOs on Lebanese witnesses:

The prominent international human rights organizations which investigated damage to the civilian infrastructure in Lebanon further reported that they found little or no evidence of previous Hezbollah presence where attacks took place, suggesting Israeli intent to destroy Lebanon’s infrastructure and economy as well as gross neglect and lack of discrimination in attacks, even against legitimate targets.

The problem with this dominant and conventional accounting of damage is that most of it is grossly exaggerated, misleading, or patently false. Based upon on-the-ground inspections, discussions with Israeli and Lebanese officials, imagery analysis, and a close reading of government and international organization materials, a good majority of the reports of damage in Lebanon are incorrect or downright fraudulent.¹²⁶

Ironically, Amnesty’s head of field investigations, Donatella Rovera, admits that witness accounts have limited credibility, particularly those obtained by her own organization in Gaza. In an April 2014 article, Rovera acknowledged that

Conflict situations create highly politicized and polarized environments, which may affect even individuals and organizations with a proven track record of credible and objective work. Players and interested parties go to extraordinary lengths to manipulate or manufacture ‘evidence’ for both internal and external consumption.¹²⁷

¹²⁵ *Id.* at 40.

¹²⁶ William M. Arkin, “Divining Victory - Airpower in the 2006 Israel-Hezbollah War,” Air University Press 76 (2007), available at http://www.4shared.com/document/NRfziHeq/Divining_Victory_-_Airpower_in.html. Arkin further states that “[t]here is no evidence that Israel intentionally attacked any proscribed medical facilities, no real proof that it “targeted” ambulances (and certainly not because they were ambulances engaged in protected activity), no evidence that it targeted mosques or other religious structures, and there were no intentional attacks on schools. The Qreitem “Old Lighthouse” in Beirut was attacked because it housed radar and observation posts used to target Israeli ships. Grain silos were hit incidental to attacking a naval base exclusively used by Hezbollah.” *Id.* at 76-7.

¹²⁷ <http://phap.org/thematic-notes/2014/april/challenges-monitoring-reporting-and-fact-finding-during-and-after-armed-co>

In addition, she explained that “Evidence may be rapidly removed, destroyed, or contaminated – whether intentionally or not. ‘Bad’ evidence can be worse than no evidence, as it can lead to wrong assumptions or conclusions.” She further admitted,

In Gaza, I received partial or inaccurate information by relatives of civilians accidentally killed in accidental explosions or by rockets launched by Palestinian armed groups towards Israel that had malfunctioned and of civilians killed by Israeli strikes on nearby Palestinian armed groups’ positions. When confronted with other evidence obtained separately, some said they feared reprisals by the armed groups.¹²⁸

In other words, Amnesty, HRW, and other NGOs relying predominately on claims of “eyewitnesses” regarding the source of attacks and military positions have little to no credibility.

NGO Lack of Military Expertise

The absence of military expertise directly contributes to the lack of credibility in NGO publications on the Gaza war. They have little to no military experience or understanding of how armies operate. NGOs overwhelmingly focus on damage occurring in war, but do not understand the implications of it. As noted by Arkin in his study of the 2006 Hezbollah war, in contrast to the NGO emphasis on anecdotal suffering derived from brief on-site surveys and interviews, Arkin was “mindful that images of bomb damage and enumerations of a relentless effort could also end up conveying exactly the opposite of the actual meaning.” Indeed, he writes, “divining Israeli and Hezbollah intent through examining destruction on the ground . . . can, if one is not careful, convey a much distorted picture.”¹²⁹

Some military claims made by NGOs were technically impossible or completely illogical. Even Amnesty’s Secretary General Salil Shetty openly acknowledges that the NGO is “not an expert (sic) on military matters. So we don’t want to, kind of, pontificate on issues we don’t really understand.”¹³⁰ Yet, despite Amnesty’s admitted lack of military expertise, this has not stopped the NGO from publishing hundreds of claims relating to military matters, including dozens in its reports on the Gaza fighting.

¹²⁸ Id.

¹²⁹ Arkin, *Divining Victory* at xviii

¹³⁰ <http://www.aljazeera.com/programmes/talktojazeera/2014/02/salil-shetty-speaking-truth-power-201427102725815233.html>

An analysis of Amnesty’s reporting on US drone strikes in Pakistan’s tribal regions provides a stark example of the NGO’s lack of expertise. In Amnesty’s publication “Will I Be Next?,” the NGO relies on accounts of eyewitnesses that drones were responsible for causing hundreds of civilian deaths. These eyewitnesses claimed to have seen drones flying in formations of two or three prior to their firing missiles on innocent civilians. Yet, as noted by military experts, drones currently do not have the capability to fly in formation. Moreover, drones generally fly at altitudes where they are inaudible. It is therefore, difficult, if not impossible, for witnesses to determine whether an attack was launched by a drone, helicopter, or plane.¹³¹ Significantly, these witnesses would also not necessarily know if attacks were launched by the Pakistani military, rather than the US, and Amnesty does not even consider this possibility even though the Pakistani military operates in the area and often flies its planes in formation.

Like Amnesty, HRW has “little expertise about modern asymmetrical war.”¹³² HRW makes military claims throughout its reporting, but often does not disclose whether military experts have advised the NGO. To the extent it has named individuals, many appear to have no military experience but rather are hobbyists on weapons systems or “citizen journalists.” It does not appear that any current HRW researchers have actual expertise or experience in military tactics, strategy, or operations. HRW’s “senior military expert” (employed from 2003-09), who frequently issued publications on Israel, had no verifiable military experience and was forced to leave the organization in scandal when it was revealed that he had an obsession with Nazi memorabilia.¹³³

Instead of credible evidence and military assessments that reflect knowledge and experience, HRW publications emphasize technical and legal claims that are unfounded or irrelevant, but present the façade of expertise. These include references to satellite imaging, GPS coordinates, and weapons specifications.

HRW’s lack of military expertise has led to fundamental errors in its reporting. For example, in a June 30, 2009 publication, HRW accuses the IDF of using drones to launch precise weapons during December 2008-January 2009 Gaza war, leading to civilian deaths in the

¹³¹ <https://medium.com/war-is-boring/dear-amnesty-international-do-you-even-know-how-drones-work-56b89ee705b2>

¹³² <http://www.unwatch.org/site/apps/nlnet/content2.aspx?c=bdKKISNqEmG&b=1317489&ct=8884881>

¹³³ http://www.ngo-monitor.org/article/expert_or_ideologues_hrw_s_defense_of_marc_garlasco_s_nazi_fetish

absence of military necessity. “The analysis is based on 6 case studies involving an alleged 29 civilian deaths.” HRW claims that these deaths should have been avoided, and that IDF drone operators failed to act accordingly. Using the term “incredibly precise,” HRW claims: “With these visual capabilities, drone operators should have been able to tell the difference between fighters and others directly participating in hostilities, who are legitimate targets, and civilians, who are immune from attack, and to hold fire if that determination could not be made.” But HRW does not quantify or indicate the criteria used for this assertion, nor do the authors provide sources.¹³⁴

Commenting on the publication, Robert Hewson, editor of *Jane’s Air-Launched Weapons*, stated, “Human Rights Watch makes a lot of claims and assumptions about weapons and drones, all of which is still fairly speculative, because we have so little evidence.”¹³⁵ Similarly, retired British army colonel Richard Kemp, a veteran of Iraq and Commander of British forces in Afghanistan, in responding to HRW claims that a launch platform could be determined solely by sound, “questioned whether such distinctions could be made, not least as the Spike’s range is 8 km (5 miles) -- enough to put helicopters or naval boats out of earshot. In a battlefield, in an urban environment, with all the other noises, it’s certainly more than likely you would not hear something five miles away.”¹³⁶

In a September 2013 report on Syria, HRW claimed that the Assad government fired Sarin-filled rockets, striking targets more than 9km away from the suspected launch locations of Syrian government troops. According to the *New York Times*, it appeared HRW based its claim “in part on connecting reported compass headings for two rockets” cited in a UN report along with the published range for the rocket.¹³⁷ A review of this data by two weapons scientists concluded, however, that “the maximum range of the munition would be no more than three kilometers, and likely less” and far below the published range because it “would have been undermined by its large mass and by drag” attributed to the Sarin warhead. Due to its lack of expertise, HRW apparently did not consider or understand the physics involved with rocket

¹³⁴ http://www.hrw.org/sites/default/files/reports/iopt0609webwcover_0.pdf

¹³⁵ Dan Williams, “Human Rights Watch accuses Israel over Gaza drones,” June 30, 2009 <http://www.reuters.com/article/worldNews/idUSTRE55T37A20090630?feedType=RSS&feedName=worldNews&pageNumber=2&virtualBrandChannel=0&sp=true>

¹³⁶ Id.

¹³⁷ <http://www.nytimes.com/2013/12/29/world/middleeast/new-study-refines-view-of-sarin-attack-in-syria.html?pagewanted=2&r=0&ref=world>

science and therefore failed to incorporate critical details like weight and drag when issuing its claims on the attacks.

These fundamental errors of Amnesty and HRW are endemic in almost all NGO reporting on armed conflict.

Targeting

Issues related to Israeli targeting was another area where NGO publications lacked credibility. Under the laws of war, targets must be confined to military objectives, defined as objects whose “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.” (AP1 Art. 52). According to the ICRC commentaries, “military objectives” are “all objects directly used by the armed forces: weapons, equipment, transports, fortifications, depots, buildings occupied by armed forces, staff headquarters, communications centres etc.”¹³⁸ Military objectives can also include strategic sites and buildings. Moreover, as noted by the ICRC, “most civilian objects can become useful objects to the armed forces. Thus, for example, a school or a hotel is a civilian object, but if they are used to accommodate troops or headquarters staff, they become military objectives.”

Once a legal target is identified, it must also be determined whether an attack would be proportional. If the attack “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,” it cannot take place. (AP1 Art. 51(5)(b)). No clear standards exist, however, as to how one determines what constitutes “excessive” harm. And as noted by the Prosecutor of the International Criminal Court, “the death of civilians during an armed conflict, no matter how grave and regrettable, does not in itself constitute a war crime. International humanitarian law and the Rome Statute permit belligerents to carry out proportionate attacks against military objectives, even when it is known that some civilian deaths or injuries will occur.”¹³⁹

¹³⁸<https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?viewComments=LookUpCOMART&articleUNID=F08A9BC78AE360B3C12563CD0051DCD4>

¹³⁹ http://www.icc-cpi.int/NR/rdonlyres/04D143C8-19FB-466C-AB77-4CDB2FDEBEF7/143682/OTP_letter_to_senders_re_Iraq_9_February_2006.pdf

The Israeli army has an extensive system in place to evaluate whether a given target is lawful, including embedding legal advisors within each division. These advisors are also available to provide real time legal advice in the midst of combat. Few if any other armies engage in this practice.

Military officials from all over the world come to study the Israeli model. General Martin Dempsey, Chairman of the US Joint Chiefs of Staff, stated, “Israel went to extraordinary lengths to limit collateral damage and ensuing casualties. In fact, we sent a lessons learned team . . . of senior officers and [NCOs] to work with the IDF to get the lessons from the [Gaza operation] . . . to learn about [preventing] casualties and tunneling because Hamas had become a subterranean society.”¹⁴⁰ He went on to say, “the IDF is not interested in creating civilian casualties . . . I can say to you with confidence that they are acting responsibly.”

Former commander of British forces in Iraq and Afghanistan, Colonel Richard Kemp, has issued similar sentiments: “No army in the world acts with as much discretion and great care as the IDF in order to minimize damage. The US and the UK are careful, but not as much as Israel.”¹⁴¹ He has also said that “the IDF’s actions during Operation Protective Edge were very reasonable, especially in light of the fact these actions were meant, first and foremost, to strike Hamas as a military organization.”¹⁴²

In contrast to the views of the most senior and experienced military officials, NGOs leveled charges that Israel “deliberately targets civilians” and engages in “indiscriminate attacks.” Almost every target struck by Israel was declared by the NGOs to be an unlawful strike. When the evidence so obviously pointed to a military objective at the target site, the NGOs instead claimed the Israeli strike was “disproportionate.”

A joint letter issued by a group of Israeli NGOs during the fighting is representative:

...Under international humanitarian law, the argument that combatants from Hamas or other organizations are operating from within the civilian population does not, in itself, render civilians and civilian sites military objectives that may be attacked . . .

Israeli [sic] bears sole responsibility for its strikes on the Gaza Strip, even if Palestinian organizations are operating unlawfully.

¹⁴⁰ <http://www.ustream.tv/recorded/55011394>

¹⁴¹ <http://www.jpost.com/Arab-Israeli-Conflict/Former-British-commander-in-Afghanistan-No-army-acts-with-as-much-discretion-as-IDF-does-374382>

¹⁴² id

Deliberate attacks against civilians and civilian property are a grave breach of international humanitarian law.¹⁴³

Unlike the Israeli NGO letter, which incorrectly claims civilian objects can never become military objectives, in one of its major publications about the war, Amnesty admits that Israel was striking military objectives. But, apparently because the NGO must always ascribe illegality to the actions of the IDF, Amnesty alleges Israel acted disproportionately in striking those legal objectives:

Amnesty International has been able to identify a named individual who was an apparent member of an armed group. However, even if a fighter or a military objective was indeed present (or thought to have been present), the loss of civilian lives, injury to civilians and damage to civilian objects appear disproportionate, that is, out of proportion to the likely military advantage of carrying out the attack, or otherwise indiscriminate. However, due to lack of information from the Israeli authorities, Amnesty International cannot be certain in any of these attacks what was being targeted.¹⁴⁴

Interestingly, immediately after Amnesty accused Israel of acting disproportionately, it also admitted, “it cannot be certain in any of these attacks what was being targeted.” In other words, Amnesty has no information at all and is therefore completely unqualified to render any proclamations about what happened.

As these two representative examples make clear, there are apparently no strikes at all that would meet the test for what NGOs consider to be legal. As noted by philosopher and ethicist Professor Asa Kasher, the condemning of every single action taken by the IDF as illegal, something no legitimate investigatory body would do, is proof that NGO reports cannot be seen as credible.¹⁴⁵

Whether an attack complies with the principles of distinction and proportionality requires an assessment of many factors. For instance, one must have knowledge as to what was known to military commanders prior to an attack, including enemy locations, presence of military objects,

¹⁴³ [Joint letter: Grave concern regarding Israeli calls to vacate northern Gaza Strip](#) (press release, July 14, 2014)

¹⁴⁴ <http://www.amnesty.org/en/library/asset/MDE15/032/2014/en/613926df-68c4-47bb-b587-00975f014e4b/mde150322014en.pdf>

¹⁴⁵ Remarks made at November 12, 2014 address at the UN Library Geneva.

presence of civilians, anticipated harm to civilians, the military advantage expected, and evidence of intent to cause civilian harm. These factors are evaluated prospectively rather than based on the outcomes of a strike.

NGOs ignore these aspects because they do not possess the expertise or access to information that would allow them to make these assessments – and because more complex evaluations would conflict with their political agendas. As a result, NGOs almost invariably claim strikes were unlawful solely based upon outcomes. While on occasion they may claim to address the factors outlined above, the analysis is generally a façade, and the NGOs always decide that there was no “military necessity” or “justification” for any strike. They frequently disregard the more logical explanation for a military action and instead impute malevolent intent on behalf of the Israeli government and the IDF.

For instance, NGOs will conclude that areas of intense or widespread damage are the result of intentional or disproportionate targeting, rather than considering the more likely explanations that there were large concentrations of targets in one area or that those targets were concentrated within civilian structures. Sometimes, the explanation might be as banal as a simple mistake (tragic, but not illegal). Yet again, the NGOs never explain why they always find wicked intent behind every strike.

An HRW press release issued on July 16, 2014 is indicative:

Human Rights Watch investigated four Israeli strikes during the July military offensive in Gaza that resulted in civilian casualties and either did not attack a legitimate military target or attacked despite the likelihood of civilian casualties being disproportionate to the military gain. Such attacks committed deliberately or recklessly constitute war crimes under the laws of war applicable to all parties. In these cases, the Israeli military has presented no information to show that it was attacking lawful military objectives or acted to minimize civilian casualties.¹⁴⁶

HRW accuses Israel of acting indiscriminately, but then to cover itself when evidence appears proving the targets were military objectives, the NGO then claims Israel acted disproportionately, though it offers no analysis as to what constitutes excessive civilian harm or how it determined and weighed the expected harm with the anticipated military advantage. For good measure, and because it does not possess any information as to these critical factors, it simply concludes that Israel had no

¹⁴⁶ <http://www.hrw.org/news/2014/07/15/israelpalestine-unlawful-israeli-airstrikes-kill-civilians>

military justification. It is also interesting that HRW claims it “investigated” the strikes at issue, even though the publication was issued only a few days after the alleged strikes, in the midst of an intense war, and when HRW has no investigators on the ground in Gaza.¹⁴⁷

The NGO approach is not limited to Israel. HRW’s former research director explains this phenomenon while analyzing HRW’s coverage in Ukraine (similar motivating factors appears present in most NGO coverage of the Gaza war):

I encountered that well-established biased frame regarding HRW in the coverage of Mariupol . . . I asked, incredulous, why [the HRW researcher] could not include in her “Dispatch” the fact that armed people in civilian clothing popped up in the crowd of unarmed bystanders and shot directly at the Ukrainian troops -- this is clearly documented on several videos . . . [and] makes it absolutely clear that far from using the “excessive force” that HRW loves to talk about with every state, they used minimal force, returned fire only when fired on themselves, and shot at the ground, not people.

[The HRW researcher’s] response . . . *That this couldn’t be reported because it would exonerate the Ukrainian army from charges of excessive use of force, and therefore “couldn’t” be part of “human rights reporting.”* Circular reasoning if there ever was one, but I’m glad for that debate because it gave me a great insight into the mind of Human Rights Watch: it cannot accept an exonerating back story, background, mitigating circumstances, factors of armed provocateurs and armed rebels, etc. because to do so would mean they were justifying what *might be* human rights violations by a state.

Similarly, in a study conducted by University College of London and the Conflict Research Analysis Center (a Colombian-based think tank) analyzing the reporting of HRW and Amnesty, researchers found that HRW and Amnesty tended to focus more on the actions of the Colombian government and paramilitaries rather than left-wing guerilla groups like the FARC. Amnesty answered that its primary concern was the actions of the government: “[F]or strategic reasons AI’s focus has to be on changing government policy. They are the signatories to

¹⁴⁷ HRW’s commentary is also reflective of a complete ignorance regarding military operations. Aside from a childish claim that Israel wants to “collectively punish” and kill civilians, HRW never convincingly explains why the IDF would take the time, effort, and huge expense, to simply bomb random homes in Gaza.

international human rights treaties and should hold a monopoly of power. As such, they will continue to be the main, but not exclusive, focus of AI's work."¹⁴⁸

Approach towards Hamas

In Gaza, NGOs generally ignored Hamas and other terror organizations when analyzing the legality of military operations, as if, in the words of Arkin, Israel was fighting some “nonexistent force.” Alternatively, they tended to give Hamas the benefit of the doubt for its actions. The soft-pedaling of Palestinian terrorist violations belies the NGO claims of objectivity and credibility.

For instance, in a statement criticizing Israel's policy of warning civilians prior to attacks,¹⁴⁹ Amnesty writes:

During the current hostilities, Hamas spokespeople have reportedly urged residents in some areas of the Gaza Strip not to leave their homes after the Israeli military dropped leaflets and made phone calls warning people in the area to evacuate. However, in light of the lack of clarity in many of the Israeli warnings ... **such statements by Hamas officials could have been motivated by a desire to avoid further panic.** In any case, public statements referring to entire areas are not the same as directing specific civilians to remain in their homes as ‘human shields’ for fighters, munitions, or military equipment.” (emphasis added)

Amnesty's comments about Hamas being “motivated by a desire to avoid further panic” are simply bizarre and must be viewed as promoting Hamas propaganda. Hamas is a terrorist organization that steals humanitarian aid; hides its leadership in hospitals; stores its rockets in schools, mosques, and private homes; and conducts military operations from within civilian areas placing them in extreme danger. It summarily executes collaborators and has intimidated and threatened the international press. Hamas and other Palestinian terror groups do not care about the safety of Palestinians in Gaza or preventing “panic.” In proffering this incredible claim,

¹⁴⁸ Amnesty International, *Amnesty International response to Andrés Ballesteros, Jorge A. Restrepo, Michael Spagat, Juan F. Vargas*, The Work of Amnesty International and Human Rights Watch: Evidence from Colombia, CERAC, Colombia, February 2007 (2007), available at <http://www.amnesty.org/en/library/asset/AMR23/006/2007/en/83aa83aa-d399-11dd-a329-2f46302a8cc6/amr230062007en.html>.

¹⁴⁹ Amnesty's and other NGOs' approach to Israeli warnings is another example of NGOs simply looking for ways to criticize and accuse Israel of illegality. Are these organizations seriously arguing that it is a bad thing to warn civilians? There is no doubt, that if Israel hadn't issued warnings, the NGOs would have attacked Israel for not doing so.

Amnesty ignores the many statements¹⁵⁰ of Hamas leaders telling its citizenry to ignore Israeli warnings and to act as human shields.

Similarly, in a *New York Times* article discussing human shielding, Bill Van Esveld, an HRW researcher, claimed that the legality of Hamas fighting and embedding in civilian areas is “a bit of a fluid concept . . . If you have any choice in the matter, you should not be fighting from an apartment building full of civilians.”¹⁵¹ Again, like Amnesty’s comment, this statement is absurd. There is nothing “fluid” about the legality of Hamas’ fighting tactics. They are clearly prohibited under the laws of war, on the one hand, because the terror organization is illegally placing civilians at risk by co-locating, and also because the attacks themselves are directed at Israeli civilians. Van Esveld’s claim that “choice” plays a role is ridiculous and ignorant. There is no “choice” to engage in prohibited activity. If Hamas cannot fight legally, it should be fighting at all.

Brookings Institution scholar Ben Wittes summarizes the consequences of the NGO approach:

In my view, we are talking about [asymmetric war] today not simply because of the barbarities of any groups but because of the reaction over time to the behavior of those groups by NGOs, international organizations, activist groups, and many members of the legal academy—for whom systematic violations of the law of armed conflict by insurgent groups is just not quite as troubling as is the reaction to those violations, often taken in rigorous compliance with the LOAC or in good faith attempts to comply, by organized state militaries, particularly those of the United States and Israel.

The crisis in the law of armed conflict, in other words, emerges not from the willingness of non-state groups to flout its most fundamental strictures as a matter of core strategy. It emerges, rather, from the impunity with which they do so not merely in relation to the formal legal consequences . . . but relative to the indulgence of the self-appointed guardians of IHL, human rights law, and international law more generally. To put it simply, the world has responded to the ever-increasing outrageousness of these groups with ever-increasing demands on their opponents—ironically, the most legally scrupulous militaries in the world—to

¹⁵⁰ <https://www.youtube.com/watch?v=eQ6S0-o3uFI>

¹⁵¹ http://www.nytimes.com/2014/07/24/world/middleeast/israel-says-hamas-is-using-civilians-as-shields-in-gaza.html?_r=0

achieve something close to perfection in civilian protection. The soft-law world is just not quite as horrified by Hamas as that group's behavior and the relevant IHL conventions would lead one to expect. And it's way more horrified by, say, civilian casualties in US drone strikes against terrorist leaders than one might expect given the actual requirements of IHL with respect to air strikes against legitimate military targets placed amid civilian life. The political pressures generated by the law, therefore, tend to militate in exactly the wrong direction. And that is not the fault of the terrorists. To assign blame on this point, rather, we must look to New York, to Geneva, to many European capitals, and to the fundraising strategies of human rights groups.¹⁵²

Distortions of International Law

During the Gaza War, NGOs frequently adopted legal positions that were not widely accepted or even accepted at all. They did not provide competing views of the law in their publications, and they rarely, if ever, informed their readers that they were adopting an obscure position. Often, they claimed to provide the existing law but not disclose that the actor in question was not a party to a particular international treaty and therefore not bound by the rule. When there was no existing treaty, NGOs simply turned to supposed principles of customary law. In some cases, an NGO simply invented a legal position out of whole cloth. In all too many instances, NGOs selectively relied on legal provisions while ignoring the overall context or the existence of conflicting law. Consequently, many legal experts recommend that NGOs avoid developing legal conclusions and instead leave legal questions to the courts.

Examples of NGO distortions related to international law abound. For instance, HRW frequently alleges that the use of cluster munitions “violates the laws of war” and “may amount to war crimes.”¹⁵³ Yet there is no international agreement stating that cluster munitions “violate the laws of war,” nor is there any customary law preventing their use.¹⁵⁴ An international treaty was adopted in 2008, whereby many countries voluntarily agreed to stop the use of cluster munitions in order to minimize civilian harm, but this treaty was silent as to the whether cluster

¹⁵² <http://www.lawfareblog.com/2015/01/notes-on-the-erosion-of-norms-of-armed-conflict/#more-42607>

¹⁵³ <http://www.hrw.org/news/2014/10/20/ukraine-widespread-use-cluster-munitions>

¹⁵⁴ In fact, as noted by the Prosecutor for the International Criminal Court, “The Rome Statute contains a list of weapons whose use is prohibited *per se* (Article 8(2)(b)(xvii)-(xx). Cluster munitions are not included in the list and therefore their use *per se* does not constitute a war crime under the Rome Statute.”

http://www.icc-cpi.int/NR/rdonlyres/04D143C8-19FB-466C-AB77-4CDB2FDEBEF7/143682/OTP_letter_to_senders_re_Iraq_9_February_2006.pdf

munitions violate the laws of war. To date, 88 countries are parties to that treaty, but many countries have not joined; their use of this weapon, *a priori*, cannot be deemed illegal.¹⁵⁵

Gisha, an Israeli NGO that advocates for the elimination of any restrictions on Hamas-controlled Gaza, is a prime example of an NGO inventing international law to serve its political agenda. Gisha was one of the first NGOs to promote the narrative that Gaza remained “occupied” even after Israel’s complete withdrawal from the territory in 2005, in order to impose non-existent legal obligations on Israel. When that position became increasingly absurd after the Hamas takeover of Gaza in a violent coup in 2007, Gisha began to advocate for a “post occupation” law instead, again creating a pretext to hold Israel legally responsible for Gaza. (It is notable that Gisha never holds the Hamas government responsible for any activity in Gaza.) Gisha failed to appreciate the irony of its position that if Gaza is still occupied and Israel is still legally responsible, then under the law of occupation, which requires the occupying power to maintain public order and safety, Israel would be obligated to reinvade Gaza and take control of the territory.

In another example, Shawan Jabarin, Executive Director of Al Haq and suspected “senior activist” in the PFLP terrorist organization, in commenting on his group’s work to prepare “war crimes” complaints against Israel, stated, “The crime is not just the rape and the widespread killing or something like that . . . It’s a different way of rape, it’s a different way of killing, it’s a different way of destruction.”¹⁵⁶ In other words, Jabarin admits that there is no real legal violation at issue. Instead, he and Al Haq will just invent their own “different ways” of criminal violations.

In addition to adopting obscure positions of law without explanation and inventing international standards, NGOs often apply inconsistent definitions of legal concepts in order to advance political agendas, as opposed to the universal application of the law.

For example, the UCL/CERAC study¹⁵⁷ examined whether the NGOs clearly define a discrete group of variables to cover “regularly and systematically” and how those variables are

¹⁵⁵ Countries who have not signed or ratified the treaty include United States, China, Russia, Ukraine, South Korea, Poland, Serbia, Argentina, Algeria, Tunisia, Egypt, Israel, Jordan, UAE, India, and Pakistan

¹⁵⁶ http://www.nytimes.com/2015/01/02/world/middleeast/court-membership-wouldnt-guarantee-palestinians-a-war-crimes-case.html?_r=0

¹⁵⁷ UCL/CERAC Study, *Id.* at 5 (excerpt from Steinberg, Herzberg & Berman, *Best Practices for Human Rights and Humanitarian NGO Fact-finding* (Nijhoff 2012)).

measured and sourced.¹⁵⁸ The report concludes that Amnesty and HRW have no systematic approach. The study found that the NGOs frequently changed what variables they chose to measure, and revealed sources for less than one-fourth of their information.¹⁵⁹ For example, while HRW had definitions for “political assassinations” and “massacres,” those definitions varied from report to report.¹⁶⁰ In some years, HRW included combatants in their political assassinations figures, and in other years it excluded them.¹⁶¹ Amnesty, in some years, included killings by guerrillas, and in some years it did not, creating a wide variation in the statistics from year to year.¹⁶² Moreover, Amnesty and HRW grossly overestimated the number of massacres. For example, Amnesty claimed that “hundreds” of massacres happened in a particular year, demonstrating a variable understanding of the (usually large-scale) term.¹⁶³ The problems identified by the UCL/CERAC researchers of HRW and Amnesty reporting in Colombia are also prevalent in NGO reporting on Gaza.

“Collective punishment” and Humanitarian Aid

Starting in 2007, NGOs, including HRW, Gisha, Amnesty, and Oxfam, began using the phrase “collective punishment” to refer to Israeli policies aimed at preventing weapons smuggling into Gaza and rocket attacks on Israeli civilians. The term was used to suggest that such policies are illegal and a violation of international law, and clearly reflects an ideologically-driven application that is inconsistent with the meaning of this term in international law. This inflammatory language has persisted in NGO publications since 2007 and continuing through the 2014 conflict and its aftermath.

Contrary to NGO usage, collective punishment refers to criminal penalties (imprisonment, execution) imposed against a group of people for acts attributed to members of that group. It does not refer to the legal act of retorsion (e.g. sanctions, blockades). Restriction on the flow of goods in a war environment, therefore, does not constitute “collective punishment” under international law. Similarly, responding to rocket attacks on the civilian population with military action is also not “collective punishment,” but rather the exercise of the

¹⁵⁸ *Id.* at 7.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 8.

¹⁶¹ *Id.* at 12.

¹⁶² *Id.*

¹⁶³ *Id.* at 15.

legal right of self-defense. In fact, pursuant to Article 23 of the Geneva Convention (which sets standards for the provision of limited humanitarian aid), Israel has no obligation to provide any goods, even minimal humanitarian supplies, if it is “satisfied” that such goods will be diverted or supply of such goods will aid Hamas in its war effort.¹⁶⁴ According to legal expert Yoram Dinstein, international law requires only that the parties to an armed conflict do not block access to essentials - food, water, medications, bedding, and means of shelter (tents). The law does not require the provision of electricity, cement for construction, or gas.¹⁶⁵ Moreover, a party is allowed to monitor all aid passing through its territory for humanitarian character, supervise distribution, choose relief providers, and set restrictions on proscribed times and routes for aid. Although Israel is under no legal obligation and despite the diversion and attacks by Hamas as described in Part I, Israel continues to provide thousands of tons of humanitarian supplies to Gaza on a weekly basis. This is above and beyond any obligation under international law. Therefore, any claim of “collective punishment” is false and entirely unjustified.¹⁶⁶

Human Shields

NGOs also employ legal distortions and double standards regarding human shielding, a method of fighting that almost always defines the tactics used by terror groups in asymmetric wars, and perfected by Hamas in Gaza. The obligation to maintain the distinction between combatants and civilians is a cornerstone of the laws of war. Article 28 of the Fourth Geneva Convention mandates that “[t]he presence of a protected person [e.g., civilians] may not be used to render certain points or areas immune from military operations.” Article 51(7) of Additional Protocol I further elaborates that “the presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations.” The UN Glossary of Peacekeeping Terms interprets the prohibition as follows:

human shield [any person who, under the laws of war is considered

¹⁶⁴[http://www.jcpa.org/JCPA/Templates/ShowPage.asp?DRIT=1&DBID=1&LNGID=1&TMID=111&FID=378&PID=0&IID=2037&TTL=Is Israel Bound by International Law to Supply Utilities, Goods, and Services to Gaza?](http://www.jcpa.org/JCPA/Templates/ShowPage.asp?DRIT=1&DBID=1&LNGID=1&TMID=111&FID=378&PID=0&IID=2037&TTL=Is%20Israel%20Bound%20by%20International%20Law%20to%20Supply%20Utilities,%20Goods,%20and%20Services%20to%20Gaza?); <http://www.icrc.org/ihl.nsf/WebART/380-600027?OpenDocument>

¹⁶⁵ Remarks of Yoram Dinstein at November 3, 2014 ICRC/Hebrew University conference on Humanitarian Access.

¹⁶⁶ <http://www.timesofisrael.com/kerem-shalom-crossing-to-reopen-sunday/>;
<http://www.mfa.gov.il/mfa/foreignpolicy/peace/humanitarian/pages/default.aspx>

a non-combattant [sic] and as such protected from deliberate attack (civilians, POWs, etc.) but who is used by one side as a hostage to deter the other side from striking a particular military target and risking killing the hostages; the side using “human shields” gambles on the other side’s reluctance to violate the laws of war and on its fear of the moral and political opprobrium usually attached to such violations; the use of human shields can take the form of a) placing civilians or prisoners in or near legitimate military targets (bases, bunkers, weapons factories, etc.) or b) placing artillery batteries and other offensive weapons in the midst of the civilian population, particularly such buildings as hospitals, schools, churches, etc., or residential neighborhoods, or c) for non-uniformed armed groups, firing at their adversary from among a crowd of civilians].¹⁶⁷

The violation of this obligation is serious not only because it flaunts the principle of distinction, but it exposes civilians to harm: under the laws of war, military objectives may be attacked, even if civilians are present, so long as such attacks are in accordance with the principle of proportionality. Those who engage in the practice of human shielding, like Hamas and Hezbollah, are guilty of war crimes and bear responsibility for any civilian deaths that result.

Despite the central and clear prohibition against the use of human shields, NGOs consistently minimize, downplay, and deny the widespread exploitation of civilian infrastructure to carry out war efforts by Hamas, Hezbollah, and other terror groups. NGOs deliberately obscure the extent of this practice for ideological purposes: If Israel is striking Hamas fighters, tunnels, or weaponry hidden in homes, mosques, schools, or hospitals, then its attacks cannot be branded as “indiscriminate” or as “targeting civilians.”

Arkin points out how NGOs erased Hezbollah human shielding in the 2006 Lebanon War:

Virtually absent [from portrayals of the conflict was how entrenched] Hezbollah, an organization that managed to fire over 4,000 rockets and projectiles at 160 Israeli settlements, towns, and cities (and over 1,000 powerful antitank missiles inside Lebanon!), . . . was in the country’s civilian fabric. . . when human rights organizations and much of the international community showed up or commented, they seemed to act as if the force Israel was battling was nonexistent.¹⁶⁸

¹⁶⁷ <http://www.un.org/en/peacekeeping/sites/glossary/h.htm>

¹⁶⁸ Arkin at n. 102.

Although Arkin characterized the Israeli operation to be excessive and ineffective, he also took issue with characterizations that Israel engaged in indiscriminate attacks. He notes that while “Gross destruction was visited upon Hezbollah’s stronghold in south Beirut, [] that destruction was still undertaken with precision, as is evidenced by its coexistence with vast untouched areas of the city. Israel indeed made decisions and took steps to limit civilian harm.”

While in 2014, HRW admitted to some degree that Hamas did indeed embed in civilian areas – unlike its reporting on the 2006 Lebanon war and the 2008-09 Gaza war where the NGO denied Hezbollah or Hamas co-located in civilian areas – the organization continued to downplay the extent to which it occurred. Van Esveld, HRW researcher, told a reporter, “I don’t think there’s any doubt urban areas were used to launch rockets from in the Gaza Strip. What needs to be determined is how close to a populated building or a civilian area were those rocket launches.”¹⁶⁹

More importantly, however, the NGO continued to assert that even if Hamas was co-locating with civilians, this did not constitute “human shielding,” applying an artificially narrow definition to encompass a much wider possibility of alleged Israeli violations and exonerate Hamas and other terror groups.¹⁷⁰ For example, in an appearance on Fox News, Ken Roth, commented:

The Israeli government, one of their PR techniques is to say “Human shields, Human shields,” now that actually is a technical term which requires coercively rounding people up... There’s actually no evidence that Hamas is forcing...¹⁷¹

In contrast to HRW’s narrow construction of human shields in Gaza and Lebanon, when reporting on Sri Lanka, Somalia, Chechnya, and elsewhere, HRW’s interpretation of human shielding law is generally consistent with the legal principles. For instance, in an April 2009 report on Sri Lanka, HRW condemned the LTTE (Tamil Tigers) for “deploy[ing] their forces close to civilians, thus using them as ‘human shields’” (HRW Report Mar. 4, 2009). In a report

¹⁶⁹ <http://www.dailymail.co.uk/news/article-2753176/Hamas-DID-use-schools-hospitals-Gaza-Strip-human-shields-launch-rocket-attacks-Israel-admits-says-mistake.html#ixzz3OsYbxZUy> Van Esveld was apparently unfamiliar with the dozens of examples in the media of rockets being launched next to hotels, homes, schools, and UN facilities. http://www.terrorism-info.org.il/Data/articles/Art_20699/E_141_14_1634181847.pdf

¹⁷⁰ In the past, HRW has even gone so far as to reverse its position on human shields when faced with criticism from the extreme Left for challenging Palestinians for engaging in the practice.

¹⁷¹ <http://www.foxnews.com/on-air/huckabee/index.html#v/3703345398001>:

issued on Somalia in December 2008, HRW condemned “[t]he practice by insurgent forces of firing mortars or otherwise launching attacks from heavily populated neighborhoods” and noted that such activity “can constitute ‘human shielding,’ which is a war crime” (HRW Report Dec. 8, 2008). And in a 1999 report from Chechnya, HRW claimed that situating “a key command post within or adjacent to [a] market” by Chechen fighters “would be a serious violation, as the Chechen forces are obliged to respect international law prohibiting use of the civilian population to shield military objects” (HRW News Release Nov. 2, 1999).

NGO Staffing

It is often difficult to assess the impartiality of NGO fact-finding because the process for selecting researchers and investigators is generally secret and rarely are the identity and/or qualifications of these individuals made public.

For instance, in Amnesty’s two major publications issued on the fighting (“Families Under the Rubble,” November 6, 2014; “Nothing is Immune,” December 9, 2014), the NGO admitted that it did not have access to Gaza and relied upon two “unnamed fieldworkers.” Without identifying the fieldworkers, it is impossible to know their qualifications, whether they have conflicts of interest, or whether there are possible links to Hamas and other terror organizations operating in Gaza.

While there is extensive secrecy regarding the individuals conducting NGO “investigations,” another serious problem relates to the background and activities of NGO staffers that raise considerable questions as to their impartiality and ability to credibly and objectively report on the Arab-Israeli conflict. Not only do many NGO employees have conflicts of interest, backgrounds in anti-Israel activism, and even “direct action” extremism, they often express highly trenchant and polemical sentiments regarding Israel both privately and publicly. Saleh Hijazi, Amnesty’s campaigner on Israel and the OPT, is one example. A Palestinian born in Jerusalem and raised in Ramallah, he worked as a Public Relations officer for the Palestinian Authority’s Office of the Ministry of Planning in Ramallah in 2005, and in 2007 was listed as contact for the NGO “Another Voice” – under the group’s signature “Resist! Boycott! We Are Intifada!”¹⁷² In 2010, Hijazi was an on-campus volunteer at Badil (a Palestinian NGO known for

¹⁷² <http://efchr.mcgill.ca/InternationalYoungLeaders.php>; <http://palsolidarity.org/2007/12/another-voice-call-for-boycott-on-intifada-anniversary/>

publishing antisemitic cartoons (see below) and campaigning for Palestinian “return” to Israel), via the Al-Quds Human Rights Clinic program.¹⁷³

NGO Support for Terrorism and Islamism

In addition to hiring activists with conflicts of interest and backgrounds in extreme anti-Israel advocacy, many NGOs have expressed sympathy with Islamists, are connected to terrorist organizations, express support for terror organizations and their tactics, and have acted as human shields. These activities belie any claim of impartiality and objectivity and violate ethical standards. They raise serious questions as to whether they can adequately report on violations committed by Hamas and Palestinian Islamic Jihad. For example, Amnesty fired the head of its Gender Unit after she spoke out against Amnesty’s partnership with a supporter of the Taliban.¹⁷⁴ After considerable outrage directed at the NGO stemming from the move, including by notable authors Salman Rushdie and Christopher Hitchens, Amnesty’s interim Secretary General Claudio Cordone, defended the partnership remarking that “jihad in self-defence” is not “antithetical to human rights.” Cordone failed to note that the concept of “defensive jihad” was first articulated in 1979 by a mentor to Osama Bin Laden and is found throughout Salafist texts.

NGOs working in the Arab-Israel conflict often refer to illegal acts of terrorism on Israeli civilians as “resistance.”¹⁷⁵ This type of rhetoric frequently appears in the publications of the Palestinian Center for Human Rights (PCHR), Al Mezan, Defense for Children International – Palestinian Section (DCI-PS), Badil, and the Alternative Information Center. The website of Diakonia, a Swedish Church NGO, has promoted a so-called “right to resist” on behalf of the Palestinians, claiming that “[t]he use of force as part of resisting occupation in the Palestinian case is therefore derived from the **international legitimacy to recourse to armed struggle** in order to obtain the right to self-determination.”¹⁷⁶ During a 2009 event featuring an ICRC official at Diakonia’s Jerusalem office, one of the NGO’s researchers referred to rocket attacks on Israeli population centers as “resistance.”

In some cases, officials and staffers at several Palestinian NGOs have either been involved with terrorism directly or have suspected ties terror organizations. For instance, Shawan

¹⁷³ http://www.badil.org/phocadownload/Badil_docs/annual-report/2010e.pdf

¹⁷⁴ For more in-depth discussion of this issue see <http://www.ngo-monitor.org/secondclass.pdf>

¹⁷⁵ http://www.ngo-monitor.org/article/international_law_series_the_right_to_self_defense0

¹⁷⁶ <http://www.diakonia.se/sa/node.asp?node=1132>. Emphasis added.

Jabarin, Executive Director of Al Haq and member of HRW’s Mideast Advisory Board, has been found by the Israeli Supreme Court to be a “senior activist in the PFLP” and a “Jekyll and Hyde.”¹⁷⁷ Another Palestinian NGO, Addameer, also appears to have close connections to the PFLP terrorist organization. Addameer’s chairperson and co-founder, Abdullatif Ghaith, was banned by Israel from travelling internationally because of his alleged membership in the PFLP.¹⁷⁸ Khalida Jarrar, Addameer’s vice-chairperson, is reportedly a senior PFLP official, and Ayman Nasser, an Addameer research staff-member, was arrested on October 15, 2012 for alleged links to the PFLP.¹⁷⁹ Other Addameer officials have close family ties to the group: Suha Al Bargouti, Addameer’s treasurer, is the wife of alleged PFLP member Ahmed Qatamesh; Sumoud Sa-adat, an Addameer staffer, is the daughter of PFLP General Secretary Ahmad Sa-adat, and Yousef Habash, an Addameer Board member, is reportedly the nephew of PFLP founder George Habbash.¹⁸⁰

Other NGO staffers have served as voluntary human shields for Hamas and/or worked with the International Solidarity Movement (ISM) – an organization that provides human shields for terror organizations and engages in violent confrontations with the IDF. For instance, Edith Garwood, Amnesty USA’s “Country Specialist on Israel, Occupied Palestinian Territories, and Palestinian Authority,” volunteered as a member of ISM.¹⁸¹ Garwood was also affiliated with the Gaza Ark project, an attempt to build a ship in Gaza and sail it to a European country to “challenge” Israel’s weapons blockade on Gaza.¹⁸² Amnesty’s researcher, Deborah Hyams acted as a “human shield” in Beit Jala (near Bethlehem) in 2001. In this capacity she tried to deter Israel’s military response to recurrent Palestinian gunfire and mortars targeting Jewish civilians in Jerusalem.¹⁸³ Hyams calls Israel “a state founded on terrorism, massacres and the

¹⁷⁷ http://www.ngo-monitor.org/article/_us_state_department_human_rights_report_al_haq_s_shawan_jabarin_false_statements_and_questionable_terminology

¹⁷⁸ <http://bbcwatch.org/tag/addameer/>

¹⁷⁹ <http://pflp.ps/english/2013/06/jarrar-on-the-66th-anniversary-of-the-naksah-the-way-forward-is-unity-and-resistance/>; <http://www.addameer.org/etemplate.php?id=526>

¹⁸⁰ <http://www.alternativenews.org/english/index.php/multimedia2/3549-israeli-occupation-forces-arrest-palestinian-writer-ahmad-qatamesh-3549>; <http://pflp.ps/english/2012/01/sumoud-saadat-negotiations-do-not-free-prisoners/>

¹⁸¹ See Edith Garwood, “Policy on Iraq Exposes Hypocrisy About Israel,” Oct 23, 2002, Miftah.org, *available at* <http://www.miftah.org/display.cfm?DocId=1148&CategoryId=5>, specifically her Bio.

¹⁸² Gaza’s Ark, “Who We Are,” <http://www.gazaark.org/about-us/who-we-are/>.

¹⁸³ Inigo Gilmore, “Israel protests as British women join 'human shield,'" 29 Jul 2001, *available at* <http://www.telegraph.co.uk/news/worldnews/middleeast/israel/1335737/Israel-protests-as-British-women-join-human-shield.html>.

dispossession of another people from their land,”¹⁸⁴ and “[some] of Israel’s actions, all the way back to 1948, could be called ‘ethnic cleansing.’”¹⁸⁵ In a 2002 *Washington Jewish Week* article, “[Deborah] Hyams said that while she does not condone suicide bombings, she personally believes they 'are in response to the occupation.’”¹⁸⁶ In another instance she defended violence stating “occupation is violence...and the consequence of this action must result in violence [against Israelis].”¹⁸⁷

Active cooperation between terror organizations and NGOs is of particular concern in territory held by terrorist groups such as Hamas-controlled Gaza. As reported in the *Daily Beast*, in Syria and Iraq, many humanitarian NGOs were found to have actively cooperated with, employed, or paid bribes to ISIS in order to continue working in territory under the Islamic State’s control.¹⁸⁸ Aid was diverted away from its intended recipients for use by ISIS or to be sold for cash in service of ISIS’ war effort. In this context, it is not unreasonable to assume that NGOs would overstate Israeli violations and ignore abuses by Palestinians in order to be able to continue working in Gaza.

In 2003, following a US Presidential Executive Order, USAID required all organizations operating in Palestinian areas to sign a Certification Regarding Terrorist Financing that warrants no US funds will be used to “advocate or support terrorist activities.” Many Palestinian NGOs refused to sign, including the PNGO Network that boasts PCHR, Al Mezan, Al Haq, among others, as members. PNGO’s program director commented, “Who defines what is terror? All funds received by the NGOs should be unconditioned — no political conditions.”¹⁸⁹ Al Mezan’s director was particularly outspoken against the pledge, stating, “There is no legal basis for this document. This document should be boycotted . . . We should publicize a list of any institutions that agree to the conditions in the document.”

¹⁸⁴ "We're not celebrating Israel's anniversary," *The Guardian*, 30 April 2008 available at <http://www.guardian.co.uk/world/2008/apr/30/israelandthepalestinians>.

¹⁸⁵ See NGO Monitor, June 04, 2012 “Breaking Its Own Rules: Amnesty’s Researcher Bias and Gov’t Funding,” available at http://www.ngo-monitor.org/article/breaking_its_own_rules_amnesty_s_gov_t_funding_and_researcher_bias.

¹⁸⁶ See NGO Monitor, June 04, 2012 “Breaking Its Own Rules: Amnesty’s Researcher Bias and Gov’t Funding,” available at http://www.ngo-monitor.org/article/breaking_its_own_rules_amnesty_s_gov_t_funding_and_researcher_bias.

¹⁸⁷ Cornell Daily Sun, August 30, 2001, “Local Groups Hold Interfaith Forum” available at <http://cornellsun.com/blog/2001/08/30/local-groups-hold-interfaith-forum/>.

¹⁸⁸ <http://www.thedailybeast.com/articles/2014/10/19/u-s-humanitarian-aid-going-to-isis.html>

¹⁸⁹ <http://www.jta.org/2003/10/16/life-religion/features/part-3-u-s-worries-about-transparency#ixzz3Osx2QjAE>

Another NGO activist, Norwegian doctor Mads Gilbert, who engages in highly visible campaigns in Gaza hospitals, has expressed sympathy for terror attacks along with bizarre anti-Israel conspiracy theories. A member¹⁹⁰ of the Norwegian Aid Committee, NORWAC¹⁹¹, Gilbert repeatedly and falsely accuses Israel¹⁹² of deliberately targeting civilians and using experimental weapons on Palestinians. In one interview he called Israel's actions a "slaughter, **this is a crime against humanity...this is of course huge war crimes...Israel shows no respect for international law...Israel respects absolutely no international laws.**"¹⁹³ To the Iranian regime's Press TV, Gilbert remarked, "...**Everybody suspects that they are testing out new weapons...I am a medical doctor and a scientist and I don't have the proof but I think it is a reasonable suspicion that the Israeli army is testing new weaponry on the population in Gaza...**if they are using new types of weapons now, we don't know yet."¹⁹⁴ There is also evidence that in the 2008-09 conflict, Gilbert helped stage¹⁹⁵ emergency room scenes for a "propaganda effect."

Gilbert was a member of the fringe left Red Party in Norway, and following the 9/11 attacks said, "**The attack on New York did not come as a surprise after the policy that the West has led during the last decades...The oppressed also have a moral right to attack the USA with any weapon they can come up with.**" When asked directly in the same interview, "Do you support a terror attack against the USA?," Gilbert replied, "Terror is a bad weapon but the answer is yes within the context which I have mentioned."¹⁹⁶

Al Haq has also echoed Gilbert's conspiracy claims, issuing a "briefing statement" alleging that Israel uses "experimental weapons" on Palestinians and deliberately seeks to increase their suffering. Almost every source in Al Haq's statement relies on the claims of

http://r20.rs6.net/tn.jsp?e=001nFniTWhcBA2sJqTMmNw3XPZ_T8ATcu9QOKXYZIOUfryk0B6yCBphn88TM67ilX3pGtXh945cKvEWcbHV0AUCNXpXucZ85dJ7A5B0Ok-ZyE3WTGqipS18FKgn0oLUBDUKgsymOBhA-M_v-mtRpJFzhw==

¹⁹¹ <http://www.norwac.no/>

¹⁹² <http://mosquito-blog.blogspot.co.il/2009/01/reality-in-gaza-dr-mads-gilbert-of.html>

¹⁹³ "[Norwegian Doctor Mads Gilbert speaks to MEMO about treating the wounded in Gaza](#)," Middle East Monitor, July 23, 2014. Emphasis added.

¹⁹⁴ "[Professor Mads Gilbert: Suspicion that Gaza is being used to test new weaponry](#)," Press TV (Iran), July 14, 2014. Emphasis added.

¹⁹⁵ http://littlegreenfootballs.com/article/32393_A_Staged_Scene_in_a_Gaza_Hospital_-_Update-CNN_Yanks_Video

¹⁹⁶ See n. 186

Gilbert. The few sources that do not reference Gilbert are from the extreme fringe, including Iran's PressTV.¹⁹⁷

Promotion of Antisemitic, Racist, Xenophobic, and Discriminatory Content

Another factor that must be taken into account is the impact of antisemitism on NGO reporting. A number of NGOs that regularly participate in HRC frameworks and that will likely contribute to the Mission disseminate and publish antisemitic, racist, and discriminatory content in violation of principles of universality, impartiality, objectivity, non-selectivity, cooperation, and dialogue. Many of the NGOs that initiated this mission have engaged in rhetoric that violates antisemitism guidelines promulgated by the US State Department, the European Union, and the UK Parliament.¹⁹⁸ These statements include offensive imagery reminiscent of Nazi propaganda, utilizing imagery and themes of classical antisemitism, and making remarks denigrating Judaism and right of the Jewish people to self-determination. Despite claiming to promote human rights, many NGOs actively advance antisemitic themes and rhetoric in their work. Antisemitism can also motivate the selection bias exhibited by many NGOs. The COI must speak out strongly against the NGO promotion of antisemitism and refuse to engage with NGOs that promote it.

Badil, a Palestinian NGO that is highly active in UN frameworks, has posted extreme antisemitic imagery on its website on the level of that found in the Nazi-era publication *Der Sturmer*.¹⁹⁹ In one highly egregious incident, an antisemitic cartoon²⁰⁰ won a monetary award²⁰¹ for 2nd prize in BADIL's 2010 Al-Awda Nakba caricature competition.²⁰² The cartoon is a blatant representation of classic antisemitic tropes, including a Jewish man, garbed in traditional Hasidic attire, with a hooked nose and side locks. He stands above a dead child and skulls, holding a pitchfork styled as a menorah dripping with blood. Funding from the Swiss,

¹⁹⁷ <http://www.alhaq.org/advocacy/topics/gaza/835-briefing-note-ii-the-illegality-of-israels-use-of-dime-weapons>

¹⁹⁸ European Forum on Antisemitism, "Working Definition of Antisemitism," available at <http://www.european-forum-on-antisemitism.org/working-definition-of-antisemitism/english/>

¹⁹⁹ <http://www.ngo-monitor.org/article/badil0>

²⁰⁰ <http://www.ngo-monitor.org/article/badil#cartoon>

²⁰¹ <http://www.badil.org/annual-al-awda-award/item/1416-award2010-winners>

²⁰² "Badil, "Info File, NGO Monitor, 31 May 2011, available at <http://www.ngo-monitor.org/article/badil>; "Badil's Antisemitic Cartoon: Questions For Danchurchaid, Trocaire And Funders," Ngo Monitor, 11 October 2010, available at [http://www.ngo-monitor.org/article/badil s antisemitic cartoon questions for danchurchaid trocaire and funders](http://www.ngo-monitor.org/article/badil%20s%20antisemitic%20cartoon%20questions%20for%20danchurchaid%20trocaire%20and%20funders)

Dutch, Swedish, and Danish governments was frozen²⁰³ because of this incident.²⁰⁴ According to news reports, in 2008, Badil also posted on its website remarks from an Austrian Holocaust denier.²⁰⁵ Other imagery posted on Badil's website features violent themes, including blood and individuals brandishing weapons, and refer to the takeover or elimination of Israel altogether. Badil's publications exhibit antisemitic rhetoric and hostility towards the Jewish community, such as referring to "the arrogance of the Zionists." In 2007, a Badil "Call to Action,"²⁰⁶ advocated anti-Israel boycotts and sanctions, and enlisted "journalists to organize a targeted campaign to expose the lies of AIPAC and the Anti-Defamation League and to expose the Jewish and Zionist community's double standards regarding Nakba & Occupation."

In July 2014, the medical journal *The Lancet* published a highly politicized, very biased, and disparaging piece under the headline, "Open Letter for the People in Gaza."²⁰⁷ The authors' claims included calling the IDF's response to the Hamas rocket attacks on Israeli populations centers, "the creation of an emergency to masquerade a massacre." Two of the main authors of this "open letter" (Drs. Paola Manduca and Swee Ang Chai) promoted²⁰⁸ a virulently antisemitic video made by American white supremacist David Duke that purportedly "reveals how the Zionist Matrix of Power controls Media, Politics and Banking..."²⁰⁹ A third author, Sir Iain Chalmers, speaking at a public event in the UK, echoed the Duke video's main message by decrying of how "the Zionists" have "control in so many different domains."²¹⁰ Another signatory to the letter was the aforementioned Mads Gilbert.

In another disturbing case, during a "study tour" of the West Bank, a researcher for B'Tselem told an investigative reporter and a group of Italian students that the Holocaust was a "lie."²¹¹

²⁰³ "Swiss freeze funds for pro-Palestinian NGO," *The Jerusalem Post*, 22 May 2011, available at <http://www.jpost.com/International/Swiss-freeze-funds-for-pro-Palestinian-NGO>

²⁰⁴ Benjamin Weinthal, "Swiss Freeze funds for pro-Palestinian NGO," 22 May 2011, available at <http://www.jpost.com/International/Article.aspx?id=221623>

²⁰⁵ *Id.*

²⁰⁶ See http://www.ngo-monitor.org/digest_info.php?id=1434#9

²⁰⁷ See <http://www.thelancet.com/journals/lancet/article/PIIS0140-6736%2814%2961044-8/fulltext>

²⁰⁸ See [http://ngo-monitor.org/data/images/Image/CNN%20Goldman%20Sachs%20&%20the%20Zio%20Matrix%20\(1\).jpg](http://ngo-monitor.org/data/images/Image/CNN%20Goldman%20Sachs%20&%20the%20Zio%20Matrix%20(1).jpg)

²⁰⁹ See <https://www.youtube.com/watch?v=Zw9EhJyU3JU>

²¹⁰ See http://www.ngo-monitor.org/Chalmers_clip.mp3

²¹¹ http://www.ngo-monitor.org/article/eu_funded_ngos_and_holocaust_denial_exposed_in_new_book0; <http://elderofziyon.blogspot.co.il/2014/10/btselem-admits-its-researcher-denied.html#.VLuQElrufww>

Several officials of HRW and Amnesty have also expressed extreme hostility and animus towards Jews and Judaism and have compared Israel to Nazis.

For over a decade, NGO Monitor has documented and analyzed the highly obsessive targeting of Israel by HRW's Executive Director Ken Roth, in order to promote his personal and ideological objectives. These comments have also included the expression of extreme hostility towards Judaism and Jews, such as during the 2006 Hezbollah war when Roth penned an op-ed that exclusively singled out Judaism for rebuke, referring to it as "primitive." The 2014 Gaza war was no exception, and if anything, Roth's activities, particularly on Twitter, reflected even greater personal animus and provided even more evidence that Roth is incapable of impartially and objectively evaluating Israel's policies and activities.

NGO Monitor catalogued more than 400 Ken Roth tweets about Israel between July 5 and September 2, 2014.²¹² Although Roth's feed is intended to broadly address global issues, on average, the number of tweets on Israel constituted a quarter of his feed. During some periods, this number approached 50-60%.²¹³

Roth's tweets included significant levels of sarcasm, vitriol, and deep-seated hostility. The content consisted almost entirely of condemnations and attacks against Israel. Many involved retweeting of antagonistic articles and false or unverified claims, based on rumors, from fringe sources. Common themes included labeling Israel's actions in Gaza as "war crimes," "indiscriminate," "unlawful," and "collective punishment"; denying Hamas human shielding and other fundamental violations; sarcastic comments solely towards Israeli leadership; promotion of Hamas propaganda while attacking Israeli PR efforts; silence on the rise in global antisemitism and denigration of those speaking out against it; and obsessive attacks on critics as "Israel partisans" and part of the "Hasbarah crowd." No similar sarcasm or animosity is expressed towards pro-Palestinian activists.

One of Roth's most offensive Twitter moments was his retweet of a highly propagandistic advertisement published in *The New York Times* and *The Guardian* equating "Nazi genocide" with "the massacre of Palestinians in Gaza." (Professor Deborah Lipstadt refers to this as soft-core denigration of the Holocaust.)

²¹² <https://docs.google.com/document/d/1Iie7Hp5zpQTHpPbqA3hbGCvmlq5-x5YHxf1pc2k1a8k/pub>

²¹³ (For different aspects of this phenomenon, see also "[The Twitter Hypocrisy of Kenneth Roth](#)" by Jonathan Foreman in *Commentary Magazine* and "[Most of Ken Roth's most popular tweets are anti-Israel lies](#)" on the Elder of Ziyon blog.)

This advertisement was placed in the names of 327 “Jewish survivors and descendants of survivors and victims of Nazi genocide” who “unequivocally condemn the massacre of Palestinians in Gaza.” In the text, Israel is condemned for “colonialism, racism, and genocide,” and unnamed “right-wing Israelis” are compared to Nazis; it ends with support for BDS in the form of a “full economic, cultural, and academic boycott of Israel.” (The ad was sponsored by the International Jewish Anti-Zionist Network.)

The ad was posted, under the tagline “‘Never again’ must mean NEVER AGAIN FOR ANYONE!,” by HRW European Media Director Andrew Stroehlein, and was also tweeted by HRW EU Director Lotte Leicht and retweeted by Roth.²¹⁴

Jewish survivors and descendants of survivors and victims of Nazi genocide unequivocally condemn the massacre of Palestinians in Gaza

As Jewish survivors and descendants of survivors and victims of the Nazi genocide we unequivocally condemn the massacre of Palestinians in Gaza and the ongoing occupation and colonization of historic Palestine. We further condemn the United States for providing Israel with the funding to carry out the attack, and Western states more generally for using their diplomatic muscle to protect Israel from condemnation. Genocide begins with the silence of the world.

We are alarmed by the extreme, racist dehumanization of Palestinians in Israeli society, which has reached a fever-pitch. In Israel, politicians and pundits in The Times of Israel and The Jerusalem Post have called openly for genocide of Palestinians and right-wing Israelis are adopting Neo-Nazi insignia.

Furthermore, we are disgusted and outraged by Elie Wiesel's abuse of our history in these pages to justify the unjustifiable: Israel's wholesale effort to destroy Gaza and the murder of more than 2,000 Palestinians, including many hundreds of children. Nothing can justify bombing UN shelters, homes, hospitals and universities. Nothing can justify depriving people of electricity and water.

We must raise our collective voices and use our collective power to bring about an end to all forms of racism, including the ongoing genocide of Palestinian people. We call for an immediate end to the siege against and blockade of Gaza. We call for the full economic, cultural and academic boycott of Israel. "Never again" must mean NEVER AGAIN FOR ANYONE!

Signed by the following Jewish survivors of the Nazi holocaust,

Hajo Meyer, Auschwitz (Netherlands) • Herta Wajsbom, Auschwitz (Belgium) • Arnan Bedenhal, child refugee (United States) • Mariana Elzbieta Ross, Vienna (United States) • Irena Klepfisz, Warsaw Ghetto (United States) • Holly Epstein, Kindertransport from Germany (United States) • Lillian Rosengarten (United States) • Suzanne Weiss, France (Canada) • H. Richard Leachon (United States) • Ervin Szenogy (United States) • Ilse Hadda, Kindertransport (United States) • Jacques Glaser (France) • Eva Naylor (New Zealand) • Suzanne Ross, Belgium (United States) • Bernard Stawronca, Poland (United States) • Joseph Klétkos, Poland (United States) • Nicole Milner, Belgium (United States) • Hedi Szarf, Dachau (United States) • Michael Rice, The Netherlands (United States) • Barbara Reese, Germany (United States) • Sonia Herzberg (France) • Jean Huber (United States) • Alman Janna, Jasenovik (Israel) • Miriam Altschil (United States) • George Baranoff, Germany (United States) • Magarete Lichtsacher, The Netherlands (Belgium) • Edith Bell, survivor, Westerbork, Theresienstadt, Auschwitz & Karlsruhe (United States) • Janine Farvard (France) • Harry Halbroich (Germany) • Ruth Kupferschmid (The Netherlands) • Annette Herskowitz, France (United States) • Felicia & Mothe Langer, Germany, Mothe survived 5 camps (Germany) • Adam Policzer, Hungary (Canada) • Juliane Bitt, Kindertransport (United States) • Edith Rubenstein, (Belgium) • Jacques Baule (Belgium) • Nicole Kahn (France) • Shimon Schwarzschild, Germany (United States)

Also signed by the following descendants of Jewish survivors and victims of the Nazi holocaust from 26 countries: Celine Eliana Kaczynski, Jean-Claude Meyer, Clara Feiler, Michal Baran, Sylvia Schwaber, Majgor Goldstein, Ellen Schwarz Warf, Lisa Kosowski, David Strass, Bezer Ballin, Rachel David, Yoni Mayer, Alan Nissen, Jonny Haim, Mark Aleshack, Hans Berberich, Todd Michael Feldman, Tim Naylor, Victor Popovitch, Tanya Dry, Rachel Gross, Jose Dierlmann, Elise Auerbach, Julian Clegg, David Mizen, Jeffrey J. Westman, Susan K. Jacoby, Aubrey Buzan, Daniel Gerichalk, Barbara Grossman, Abraham Wilschick, David Rubeloh, Walter Ballin, Reshen Roth, Tony Ditt, Anne Hadas, Miro Nohle, John Mirsal, Mike Chayer, Susan Bailey, Brenda Lewis, Fritzi Ross, Patricia Roscoe-Maxner, Sarah Michele, Jessica Blum, Max Etinger, Annette Alkalin, Julia Delarue, Kosowski, Julia Shper, Robert Rosenblum Colvard, Victor Ginsburgh, Antoine Bond, Rolf Verhegen, Ernest James, H. Etelsova, Barbara Meyer, Susan Hoffman, Rami Hahel, Eilat Altman, Jung Sevil, Matta Krocikowska, Sarah Lutzman, Cheryl BC, Chris Helminger, Annette Bond, Rolf Verhegen, Bettina, Rebecca Werman, Yovita Loshitzky, Maron Geller, Susan Spymonov, Heiga Fischer Maslovitz, Michael Wischne, Arthur Graaff, Yael Kahn, Pierre Sussfeld, Georges Gumpel, Emma Koobberg, Hannah Schwarschild, Ratan Kaczynski, Daniele Arzabalo, Ana Policzer, Felio Polczari, Anzaldia Stern Barel, Sam Carralido, Gail Nosed, Elisabeth Heintzman, Lavinia Magalochi, Dani Gellman, Eran Land, Rayah Feldman, Hadar Brava-Watts, Peleu Tshernky, Alan Kishit Horowitz, Manique Moutin, Mike Brucher, Nivoni Yah Guadalupe, Massimo van Looze-Keplerova, Alfred Gionkassiano, Smarck Caroline, Miranda Pouch • Goodwillner Raphael Cohen, Emma Rabbin, Alex Sattin, Danielle Frits, Jose Sotom, Anou Balout, Abigail Harris, Tania Itzami, Caroline Picket, Amalid Dofren, Anouin Kesteven, Chong, Alex Nissen, Emily Marston, Abby Olsent, Tiff Auerbach, Erik Beach, Katherine Walkowitz, Bob Wilcox, Sylvia Frits, Estaban Schmalic, Francine Busch, Gabriel Altan, Sam Ben-Ari, Hilda Schuman, Ben of Goshen, Elise Lantier, Laure Mandelberg, Josh Rabinov, Natas Great-Fitzner, Shirley Feldman, Andrea Land, Sarah Goldstein, Baruch Wilski, Frank Anshon, Eve Spangler.



Lotte Leicht @LotteLeicht1 · Aug 23
 "Never again must mean NEVER AGAIN FOR ANYONE" #Holocaust survivors condemn #Israel on #Gaza [haaretz.com/news/diplomacy...](https://www.haaretz.com/news/diplomacy...)
pic.twitter.com/SEYXOFHghn

Reply Retweet Favorite

Flag media

²¹⁴ <https://twitter.com/astroehlein/status/503236540399906817>;
<https://twitter.com/LotteLeicht1/status/503242645586862081>

HRW's Director of its Middle East and North Africa Division, Sarah Leah Whitson, exhibited similar animus and bias. Whitson's Twitter account included comments such as:

- #Netanyahu vengeance in action: RT @guardian **Israel** destroys #Gaza buildings, Palestine teen shot dead
- When is magic nondemocratic line crossed? Already there @bennunanat: Peres at Rabin Square: **Israel** cannot remain democratic without peace;
- not first time or first war either: #**Israel** deliberately attacking medical workers in #Gaza, Amnesty says [http://electronicintifada.net/blogs/charlotte-silver/israel-deliberately-attacking-medical-workers-gaza-amnesty-says ...](http://electronicintifada.net/blogs/charlotte-silver/israel-deliberately-attacking-medical-workers-gaza-amnesty-says...)
- Btselem, Yesh Din further expose **sham** #**Israel** investigations on human rights violations in Palestine.²¹⁵

Like Roth, Whitson frequently relied upon fringe sources that frequently traffic in bizarre anti-Israel conspiracy theories. She has called Israel “medieval,” has expressed extreme antagonism towards the US Jewish community, and praised demagogues like Norman Finkelstein, remarking, “I continue to have tremendous respect and admiration for him, because as you probably know, making Israeli abuses the focus of one's life work is a thankless but courageous task that may well end up leaving all of us quite bitter.”²¹⁶ In 2009, Whitson fundraised in Saudi Arabia, citing the need to counter pro-Israel “pressure groups.”²¹⁷

Roth's and Whitson's bias against Israel and their wider moral failures are consistent with other expressions of extreme hostility, as demonstrated in numerous examples over the past several years, including:

- HRW's “senior military expert” and author of many reports on Israel was exposed as obsessed with Nazi memorabilia;²¹⁸
- Ken Roth's denial that Iran's President Ahmedinajad engaged in incitement to genocide, claiming that he was merely engaging in “advocacy” for genocide instead;²¹⁹
- The NGO appointed a suspected senior activist in the PFLP terrorist organization to its Mid-East advisory board;²²⁰
- HRW's “Emergencies Director” was exposed making

²¹⁵ <https://twitter.com/search?q=israel%20from%3Asarahleah1&src=typd>

²¹⁶ <http://www.theatlantic.com/international/archive/2010/04/human-rights-watch-and-hezbollah-supporter-norman-finkelstein/39592/>

²¹⁷ http://www.ngo-monitor.org/article/focus_hrw_raises_funds_in_saudi_arabia_by_demonizing_israel

²¹⁸ http://www.ngo-monitor.org/article/expert_or_ideologues_hrw_s_defense_of_marc_garlasco_s_nazi_fetish

²¹⁹ <http://online.wsj.com/news/articles/SB10001424127887324439804578105691046734674>

²²⁰ <http://www.thedailybeast.com/articles/2011/02/15/shawan-jabarins-controversial-appointment-to-human-rights-watch-board.html>

prejudicial statements about Israel on a secret Facebook group, including commenting on a report as “typical IDF lies.”²²¹

Like HRW, Amnesty also employs several highly questionable figures to report on Israel. One individual has been censured on multiple occasions for antisemitic activities. Kristyan Benedict, AIUK’s Campaign Manager, has had an extensive history of anti-Israel activism and bias. Benedict’s criticisms of Israel are without nuance, and he sees the Middle East through the prism of broad conspiracy theories, with Israel at the center:

The USA plays both Arab and Israel sides to generate money, power and control. The main reasons are: The Arms Trade: The conflict makes loads of money for the ‘weapons trade’. Israel always pushes the buttons to make all the surrounding Arabic states such as Syria, Lebanon feel insecure. So they then buy weapons off other states and this is a great profit-making industry.²²²

During the November 2012 war with Hamas, Benedict made an antisemitic joke on his Twitter account about three Jewish members of the UK Parliament. The tweet prompted an inquiry by John Mann MP, chair of the UK All-Party Parliamentary Group against Anti-Semitism, seeking clarification on the organization’s policies towards preventing antisemitism.

In November 2014 Benedict compared Israel to the Islamic State, by using the hashtag “#JSIL” on Twitter.²²³ The hashtag, which stands for “Jewish State in Levant,” is used by extreme anti-Israel groups to compare Israel to the Islamic terror group. In April 2011, Benedict threatened a pro-Israel activist with violence²²⁴ and allegedly, “Amnesty took disciplinary action against Benedict” following the threat.²²⁵

Again, it is imperative that any submission that contains antisemitic and discriminatory content should be disregarded by the COI, and the COI should refuse to credit the information or meet with individuals engaged in this activity.

²²¹ <http://www.washingtontimes.com/news/2013/may/22/reporters-human-rights-activists-trash-israel-secr/?page=all>

²²² *Id.*

²²³ Ynet News, “Senior Amnesty International official compares Israel to Islamic State on Twitter,” November 5, 2014, available at <http://www.ynetnews.com/articles/0,7340,L-4588465,00.html>

²²⁴ Richard Millet, Amnesty Event: “Israeli soldier used broken glass to cut Magen David into Palestinian boy’s forearm” April 13, 2011, available at <http://richardmillet.wordpress.com/2011/04/13/amnesty-event-israel-soldier-used-broken-glass-to-cut-magen-david-into-palestinian-boys-forearm/>.

²²⁵ Marcus Dysch, December 20, 2012 “Amnesty International orders official Kristyan Benedict to apologise for ‘antisemitic’ tweet,” The Jewish Chronicle, available at <http://www.thejc.com/news/uk-news/94787/amnesty-international-orders-official-kristyan-benedict-apologise-antisemitic-twe>.

Obligation to “Do No Harm”

One of the core tenants of fact-finding and a Guiding Principle of the HRC is that it should “do no harm.” This is unlikely to be the outcome of the COI. This politicized inquiry was organized at the behest of abusive regimes, in conjunction with Palestinian and Arab NGOs that explicitly reject normalization and a negotiated solution to the Arab-Israeli conflict. It has been and will be used to bolster those seeking the elimination of Jewish self-determination. Any report issued by the COI will likely be used to further discriminatory BDS campaigns and promote antisemitism. It will also be used as a pretext by the Palestinian Authority and the Arab States to continue their destructive policy of rejectionism.

Significantly, based on the reporting of past fact-finding missions, the conclusions will send a clear message to terrorist organizations that they can continue to embed within civilian areas and launch attacks from homes, schools, UN facilities, hospitals, and mosques with impunity. Doing so will further endanger not only Palestinian and Israeli civilians but civilians everywhere that are victims of this illegal and immoral war strategy.

Conclusion and Recommendations

Previous HRC fact-finding inquiries related to Israel have been of limited value due to their lack of due process and their disregard for legal standards and ethical principles. The continued failure by the HRC fact-finding mechanisms to employ clear benchmarks for ethical standards vis-à-vis its relations with NGOs, as well as their failure to adhere to the principles of objectivity, non-selectivity, balance, and universality, are among the reasons for the HRC's failures during its first eight years and the sweeping criticism of the Goldstone mission, among other initiatives. In some cases, their findings and conclusions have been manifestly dangerous and have contributed to civilian harm, bolstering the impunity of groups like ISIS, the Taliban, Hamas, Hezbollah, and Boko Haram.

At a minimum, and in order to avoid, the gross failures of the past, the COI must strictly adhere to the principles of impartiality and objectivity, identify all individuals involved in its work, adopt transparency standards governing all interactions with NGOs, and implement guidelines as to how the credibility and factual claims of NGOs will be assessed. Unfortunately, we have no evidence or reason to expect that this COI will be any different from its predecessors in these core dimensions.