

# **Filling in the Blanks**

Documenting Missing Dimensions in UN and  
NGO Investigations of the Gaza Conflict

A publication of  
NGO Monitor and UN Watch

Edited by  
Gerald M. Steinberg and Anne Herzberg

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## Preface

This report provides an independent, fully-sourced, systematic, and detailed documentation on some of the key issues related to the renewal of intense conflict between Hamas and Israel during July and August 2014. As such, it is intended to provide information on dimensions that are likely to be absent from the UN Human Rights Council's Commission of Inquiry on Gaza, initially known as the Schabas Commission.

The need for investigations that are conducted independent of the United Nations structure stems from a number of defects that have stained previous UN inquiries into armed conflict, in general, and regarding Israel, in particular. As reflected in numerous such investigations, these defects include political bias in the mandate and the appointment of commissioners, the secrecy that surrounds the investigation, the lack of information on the backgrounds and professional capabilities of the researchers and consultants, an apparent absence of expertise on military operations and laws of armed conflict, and reliance on unqualified and highly politicized sources. This history indicates a high probability of unverifiable allegations, distortions of fact and international law, and selective omissions, producing documents that are exploited in political, academic, media and legal frameworks, including submissions to the International Criminal Court. As a result of these failures, UNHRC investigations of conflicts involving Israel, and particularly regarding Gaza following the complete Israeli withdrawal in 2005, have generally erased or ignored central dimensions. Due to these blatant omissions, it was impossible to produce a credible description and analysis of the events. These fundamental failures characterized the 2009 "Goldstone Report"<sup>1</sup> (which Judge Richard Goldstone later acknowledged was based on false premises and allegations), as well as previous reports under the UN Commission of Human Rights (replaced by the Council in 2006).

In the process of writing this report, the leadership and timeframe of the UNHRC document changed dramatically, affecting the expectations that guided the choice of topics. At the beginning, the selection of William Schabas (who has a history of anti-Israel activism and prejudicial comments), the biased mandate that he received from the Council, the reliance of unverifiable claims combined with the absence of military expertise, and the secrecy which surrounded the investigation indicated that, once again, the final product would fall far from the basic requirements of a credible fact-finding report. It was highly probable that this report, like its predecessors, would omit key dimensions regarding the activities of the Hamas organization, including the thousands of rocket and

other attacks against Israeli citizens, and the international treaties and other legal instruments that are aimed at blocking support to terrorist entities.

However, at the beginning of February 2015, Schabas suddenly resigned after evidence emerged that he had omitted a key conflict of interest in a UN application form. Another member of the Commission, Judge Mary McGowan Davis, was appointed to replace Schabas, and subsequently, the date for presenting the report was delayed by three months. This was apparently necessitated by the need to investigate issues and dimensions that had not been examined by Schabas. Although the process was still kept under intense secrecy, more witnesses were called and a wider variety of source material was consulted. These changes suggested the possibility that, in this case, the UN publication would actually address some of the issues that had been previously ignored.

Regarding the elements that we address and are not in the UNHRC report, our publication will provide details on central dimensions required to adequately understand the conflict. In addition, to the extent that the report initiated by Schabas and completed by McGowan Davis does, in fact, examine the issues considered in our investigation, readers will have the opportunity to compare the two products, and perhaps find different angles and analyses, particularly regarding interpretations of international law.

I acknowledge the important contributions of a number of experts, including Jonathan Schanzer, Dr. Uzi Rubin, Anne Herzberg, Hillel Neuer, Prof. Abraham Bell, Trevor Norwitz, and Col. Richard Kemp, in the preparation of this report. I also wish to extend a special thanks to Naftali Balanson, Yona Schiffmiller, Josh Bacon, Rebecca Wertman, and Elana Zygman for their dedicated research, editing, and fact-checking assistance.

Prof. Gerald M. Steinberg

## Executive Summary

This report provides, in parallel to the report of the UN Human Rights Council's Commission of Inquiry on Gaza (the "COI" or "Commission"), independent, fully-sourced, systematic, and detailed documentation on some of the key issues related to the outbreak of intense conflict between Hamas and Israel during July and August 2014. Based on past UNHRC investigative commissions regarding Israel, in which the facts related to central dimensions of the conflict were omitted, a group of experts was assembled to provide the missing information and analysis.

On this basis, and noting that other detailed and verifiable reports are available on issues such as Hamas' violations of international law, the use of the Gaza population as human shields, the abuse of UN facilities for military purposes,<sup>2</sup> and the Israeli military's decision making during the conflict (the latter posted by the Israeli Ministry of Foreign Affairs), this report focuses narrowly on four other issues that are expected to be omitted by the UNHRC:

- 1) The production and import of rockets and missiles, which were then launched from Gaza at targets in Israel, in violation of international law: This section documents evidence on the transfer of rockets and components from Iran, via sea and land routes, as well as the use of materials and facilities in Gaza for producing such weapons. In the period since 2001, more than 20,000 projectiles have been launched from Gaza, targeting the Israeli civilian population in a gradually increasing radius. The import, production, storage (in densely populated civilian areas), and launch of these weapons clearly and repeatedly violate international law.

- 2) The sources of Hamas financing in light of international law forbidding the provision of assistance to terror organizations: Hamas is widely recognized as a terror organization, and as such, providing financing is a violation of international law. In this chapter, we examine the internal and external funding mechanisms of Hamas, with a particular emphasis on states that provide financial, military, and material support – specifically Syria, Iran, and, after 2012, Qatar and Turkey.

- 3) Evidence regarding the abuse of humanitarian aid provided by different sources — international agencies, individual governmental, and non-governmental aid groups — to Gaza; the diversion of aid for military and terror purposes; questions of supervision and accountability by aid providers; and the

international law implications of the diversion of aid. By acquiescing in the large-scale diversion of such aid to military and terror objectives, the providers of this aid, including governments and humanitarian organizations, share responsibility for the violent attacks and their deadly outcomes.

4) The credibility of reports and allegations from non-governmental organizations (NGOs) regarding the 2014 conflict: In this, as in many other conflicts, NGOs that claim to promote universal human rights, international law, and similar principles, repeatedly and consistently made claims that were highly selective, unsubstantiated, or clearly false. Many of these groups, which enjoy a high level of visibility and prestige, produce highly biased “reports” and draw conclusions without any professional fact-finding methodology, often based on selected “testimonies” that are unverifiable and contradictory. Nevertheless, in previous publications from the UNHRC, including the 2009 Goldstone Report on Gaza, publications from unsubstantiated and tendentious NGOs, often repeated by UN-OCHA or journalists, are cited as “evidence” and their legal conclusions are repeated. In this section, the biases, lack of professionalism, and methodological failures of the NGO network are documented in detail.

On the basis of the detailed research and analysis presented in these chapters, we offer the following conclusions and recommendations:

The continued failure by HRC fact-finding mechanisms to employ clear benchmarks for ethical standards vis-à-vis its relations with NGOs, as well as their lack of adherence to the principles of transparency, objectivity, non-selectivity, balance, and universality, are among the reasons for the HRC’s unsuccessful first eight years and the sweeping criticism of the 2009 Goldstone Report, among others. 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, future UN commissions of inquiry must move beyond the simplistic narrative of sole Palestinian victimhood and complete Israeli wrong-doing. They must end their practice of one-sided mandates and examine the motivations and actions of Hamas and other Palestinian armed groups, as well as their supporters and funders.

Future commissions must adopt and strictly adhere to internationally-accepted fact-finding standards, in particular the principles of impartiality and objectivity. They must also be fully transparent in all methods of their work including, identifying all staffers and consultants, adopting standards governing



all interactions with NGOs, and implementing guidelines as to how the credibility and factual claims of NGOs will be assessed. Without these key reforms, UN fact-finding mechanisms will continue to be viewed as politicized exercises of little relevance.

## **METHODOLOGY AND AIMS OF THIS REPORT**

This report provides an independent, fully sourced, systematic and detailed documentation in parallel to the report of the UN Human Rights Council's Commission of Inquiry on Gaza (the "COI" or "Commission") on issues related to the 2014 Israel-Hamas conflict. While the work of the Commission is hidden from public oversight, the available facts about the COI's mandate and operations, and the history of past UNHRC commissions leaves little doubt about the likely bias, unverifiable allegations and selective omissions in the report.

The United Nations Human Rights Council and its predecessor framework – the UN Commission on Human Rights – have created at least seven commissions of inquiry regarding the Arab-Israeli conflict in the past 13 years, more commissions than have been formed for any other conflict. All the commissions on the Arab-Israeli conflict have been mandated to investigate alleged Israeli wrongdoing; none have focused on wrongdoing by Arab states or terrorist groups in conflict with Israel. In all cases, the mandates of the commissions were openly biased, and each of the commission reports — from 2002 (Jenin), 2006 (Lebanon), 2008 (Beit Hanoun), 2009 (the Goldstone report), 2010 (Flotilla), and 2012 (settlements)— was surrounded by substantial criticism and controversy related to bias, inaccuracy, secrecy, questionable staffing and sourcing, and absence of systematic fact-finding methodology and standards.

The newest UNHRC commission was established on July 23, 2014 under Resolution S-21/1, passed during a special session of the UNHRC, in the midst of a 50-day conflict where Palestinian terrorist groups based in Gaza, under the control of the Hamas terrorist organization, fought Israel and launched thousands of deliberate attacks on Israel's civilian population. The Resolution "deplore[d] Israeli military operations" but not Hamas's attacks on civilians, and accused Israel, but not Hamas of "gross violations" of international law. The Resolution mandated the creation of a Commission of Inquiry (COI) "to establish the facts and circumstances of such violations, ... to make recommendations, in particular on accountability measures ... and to report to the Council at its twenty-eighth session." The scheduled date for release of the report was March 23, 2015.

On August 11, 2014, Ambassador Baudelaire Ndong Ella, President of the Human Rights Council, announced the appointment of William Schabas to chair the Commission,<sup>3</sup> despite (or, more likely, in consequence of<sup>4</sup>) his long

history of anti-Israel activism and prejudicial statements made about Israel and its leadership. On February 2, 2015, with the Commission having “largely completed the task of gathering material” and beginning “work on the drafting of the report,” Schabas resigned when the Bureau of the Human Rights Council requested a legal opinion from UN headquarters regarding a previously undisclosed conflict of interest created by Schabas’s prior paid work on behalf of the Palestine Liberation Organization.<sup>5</sup> On February 3, Mary McGowan Davis, already a member of the Commission, was appointed Commission chair, and the UN Secretary General announced that the Commission would still present the report according to its original schedule. Given the time frame, it was practically impossible for the new chair to alter the investigative agenda already set by Schabas.

On March 9, 2015, just two weeks before the COI’s report was to be presented to the Council, McGowan Davis requested a delay in presenting the report. Instead, on March 23, she provided an update of the COI’s work to the UNHRC, and the Council voted to delay presentation of the report to the body’s June 2015 session.

Despite indications that under McGowan Davis’ leadership the COI has interviewed additional witnesses and taken a broader look at source materials than it had under Schabas’ tainted leadership, the Commission’s work nonetheless remains clouded in secrecy. The evidence being considered by the COI has not been released to the public, the deliberations of the Commission are tightly sealed, the identities of staff members are hidden, and allocation of work between Commission members and staff is unknown. Moreover, past UNHRC reports can be used to predict the results, and suggest that the primary emphasis of the report will focus on unverifiable and false allegations against Israel premised on bad sourcing and a fundamental misunderstanding of military operations and the laws of armed conflict. The factual narrative adopted by the report will rely, in the main, on work by a variety of anti-Israel NGOs (only partially acknowledged), and it will reflect the narrative of Israel’s foes, primarily Hamas.

The factual narrative will not be supported by sufficient evidence to enable objective third parties to reach similar conclusions; indeed, in many cases, the factual narrative will be disproved by subsequently presented evidence. Nonetheless, the report will accuse Israel of numerous war crimes and crimes against humanity based on this shaky evidentiary foundation and tendentious and erroneous readings of the relevant law. Token acknowledgement of one or two of Hamas’s crimes — most likely related to the indiscriminate firing of rockets against Israeli civilians — will appear in the report to create the appearance of balance. The report will avoid recognizing the relevance of international law concerning terrorism and it will refrain from acknowledging that Hamas is a

terrorist organization.

As independent scholars and researchers who have examined previous UNHRC reports in detail, we decided to conduct our own investigation focusing on some of the central issues related to the conflict, international law and human rights. Lacking the substantial budget and personnel at the disposal of UNHRC, we limited our investigation to a small number of issues likely to receive inadequate treatment in the COI report.

In preparing this report, we are aware of the extreme complexities in discerning the facts in the context of urban warfare. We are keenly cognizant of the difficulty in ascertaining the truth when faced with contradictory versions of events, particularly when little or no forensic or documentary evidence is revealed to the public. When even the identity of casualties (combatant or civilian) is hotly disputed, it is difficult to make definitive judgments concerning such issues as military necessity and proportionality. As has been demonstrated conclusively in analysis of past publications, particularly in the case of the Goldstone Report, it is not possible within the compressed time frame of a few months to properly investigate incidents related to combat in Gaza. In nearly all cases, little or no direct evidence is available to non-party investigators regarding the events. The evidence at the disposal of non-party investigators is often based on the testimony of residents and partisans and is highly problematic (whether gathered by partisan non-government organizations, journalists, or officials of UN commissions) and of questionable verity.

Therefore, our publication does not attempt to provide a definitive analysis of the incidents during the 2014 combat. Instead, we focus on a number of central dimensions related to international law and human rights that are essential to understanding the context and combat. These dimensions are:

- 1) The production and import of rockets and missiles launched from Gaza at targets in Israel, in violation of international law;
- 2) The sources of Hamas financing and the sources of international law forbidding providing assistance to a terror organization;
- 3) The evidence regarding the abuse of humanitarian aid provided by different sources — international agencies, individual governmental, and non-governmental aid groups — to Gaza; the diversion of the aid for military and terror purposes; questions of supervision and accountability by the aid providers; and the international law implications of the diversion of aid; and
- 4) The credibility of reports and allegations from non-governmental organizations (NGOs) regarding the 2014 conflict.

## Chapter 1:

# Production and Import of Rockets and Missiles Launched from Gaza at Targets in Israel<sup>6</sup>

**A**s in previous outbreaks of intense combat in Gaza since the Israeli withdrawal of 2005, rocket attacks by Hamas and other Palestinian terrorist groups were central in 2014. During the 50 days of combat, over 4,560 projectiles (mortars, rockets and longer range missiles) were launched from Gaza toward Israeli targets.<sup>7</sup>

In this chapter, we examine these weapons, including the import of complete systems, as well as local production processes, beginning with the raw materials and machinery used, and the sources of these materials.

### A. OVERVIEW

Rocket and mortar attacks from Gaza targeting Israeli citizens began in 2001. From this time until December 31, 2014, Palestinian groups in Gaza had fired nearly 20,000 projectiles at Israeli villages, towns and cities, killing 36 Israeli, Palestinian, and foreign civilians and wounding more than 2,000 Israelis, destroying or damaging thousands of homes, disrupting daily life, creating economic dislocation and loss of jobs, disrupting the educational system and traumatizing millions. The number of fatalities in rocket and mortar attacks listed above does not include Palestinians who were killed as a result of rockets inadvertently landing in populated areas in Gaza, or exploding prematurely. These deaths will be addressed separately, later in this report.

Israel has taken numerous defensive measures to protect its civilians, including employing civil defense systems, providing public early warning, building personal and communal shelters, and — since 2011 — deploying active missile defense systems to destroy the rockets before they strike the ground.<sup>8</sup> Without those measures, the number of Israeli civilian deaths from Gaza rockets and mortars would have been much greater.

Figure 1: Rocket and Mortar Fire 2001-2014 <sup>9</sup>

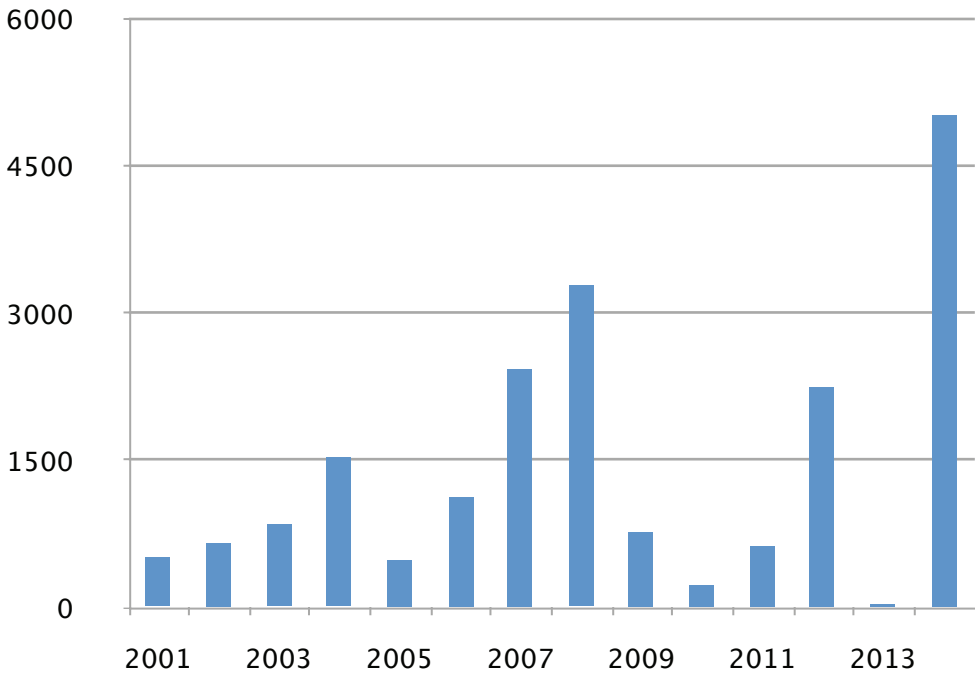
Year	Rockets and Motars	Civillians Killed	Wounded
2001	510	0	Not Available (N/A)
2002	661	0	(N/A)
2003	848	0	(N/A)
2004	1,528	7	(N/A)
2005	488	6	(N/A)
2006	1,123	2	371
2007	2,427	2	578
2008	3,278	5	611
2009	774	0	11
2010	231	1	35
2011	627	3	81
2012	2,248	4	286
2013	41	0	0
2014	5,012	6	80
<b>Total</b>	<b>19,796</b>	<b>36</b>	<b>2,053</b>

The Palestinian terrorist groups that have carried out the rocket and mortar attacks have made no effort to hide their responsibility for these attacks. On the contrary, they advertise them widely and take full responsibility for them.<sup>10</sup> Likewise, they have made no effort to disguise that they target civilians in villages, towns and cities. Occasional and contradictory efforts to describe the targets as “military,”<sup>11</sup> or to deny that there are any targets at all — Ahmed Youssef, a senior Hamas official, described his organization’s rockets as “fireworks” since they killed so few Israelis<sup>12</sup> — simply amplify the fact that the terrorists view all Jewish civilians and all Israeli property as legitimate targets.

Many of the rockets and mortars used in these attacks were manufactured in Gaza from imported dual-use raw materials that can be utilized for both civilian and military purposes. These dual-use materials were provided as humanitarian aid, or sold to Gaza businesses, ostensibly for use in commercial and agricultural activities.<sup>13</sup> In addition, as documented below, significantly more lethal rockets,

produced by established military industries, were exported or transferred to Gaza by outside supporters, primarily from Iran.<sup>14</sup> The warheads of these rockets are laced with metal shards to increase their lethality.<sup>15</sup> Over time, industrial level production lines of rockets and mortars were established in Gaza with Iranian support,<sup>16</sup> enhancing their range and lethality. Gaza rockets can now cover an estimated 75 percent of Israel's homeland territory<sup>17</sup> and threaten approximately 6 million civilians. During July and August of 2014, rockets were fired from Gaza towards Ben Gurion International Airport (near Tel Aviv),<sup>18</sup> at international sea ports in Ashdod,<sup>19</sup> at nuclear facilities in Dimona<sup>20</sup> and at least one natural gas installation located in the Mediterranean Sea.<sup>21</sup>

**Figure 2: Rocket and Mortar Fire 2001-2014**



## **B. EARLY ROCKET ATTACKS FROM GAZA — RATIONALE AND TECHNICAL FEATURES**

Cross-border rocket attacks against Israeli civilians have been launched by a number of different armies and terror groups for many years. This tactic increased significantly when adopted by the Iranian-backed Lebanese terror group Hezbollah in the 1990s, which fired a variety of rockets of Russian manufacture (presumably transferred from Iran to Syria) against Israel's northern communities.<sup>22</sup> Rocket fire from Gaza was initiated by Hamas in 2001.

In contrast to the rockets previously fired at Israel from Lebanon, the rocket fired from Gaza at Sderot, Israel on October 26, 2001 was locally designed and manufactured by the Izz ad-Din al-Qassam Brigades, the military arm of Hamas.<sup>23</sup> Israeli expert Uzi Rubin speculates that the vivid impressions made by Saddam Hussein's ballistic missile attacks on Haifa and Tel Aviv in 1991, served as inspiration for employing this method of attacking Israel, and it was perhaps an imitation of Hezbollah's success in bombarding Israel's northern cities with rocket fire during the 1990s.<sup>24</sup>

In 2001, Hamas' ability to import rockets from abroad was limited. In contrast with Hezbollah — which had near-complete control of Southern Lebanon in the wake of Israel's withdrawal in 2000, as well as direct transportation connections to Syria — Hamas had neither direct control of any territory nor open access to a port. Following the 1994 agreements, Gaza was mostly under control of the Palestinian Authority, but subject to an Israeli military presence. Israel controlled its own land border, access via Egypt (the so-called "Philadelphi Corridor"), as well as maritime access.<sup>25</sup>

However, Israeli control was incomplete and the Israel Defense Forces did not fully deploy and operate throughout Gaza. This situation exposed Israel to Palestinian rocket fire, particularly aimed at patrols along the borders and against civilians in the vicinity.<sup>26</sup> A network of smuggling tunnels was dug under the Gaza-Egypt border, through which Hamas and other groups were able to avoid Israeli inspections when bringing in materials.<sup>27</sup>

Using smuggled materials, Hamas began to manufacture rockets locally.<sup>28</sup> This innovation is attributed to a Hamas operative by the name of Adnan Al-Ghoul who is featured in the organization's literature as a "first-class explosives engineer" and who has served as the main explosives expert of its military arm since 1988. Rubin surmises that Ghoul and his assistants received their technical know-how from the Internet and via cyber communication with terror groups in Saudi Arabia and other terror warfare experts. It is also possible that some of



the inspiration came from the websites of rocket enthusiasts in the West, where instructions on homemade propellants for amateur rockets were available.<sup>29</sup>

The core innovation of these independently developed rockets was the use of locally available raw materials — mainly sugar, fertilizers and steel pipes imported from Israel — to produce the rocket propellant. The manufacturing process was simple and could be carried out in most domestic kitchens. The rocket casings were cut from irrigation pipes, traffic light poles or any suitable piece of steel piping available in Gaza. The warhead was filled either with military grade explosives salvaged from landmines or abandoned artillery shells or with improvised explosives made from common fertilizers available in the open market.<sup>30</sup> Most warheads were laced with metal shards or balls to increase their killing power.<sup>31</sup> Tools for machining the rocket nozzles and forming the stabilizer fins from steel cans, for welding the various parts and for finishing the product were widely available in numerous machine shops and light industries in Gaza City and its suburbs.<sup>32</sup> In this way, Hamas was able to improvise rockets built entirely from locally available materials (or such that could be easily imported as civilian goods) and produced by means of existing light industry in Gaza.

Hamas named the first generation rockets fired at Israel after a Palestinian national hero, *Izz ad-Din al-Qassam*, which was promptly shortened to “Qassam.” This name became accepted as a generic term for all types of rockets manufactured in Gaza, whether by Hamas or by other Palestinian organizations.<sup>33</sup>

The advantage of these rockets lay not only in the availability of raw materials, but in two additional characteristics. First, their small dimensions and relatively light weight (the weight of the first Qassams hardly exceeded five kilograms) greatly facilitated their transportation from the workshop to the launch point. In fact, the early Qassams were easily portable rockets that could be moved about manually. Second, the firing of Qassams did not require complex launching mechanisms — any suitable metal scaffold would do. This simplicity allowed for the quick manufacturing and production of Qassams in large quantities, rendering irrelevant the loss of any individual launcher to a preemptive strike, as they were essentially disposable.<sup>34</sup>

Immediately after fielding and firing the first rockets into Israel, Hamas embarked upon a program of enhancement and improvement, aimed mainly to extend the range and increase the lethality of their warheads. The range was gradually extended from three kilometers to more than 10km, and the weight of the warhead grew from half a kilogram to more than 10kg. As the warhead increased, the damage and Israeli casualties did as well. Improvements were also made to the impact fuse and to the explosive power of the warhead in order to increase the lethal effect.

The available literature describes several early models of Hamas-manufactured



rockets: The Qassam-1 has a range of 3km and carries a warhead weighing half a kilogram.<sup>35</sup> The Qassam-2 has a range of 8km and carries a warhead weighing over 5kg. Finally, the Qassam-3 has a range of 10km and a warhead weighing more than 10kg. However, this model's overall weight was an estimated 90kg, which restricted mobility and made it less useful for Hamas than the previous models.

While Hamas is the largest armed Palestinian faction in Gaza and has carried out the majority of rocket attacks against Israel, other Palestinian factions in Gaza are also responsible for rocket attacks. These include Palestinian Islamic Jihad, the Popular Resistance Committees, Fatah (the military wing of Fatah, the Al Aqsa Martyrs Brigades, usually takes credit), the Popular Front for the Liberation of Palestine, and the Democratic Front for the Liberation of Palestine.<sup>36</sup> Some of these organizations have their own rocket production facilities. At the time of writing (May 2015), at least five Salafist organizations are reported to have joined the rocket terror campaign from Gaza<sup>37</sup>, the most notorious of which — the Jama't Ansar Beit El Maqdas — has also formally joined ISIS.<sup>38</sup>

Of these organizations, Fatah may have been the first to join in Hamas' rocket campaign against Israeli civilians. In January 2002, three months after Hamas' first rocket struck the Israeli town of Sderot, the Israeli Navy intercepted an arms shipment aboard the *Karine A* cargo ship bound for Gaza.<sup>39</sup> Organized and financed by Fatah, the shipment included a sizable complement of longer-range military grade rockets — Iranian made 107mm Katyusha rounds and 122mm Grad rockets. Had the rockets reached Gaza, they would have likely been used by the Al Aqsa Martyrs Brigades.

## **C. GROWING SOPHISTICATION AND FREQUENCY OF ROCKET ATTACKS<sup>40</sup>**

### **I. First Phase of Rocket Campaign from Gaza: October, 2001-December, 2008<sup>41</sup>**

Hamas commemorates October 26, 2001 as the inaugural day of its rocket offensive. It fired three more rockets during that year, bringing the total for 2001 to four rockets.<sup>42</sup> The following year, 661 rocket and mortars launches were recorded, most of them landing on the Israeli side of the border and a few landing near Israeli military bases within Gaza. This number increased significantly in 2003 to 848 rockets and mortars, most of which were aimed at Israeli towns and communities in the vicinity of Gaza. Even in this initial period, it was possible to discern the influence of external events on the rate of fire. For instance, a ceasefire that followed the Aqaba Summit on June 4, 2003 brought about a month-long

break in the rocket launching from Gaza.<sup>43</sup> Likewise, after the death of Yasser Arafat in November 2004, there was a significant, albeit short, decrease in the rate of rocket fire from Gaza.

The volume of fire nearly doubled the following year. Throughout 2004, 1,528 rocket and mortar strikes were recorded near Israeli communities. The lethality of the fire also increased significantly. In June of that year, the rockets claimed their first Israeli victims – Afik Zehavi and his grandfather, Mordechai Yosefov – both killed by a rocket that landed near a kindergarten in Sderot on June 28, 2004.<sup>44</sup> These fatalities demonstrated the rise in reliability and lethality of the Gaza-made warheads.

During the following month (July 2004), 63 rockets landed near Israeli targets, indicating an accelerated production rate in the Gaza workshops. In 2005, the number of rockets and mortars launched at Israel was 488. It should be noted that in March 2005, the Palestinian factions in Gaza formally agreed to a “lull” in their terror attacks against Israel,<sup>45</sup> presumably related to the Israeli unilateral withdrawal from Gaza.

Immediately after the withdrawal in August 2005, rocket and mortar attacks resumed and with far greater frequency. The following year, 2006, saw a major growth in the amount, types and ranges of the rockets fired from Gaza with 1,123 rockets and mortars having been fired against Israeli villages and towns over the course of the year. In addition, Hamas launched a series of underground commando raids into Israeli territory, including the assault in which IDF Corporal Gilad Shalit was captured. This attack triggered a significant counter-attack by the IDF.<sup>46</sup>

In addition to the locally made extended range Qassams, the Palestinian rocket attacks on Israel included 122mm Grad-type missiles that were most likely smuggled into Gaza from Egypt, underneath the abandoned Philadelphi Corridor, vacated in the course of Israel’s unilateral withdrawal from Gaza in 2005.<sup>47</sup> The Israeli city of Ashkelon was hit for the first time by these extended range weapons.<sup>48</sup> In this period, rocket fire continued unabated at a fairly constant rate of 20 to 40 rockets per month.<sup>49</sup>

In June, 2007, Hamas violently seized control of Gaza and of the government buildings there, battling Fatah and expelling them from public life in Gaza.<sup>50</sup> The Hamas takeover enabled them and like-minded organizations to make extensive use of the tunnel systems dug beneath the Philadelphi Corridor and across the Egyptian border to smuggle in raw materials, explosives and machinery for more advanced rocket production as well as complete, factory-manufactured rockets. The latter included 107mm Katyusha rockets with a range of 7km, enhanced 122mm Grad rockets with a range of 43km, and eventually included 330mm Iranian designed and manufactured Fajr 5 rockets.<sup>51</sup>

During this period, the rate of the rocket fire targeting Israel reached a hitherto unprecedented level when in the month of May 2007 alone, 257 rockets were fired at an average rate of eight to nine rockets per day.<sup>52</sup> This was explained by the Israel Security Agency as an attempt to provoke a strong Israeli response that would unite the quarreling factions in Gaza and stop the internal war.<sup>53</sup> In 2007, a total of 2,427 rockets and mortars were fired at Israeli communities.

In 2008, the intensity of the rocket fire continued to grow, with 259 rocket and mortar launches in April.<sup>54</sup> A six-month ceasefire, mediated by Egypt, came into force on June 19,<sup>55</sup> and the rocket attacks subsided almost completely for five months. In November 2008, the fifth month of the agreement, following a border clash between Israeli troops and armed Palestinians, Hamas increased its rocket fire to an even greater level than before the ceasefire.<sup>56</sup> In December 19 of that year, Hamas proclaimed the end of the ceasefire, ratcheting its rocket attacks to previously unseen levels.<sup>57</sup> Shortly thereafter, Hamas announced the launch of "Operation Oil Stain."<sup>58</sup> This compelled Israel to launch a response (Operation Cast Lead), on December 28, 2008, with the objective of deterring the Palestinians from launching further rocket and mortar attacks on an increasingly wider range of Israeli population centers.<sup>59</sup>

Despite the six-month ceasefire agreement, Israel was hit with close to 3,000 rockets and mortars from the beginning of 2008 until the commencement of Operation Cast Lead, representing a significant increase from the previous year.<sup>60</sup>

## II. Operation Cast Lead: December 2008-January 2009

Approximately two hours after the first attacks by the IAF, Hamas and other Palestinian terrorist organizations accelerated their rocket fire toward Israel's civilian communities along the Gaza border and toward other towns and cities further away. During the 22 days of the conflict, a total of 776 rockets and mortars landed in Israeli territory, resulting in the death of three civilians, the wounding of over 180 civilians, and nearly 600 civilians being treated for shock and anxiety.<sup>61</sup> The effective lethality of the rocket fire was primarily managed by massive defense measures (early warning sirens, bomb-shelters and the cooperation of the general public with civil defense instructions) employed during the operation.

The Hamas rocket campaign had two unique features. The first was a higher rate of fire than before — the Palestinian organizations fired 776 rockets and mortars in the span of three weeks, compared to a previous peak of 380 rockets in any single month.<sup>62</sup> Moreover, the Palestinians' ability to double their rate of fire in a short period of time — within just a few hours — indicates that the five-month ceasefire in summer 2008 was utilized to greatly expand the human and material resources dedicated to rocket warfare against Israeli civilians.

The second feature was the use, for the first time, of imported and improved Grad rockets, whose range was double that of the standard Grad rockets previously launched from Gaza. These improved rockets, used against Israel by Hezbollah during the Second Lebanon War, enabled Hamas to strike deeper into Israel and reach communities beyond the Gaza-border communities, which had hitherto seemed safe from the Gaza rockets. The cities of Be'er Sheva and Ashdod were attacked almost daily by rockets with an estimated range of 43km, as were smaller communities such as Yavneh and Gedera. During this three-week long operation, approximately 130 Iranian-made, long-range Grad rockets were fired.<sup>63</sup>

### **III. Second Phase of the Rocket Campaign from Gaza: January 2009 to July 2014**

The four and a half years after the end of Operation Cast Lead in January 2009 until the next large-scale operation in July 2014 was characterized by periods of relative lulls, when rocket fire from Gaza reduced to a relatively sparse "drizzle," interspersed with outbursts of increased rocket fire on Israeli communities, the most intense of these occurring in November 2012.

This second phase of the rocket campaign from Gaza featured three new developments. The first was the efforts to smuggle into Gaza heavier, longer range rockets of Iranian and Syrian origins, with devastating warheads and ranges that could cover most of Israel's territory from the deep Negev desert in the south to Israel's transportation and industrial hub of Haifa in the north. The second development was the industrialization of indigenous rocket production in Gaza and the gradual shift from imported to locally produced rockets. As a consequence of growing local capabilities — the production, deployment and launching of rockets reached even longer ranges than ever before. Third, this phase of the rocket assault on Israel's civilian population saw rocket fire toward Israel's major metropolitan areas of Tel Aviv and Jerusalem.

#### **a. Smuggling of Heavy Long-Range Rockets From Iran and Syria**

With their network of smuggling tunnels dug under the Gaza-Egypt border, the Palestinian factions in Gaza succeeded in smuggling in Fajr 5 heavy artillery rockets, currently being used by Iran's military forces.<sup>64</sup> In comparison to the rest of the Palestinian rocket arsenal, it is a particularly devastating weapon. With a one-ton takeoff weight, it can deliver a 175kg warhead to a range of 75km. It is also quite cumbersome, with a diameter of 330mm and a length of 6.8 meters, making its successful handling and transportation from Sinai to Gaza through underground tunnels a significant logistical challenge.<sup>65</sup> Nevertheless,

the Palestinians managed to maneuver them into Gaza (most likely with help of Iranian technicians) and deploy them in buried launchers. These rockets were later used to attack Tel Aviv, as was seen in the summer of 2014.

In March 2014, Israel's navy boarded the SS Klos C, a Panama-flagged cargo ship sailing in the Red Sea, and uncovered a shipment of 40 Syrian-made 302mm artillery rockets, a standard weapon of the Syrian Army. The long-range version of this weapon carries a 90kg warhead to a range of 160km.<sup>66</sup> A slightly shorter range version of this rocket was fired by Hezbollah against Israel's northern population during the 2006 Second Lebanon War. While Iran denied any involvement in this affair, its fingerprints were quite clear.<sup>67</sup> The rockets were flown from Syria to Tehran, then trucked overland to the Iranian port of Bander Abbas where they were packed into containers and loaded on the SS Klos C. The ship made a stop in Shat El Arab to load a shipment of Iranian made cement sacks, used to camouflage the deadly rockets as civilian goods. The ship's destination was Port Sudan, from where the rockets were destined to be transported to Sinai for subsequent smuggling into Gaza through the tunnel system.<sup>68</sup> It is not known, at the time of writing, if any such rockets reached Gaza by previous or subsequent shipments.<sup>69</sup> The significance of Sudan in Hamas' efforts to raise funds, acquire weapons and training will be discussed in the next chapter.

Israel's success in preventing rocket shipments to Gaza was anticipated by the Palestinians' Iranian patrons, who had made early provisions to circumvent the blockage of smuggling routes.

## **b. The Industrialization of Palestinian Rocket Manufacturing in Gaza**

The second phase of rocket attacks witnessed the introduction of a sophisticated, semi-industrial level production methods that allowed the Palestinians to increase the size, range and lethality of their rockets. The new production methods replaced the locally produced Qassams and imported 122mm Grads used by the Palestinians during the first phase of their rocket assault on Israel. The Qassams that constituted the bulk of the Palestinians' early arsenal were effective in terrorizing civilians but were crudely made in kitchens and small workshops — an amateur level production method. In the second phase, more sophisticated methods were adopted.

The impetus to evolve from amateur to industrial-level production methods came from Iran. In the wake of the 2006 Lebanon War, Iran made a strategic decision to provide its clients in Lebanon and Gaza with local manufacturing capabilities, to thwart potential embargoes and sieges.<sup>70</sup> A systematic program of industrial buildup and manpower training was initiated. In the case of Gaza, the machinery was smuggled in through the extensive tunnel system running



under the Egyptian border. According to a Turkish media source, Palestinian trainees were flown to Iran to receive on-the-job training in the rocket industry, with the motto “you can’t bomb knowhow.”<sup>71</sup> This buildup was accelerated after the toppling of the Muslim Brotherhood-led regime in Egypt and the anticipation that the new regime would be unfriendly to the Hamas rulers of Gaza.

The newly established military industries in Gaza manufacture various types of military hardware, including rocket launchers and mortars.<sup>72</sup> It is possible that Iran’s depot for components, materials and technical assistance destined for Gaza was the Iranian owned “Yarmuk” factory near Khartoum — the same factory that’s bombing in 2012 was attributed in the media to Israel.<sup>73</sup> According to international press reports, this factory was bombed again by Israel during Protective Edge.<sup>74</sup>

From the abundant propaganda videos and statements to the press, it appeared that two separate industrial clusters were created, one for Hamas and the other for Islamic Jihad, each producing its own variants of rockets and other weaponry.<sup>75</sup> Despite being divided, these clusters might have shared background information, basic designs and acquisition channels for raw materials such as steel pipes and special chemicals for more modern, more energetic rocket propellants. As in the case of the previous, amateur-level-produced “Qassams,” the warheads of the later generation rockets from Gaza were laced with steel balls and shards to enhance their lethality, as can be seen from the abundant visual evidence in Israeli towns and cities that were struck by these weapons.<sup>76</sup>

Another significant achievement of the newly founded Gaza armament industries was the local production of multiple rocket launchers, some of which were quite sophisticated. Hamas-produced videos revealed that the quadruple barrel launcher for the M-75 long-range rockets was hydraulically elevated.<sup>77</sup> It is quite possible that similarly sophisticated launchers were also developed for the smaller Grad compatible rockets.

Longer-range rockets require test ranges to check their accuracy by live firing. The geography of Gaza itself is too small and too heavily built up to provide suitable test ranges for rockets of 40km and beyond. The Palestinian rocket industry is therefore testing its rockets by firing them into the Mediterranean Sea.<sup>78</sup> This method of testing however has the disadvantage of not being able to accurately record the point of impact for the rockets being tested. To solve this difficulty, the Palestinians sometimes test fire their long-range rockets into Israel, counting on Israel’s media to provide them with information about the impact zone.<sup>79</sup> Another method is test firing into Egyptian Sinai desert, relying on friendly locals to pinpoint the impact point and report it back to them.<sup>80</sup>

The fruits of this industrialization process became evident during the latter part of the next phase of the rocket campaign, when both locally made “Grad

compatible” rockets (i.e. with roughly the same range and warhead as the original military grade 122mm Grad) as well much heavier, 220mm rockets with twice the range of the Grads became prevalent in the rocket campaign. As a result, more and more villages, towns and cities in Israel came within the range of this new generation of Palestinian rockets. Even larger rockets of Gaza production made their appearance during the 2014 conflict, as will be described later on.

### c. The Course of the Rocket Campaign during its Second Phase

Operation Cast Lead ended with a unilateral ceasefire announced by Israel on January 17, 2009, followed by a corresponding unilateral ceasefire announced the following day by Hamas.<sup>81</sup> The ceasefires did not end the Palestinian rocket attacks on Israel, which tapered off but never ceased completely in the following years (and in fact continue as of this writing). No less than 88 rockets were fired at Israel in February, 2009,<sup>82</sup> but subsequently the rate of fire gradually subsided, bringing the total for 2009 to 774 rockets and mortars. The next year, 2010, saw an even more significant drop in the intensity of the terror from Gaza, with 231 rockets and mortars fired at Israel’s towns — the lowest number since 2003.

The tempo started picking up again in 2011, with a shift in the pattern of the terror rocketing from steady “drizzle” to what was termed in Israel as “violent cycles” — outbursts of intense rocket and mortar fire lasting several days followed by periods of relative calm. The first noticeable “cycle” occurred in April 2011 and was followed by further “cycles” in August and October of that year. This nearly tripled the total number of Palestinian rockets and mortars fired during that year to 627. This pattern intensified in 2012, with the most intense “cycle” occurring in March 2012, in the course of which the Palestinians fired about 170 rockets in three days. Further “cycles” erupted in June and August of that year.<sup>83</sup>

In October, 2012, the intensity of the Palestinian rocket and mortar fire rose once again. On November 14, 2012, a day after 100 rockets were fired at Israel, the IDF launched a week of air strikes, known in Israel as Operation Pillar of Defense.<sup>84</sup> Hamas, for its part, increased the pace of its rocket attacks on Israeli civilians in a counter-operation it labelled Operation Stones of Baked Clay.<sup>85</sup> Until the cease-fire at the conclusion of the operation, Palestinian rocket and mortar fire reached a hitherto unheard-of record of over 1,500 rockets and mortars in one week — the highest rate of fire ever. The week-long “cycle” saw the first rocket attacks on Tel Aviv and Jerusalem.<sup>86</sup>

Operation Pillar of Defense ended with the acceptance of an Egyptian-brokered cease-fire on November 21, 2012, which called for “all Palestinian factions [to] stop all hostilities from the Gaza Strip against Israel including rocket attacks, and all attacks along the border” and for Israel to “stop all hostilities in

the Gaza Strip.”<sup>87</sup> The ceasefire contributed to a pattern similar to the aftermath of Operation Cast Lead in 2009, where the rocket fire slackened for some time, before increasing again.

The escalating violence in 2012 was reflected in the total number of rockets and mortars for that year, which nearly quadrupled to the total of 2,248. In 2013, 41 rockets and mortars struck Israel, a significant decrease. Yet, while Hamas greatly reduced its fire, it simultaneously increased its preparation for the next major military action against Israel. In March 2014, there was a spike in rocket attacks with 65 rockets and mortars launched into Israel, as a different Palestinian terrorist group — Islamic Jihad — attacked Israeli civilians, while Hamas refused to enforce the ceasefire agreement, and Israel reacted with relative restraint.<sup>88</sup>

#### **IV. Operation Protective Edge: July-August 2014**

June 2014 once again witnessed a rise in rocket attacks against the backdrop of the kidnapping and murder of three Israeli teenagers that month by Hamas operatives, the arrest by Israel of many Hamas leaders in the West Bank, the murder of a Palestinian teen by Israeli vigilantes, and a preventive Israeli air strike on a Hamas cross-border tunnel.<sup>89</sup> Initially, in a repeat of March 2014, the attacks were carried out by Palestinian factions other than Hamas. Shortly afterward however, Hamas itself joined the renewed rocket assault, and Israel responded by launching Operation Protective Edge on July 7, 2014.<sup>90</sup> Both major Palestinian factions in Gaza, Hamas and Islamic Jihad, announced their own military operations against Israel, dubbed “The Rotting Straw” by Hamas and “The Steadfast Formation” by the Islamic Jihad.<sup>91</sup> The other Palestinian armed factions in Gaza joined the campaign, which lasted (with some temporary ceasefires) until a negotiated ceasefire facilitated by Egypt came into force on August 26, 2014.

The 50-day long rocket assault of July-August 2014 fully utilized the burgeoning rocket arsenals and the tactics of their use provided by Iran.<sup>92</sup> At the onset of fighting, the arsenals of the Palestinian terrorist organizations in Gaza brimmed with more than 10,000 rockets ranging from short range 107mm Katyusha rounds to 43km 122mm Grads, 75km 220mm M-75s that were fired at Central Israel and 300mm “R 160” with a claimed range of 160km that could reach all the way to Northern Israel.<sup>93</sup>

According to Israeli sources, over 4,560 rockets and mortars were fired at Israel during the campaign<sup>94</sup> (Hamas and Islamic Jihad claimed a significantly higher number of 6,870 rounds of mortars and rockets fired against Israel during the fighting)<sup>95</sup>. About one half of that number hit Israeli communities within close proximity to Gaza. The other half was fired at Israel’s major cities of Be’ersheva,



Ashdod, Jerusalem and Tel Aviv.<sup>96</sup> The major city of Haifa in Northern Israel was also targeted, although no rocket impact was registered in this city (some debris from Hamas rockets was found in its environs). The weapons used by the Palestinians to attack Israel's cities were not limited to rockets. For the first time, UAVs carrying explosives were launched from Gaza towards Tel Aviv, serving as land attack cruise missiles.<sup>97</sup> In total, Palestinian rocket and mortar fire during "Protective Edge" killed five Israeli civilians (including one child) and a Thai worker.

In another "first," the Palestinians targeted major civilian infrastructure with the aim of disrupting Israel's economy. Most noticeable was their campaign to disrupt Israel's passenger and commercial air traffic by targeting Ben Gurion International Airport. Another significant civilian target for Palestinian rockets were Israel's gas producing rigs located in the Mediterranean Sea, located north-west of Gaza.<sup>98</sup>

#### **D. ISRAEL'S PROTECTIVE MEASURES AGAINST PALESTINIAN ROCKET ATTACKS**

Since the commencement of the Palestinian rocket campaign against Israel a decade and a half ago, Israel has been engaged in an extensive and costly effort to protect its citizens' lives, to minimize the disruption to the national economy and education system, and to mitigate the damage to personal, public and commercial property. To that purpose, the Government of Israel allocated considerable resources to alert its citizens to incoming rockets, to build bomb shelters and to deploy defensive systems to intercept the rockets midflight.<sup>99</sup>

##### **I. Passive Defense**

Passive defense includes the measures designed to mitigate the consequences from rocket strikes. They include early detection of incoming rockets, warning sirens to warn the population to take shelter, and the construction of public and residential shelters in threatened communities. The first practical warning system, consisting of rocket detection sensors and public warning sirens was installed in the town of Sderot in 2004, following the first two fatalities caused by Palestinian rockets in the summer of that year. Later, the system (dubbed "Code Red") was expanded to cover more communities in the area. The first major town to be hit by rockets from Gaza was Ashkelon, and "Code Red" was installed there in 2005.<sup>100</sup> Today, the early detection and alert system against rockets from Gaza covers most of Israel.<sup>101</sup> The system, spotty at first, gradually became more reliable

and saved lives by warning people to take shelter before rockets struck. The time from alert to impact depends on the distance of each community from the launch point. In areas in close proximity to Gaza, like Sderot, the alert time is about 15 seconds, often insufficient to reach a proper shelter. In more distant communities the alert time is longer (for example 60 seconds in Be'ersheva or 90 seconds in Tel Aviv). The short alert times barely allow drivers and passengers on public transportation to debark and take shelter. Even the longest alert time is usually insufficient for the disabled to take cover. As a result, the sounding of air-raid sirens usually causes a degree of panic, at times leading to injuries in the course of the rush to take shelter. During the course of Operation Protective Edge in 2014, 159 people were treated by Israeli medical teams for injuries suffered while running to bomb shelters, along with 581 people who suffered anxiety attacks following air-raid sirens. Two Israelis also died while trying to reach shelter.<sup>102</sup>

While Israel's current building code requires that every new dwelling has at least one "fortified space" — usually a room with concrete walls, concrete ceiling and steel shutters — most of the dwellings in Israeli communities near the Gaza border were built before this code was legislated.<sup>103</sup> Preexisting public shelters were constructed when the main threat were air raids, with minutes-long, rather than seconds-long alert times. Hence, public sheltering for people caught in the open (such as persons queuing for public transportation) were completely lacking when the rocket offensive from Gaza commenced in 2001. In spite of the heavy costs involved, the Government of Israel allocated significant budgets for personal and communal sheltering. This included the structural fortification of all kindergartens and schools near the Gaza border, paying residents to build their own "fortified spaces" in older dwellings, and construction of local shelters within easy reach of public congregation spots such as bus stations. Israel budgeted over NIS 1.9 billion on shelters and fortification in Sderot and nearby communities from 2007 to March 2009 alone.<sup>104</sup> These measures, together with the deployment of active defenses as described below, are instrumental in saving the lives of Israeli civilians.

## II. Active Defense

Active defense denotes weapon systems that are designed to destroy missiles and rockets in flight. While active defense against tactical ballistic missiles was already maturing at the commencement of the rocket assault from Gaza, the brief flight time of rockets posed a major challenge to technicians: how to craft an agile enough system that intercept the rockets during their brief flight time. At first, high energy laser weapons were tried but were not adopted.<sup>105</sup> The mounting number of rocket victims and the ever increasing damages to property and

business compelled Israel to turn to a more feasible rocket interception technology and to formulate the concept that would eventually lead to the Iron Dome missile defense system. The first steps in this direction were taken in 2004, following the first deaths caused by Palestinian rockets from Gaza. The death and destruction from rockets in Northern Israel during the 2006 Lebanon War led to the decision to speed up development of Iron Dome in a crash program.<sup>106</sup>

The first two batteries of Iron Dome were deployed operationally for the first time in April, 2011, during a post-Cast Lead outburst of rocket fire. The batteries destroyed nearly 80 percent of the rockets fired at these Ashkelon and Be'ersheva.<sup>107</sup> Since then, a growing number of Iron Dome active defense systems took part in every cycle of violence involving Gaza, including Operations Pillar of Defense and Protective Edge, when the system was first tasked to defend Jerusalem, Tel Aviv and Ben Gurion International Airport.<sup>108</sup>

Compared to the 2006 Lebanon War, when no active defense system against rockets existed, by the conflict in 2014, the Iron Dome system reduced property damage from rocket fire to approximately one sixth of the earlier level. Similarly, the rate at which Israelis and foreign workers were killed by rockets (not mortars) was far less than the 2006 levels.<sup>109</sup> Another active defense system, the US made Patriot PAC2 also contributed to Israel's active defense by intercepting two attack UAV's launched by Hamas from Gaza for attacking the Tel Aviv metropolitan area.<sup>110</sup> It is important to note that Iron Dome is only designed to intercept rockets and not mortars; 13 Israeli civilians and soldiers, as well as one foreign worker, were killed by mortar fire into Israel during Operation Protective Edge.<sup>111</sup> In one such attack on August 22, 4-year old Daniel Tragerman was murdered when a mortar landed outside of his family's home in Kibbutz Nahal Oz, near Israel's border with Gaza.<sup>112</sup>

Iron Dome has been effective in intercepting rockets and has thus contributed to the security of Israeli civilians, as well as reducing property damages as a result of rocket strikes. The system however, has proven costly to develop, procure and deploy. Israel and the U.S. have combined to spend billions of dollars on the development, production, procurement and deployment of Iron Dome.<sup>113</sup>

## **E. CONSEQUENCES OF ROCKET CAMPAIGNS**

### **I. Overview**

The Palestinian rocket and mortar attacks from Gaza that targeted Israel's civilian population began on a small scale in 2001 and have grown steadily, with major costs to life, health, property, and livelihood. During the initial period of

short-range Qassams, approximately 20,000 residents of the communities and towns bordering Gaza were targeted. By 2012, this number rose to about 3 million Israeli residents of major cities and communities in Israel.<sup>114</sup> Today, approximately 6 million Israelis — over 70 percent of Israel's population — are threatened by Gaza-launched rockets.<sup>115</sup>

The consequences of this protracted rocket campaign have been grave. The rockets have killed dozens of Israelis and wounded thousands. Hundreds of residences have been damaged, some so severely that they had to be demolished. Industrial plants burned down, shopping centers damaged and businesses relocated or shut down, harming local economies, destroying jobs and depriving people of their livelihood.<sup>116</sup>

Schools and kindergartens were also hit and the educational system disrupted.<sup>117</sup> The rockets traumatized the targeted populations, adults and children alike, causing stress, depression and even miscarriage by pregnant women.<sup>118</sup> A 2011 study concluded that approximately 70 percent of children living in Sderot were suffering from post-trauma.<sup>119</sup> In total, the Israel Ministry of Education reported in 2014 that 38 percent of children in Gaza-area communities were receiving treatment for symptoms of PTSD.<sup>120</sup> Additionally, a study published in 2014 showed that 44 percent of mothers living in Sderot and other Gaza-area communities were suffering from some form of emotional distress, depression or PTSD.<sup>121</sup>

The direct damages from exploding rockets to date has amounted to hundreds of millions of dollars, while the indirect damages due to loss of income amounted to many more hundreds of millions.<sup>122</sup> These economic damages in the targeted communities were dwarfed by the damage to Israel's national economy by the decrease in gross national product brought about by the disruption of economic life even in areas not directly hit by rockets, such as loss of income from tourism.<sup>123</sup> The rocket and mortar campaign also forced the Israeli government to spend billions of shekels on a variety of defensive measures designed to protect the lives and property of the country's civilian population.

The incessant rocket attacks targeting Israeli civilians have been triggering increasingly violent cycles of fighting between Israel and the Palestinian factions in Gaza, costing thousands of lives on both sides of the border.

## II. The Human Toll

Since 2001 when the rocket and mortar campaign from Gaza commenced, Palestinian rockets and mortars have taken the lives of 36 Israeli, Palestinian and foreign civilians including five children and teenagers, and have wounded 2,051.<sup>124</sup> The first Israeli civilians to be killed by these rockets were Mordechai

Yosefov and his four year-old grandson, Afik Zahavi, when a rocket struck near the young child's kindergarten in Sderot on June 28, 2004.<sup>125</sup>

The same findings were reported in 2014. One case study was of 30 month-old Gill (a pseudonym), a native of Sderot. At the age of nine months, while being walked outside by her father, a "Code Red" alarm was sounded. Her father picked her up and ran to the closest shelter. While they were still running, a rocket exploded about 20 meters away. Luckily they were not hit but Gill developed strong PTSD (Post Traumatic Stress Disorder) symptoms: She cried incessantly, and clutched her mother while refusing to be held by her father. The two year old Kobi Cohen needed therapy after a rocket fell 50 meters from him. Even the sounding of the public alarm caused stress in children. Maayan, a 10 year old girl, was crossing the street when the public alarm sounded. Paralyzed with fear, she sat down on the side of the street and screamed until an ambulance crew arrived and calmed her down. Residents postponed urgent medical attention for fear of a rocket attack during the treatment. In the words of an Israeli paramedic in the town of Sderot, "People are shaking, they can't move, they are crying and sweating.... [The rocket fire] affects everybody — young, old, men, women, children." The director of the psychological service defined the consequences as "trauma upon trauma upon trauma."<sup>126</sup> Similar reports were repeated in other Israeli communities subjected to Palestinian rocket attacks.

The stress and trauma among children and adults was made even more acute by the partial breakdown of the educational system. Since the rocket attack that killed Mordechai Yosefov and Afik Zehavi outside a Sderot kindergarten in 2004, numerous kindergartens and schools at an ever increasing range from Gaza were hit by Palestinian rockets as will be discussed below. Mayors closed schools out of concern for the safety of students and teachers and frightened parents refused to send their children to school even when open, thus increasing their stress and trauma.

Nurseries, kindergartens and schools were hit on multiple occasions, forcing them to shut down for repairs. In January 2009, two kindergartens were hit in Be'ersheva and a school was hit in Ashdod by Palestinian rockets.<sup>127</sup> A 170mm rocket from Gaza severely damaged a school in Ashkelon in February 2009, forcing it to close for repairs.<sup>128</sup> Two kindergartens were hit in August 2014, one in Ashdod and the other in Kibbutz Nir Oz.<sup>129</sup> Concern over the safety of schoolchildren brought a decision to shut down all educational institutions in all the communities within 40km of Gaza during each of the major cycles of fighting in 2009, 2012 and 2014.

The disruption of daily routine, the worry about the safety of their children, the stress caused by repeated sirens and the physical danger posed by the rockets compelled many Israeli families to leave their homes and seek refuge in other

parts of the country. School registration in the town of Sderot fell by 10 percent in 2007 and 2008, indicating the proportion of residents that left the town for safer regions. The evacuation of residential districts was not limited to Sderot. In May 2008, after a member of Kibbutz Kfar Aza was killed by a mortar while coaching a junior soccer team, the community disintegrated and most of the member families packed up and left.<sup>130</sup> In 2008, it was estimated that approximately one-fifth of Ashkelon's then 110,000 residents evacuated the town because of the heavy rocket fire at the end of that year.<sup>131</sup> In summer 2014 a sizable proportion of the residents of Israeli communities near the Gaza border left their homes due to the incessant Palestinian mortar and rocket bombardment. A broader evacuation was probably avoided due to the increasing effectiveness of Israel's defensive measures, as described above.

It should be noted that the death and suffering among Israel's civilians from Palestinian rockets was not some unintentional byproduct but the desired result from a deliberate policy pursued by Hamas and other armed organizations in Gaza. The terrorizing and targeting of Israel's civilian population and the acute disruption of daily life as a result of rocket fire is the primary goal of this campaign, as reflected by the following statement made by Hamas co-founder and leading official, Mahmoud al-Zahar: "Rockets against Sderot will cause mass migration, greatly disrupt daily lives and government administration and can make a much huger impact on the government."<sup>132</sup>

### III. Property Damage

The 15-year long rocket campaign from Gaza has not only killed Israeli civilians, but has also caused damage and destruction of civilian property and infrastructure, triggering economic downturn to the afflicted communities and to the Israeli economy at large. Thousands of structures were damaged during the 2008-2009, 2012 and 2014 conflicts alone, including hundreds of homes.<sup>133</sup> Factories and business places have been damaged and at times even been destroyed completely by rocket fire, risking the lives and jobs of their employees. For example, two factories in Sderot burned down after being struck by a rocket in June 2014, wounding some of the employees.<sup>134</sup> Many businesses have closed in Sderot during the decade and-a-half rocket campaign. The financial firm Dun and Bradstreet, estimated in 2006 that 36.5 percent of Sderot businesses and companies were in danger of closing as a result of the rocket barrages.<sup>135</sup> Two years later, the same firm reported that over one-sixth of Sderot businesses closed during the period of January 2007-June 2008 alone.

Some indications of the extent of the direct property damages from rocket fire can be obtained from the compensations paid by Israel's Treasury for damages



to homes, vehicles and business places in each of the major fighting cycles: 30 million NIS in 2009, 57 million NIS in 2012 and 90 million NIS in 2014.<sup>136</sup> The damage would undoubtedly have been much higher if not for the deployment of active defense measures in early 2011. The Israel Tax Authority estimates that reparations for direct damages incurred during Operation Protective Edge will reach close to 100 million NIS, whereas indirect damages from that conflict are approximately 1.7 billion NIS. The Israeli Government had also allocated 60 million NIS to repair public infrastructure damaged during the conflict, as of January 28, 2015.<sup>137</sup>

#### IV. Economic Damage

While damage to civilian property and businesses was mitigated somewhat by Israel's defensive measures, Israel nevertheless incurred significant economic losses as a result of Hamas deliberate rocket campaign targeting population centers. This damage includes slowdowns in economic activities, empty shops, partial or full closure of factories and business enterprises, the drop in tourism and other economic losses that were the result of the risk from rocket fire. According to various estimations, indirect damages during Operation Cast Lead in 2009 is estimated at approximately 1.5 billion NIS, those of Operation Pillar of Defense in 2012 are estimated at 1.8 billion NIS, and those of Operation Protective Edge in 2014, at nearly 18 billion NIS.<sup>138</sup> These figures represent only part of the total indirect damages incurred during the entirety of the rocket campaign, from 2001 onward.

#### F. PALESTINIAN CASUALTIES FROM ROCKET ATTACKS

Though intended to kill and injure Israeli civilians, the rocket arsenals of Hamas and other terrorist organizations have also claimed the lives of many Palestinian civilians. This has been caused both by rockets being launched towards Israel and then falling short, striking densely populated civilian areas in Gaza, as well as by the premature detonation of rockets due to technical malfunctions. An example of the latter took place on September 23, 2005 when a truck full of Hamas rockets exploded at a rally in Gaza, killing 19 Palestinians.<sup>139</sup> Examples of the former can be found in the 13 Palestinian civilians, including 11 children, killed on July 28, 2014 by a Hamas launched rocket that landed near a market in Gaza, and in the five Palestinian civilians killed under similar circumstances over the course of Operation Pillar of Defense.<sup>140</sup> During both of these conflicts, hundreds of rockets launched by terrorist organizations in Gaza fell short, striking Gaza itself, resulting in many civilian deaths and considerable property damage.<sup>141</sup>

Due to the tight control on information within Gaza by Hamas, and the UN's, NGOs', and other international organizations' failure to document and report on these statistics, precise data regarding casualties and damage caused in Gaza by Palestinian terror groups is unavailable.



## Chapter 2:

# The Sources of Hamas Financing, and the Implications Related to Providing Assistance to a Recognized Terror Organization

### A. OVERVIEW

The Palestinian terrorist group Hamas, according to a December 2014 *Forbes* report, is the second richest terrorist group in the world. The report cites “taxes and fees, financial aid and donations” as the primary sources for Hamas’ estimated \$1 billion budget.<sup>142</sup> Other estimates put the Hamas budget at approximately \$900 million.<sup>143</sup> Reflecting common wisdom on Hamas, the *Forbes* report suggests that roughly half a billion dollars derives from “taxes, fees and duties, and from the businesses it runs.” The other half a billion comes from “private donations from businesses and organizations all over the world.” The bulk of this comes from Qatar, “Which donates hundreds of millions of dollars to the organization annually.”<sup>144</sup>

International law requires states to take measures against terrorist organizations, punish international crimes of terrorism, and otherwise refrain from providing even passive support to terror. These legal duties can be found in a variety of sources.

Most straightforwardly, a series of treaties in the last half-century have established a number of international crimes of terror, and provided general definitions of terrorism and criminal acts of terror.

For instance, the International Convention for the Suppression of the Financing of Terrorism (1999) requires state parties to establish within their domestic law a framework for criminalizing and punishing by “appropriate penalties” the provision or collection of funds “by any means, directly or indirectly ... willfully ... with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out” defined acts of terror. The acts of terror include hijacking, hostage-taking, attacks on airports and terrorist bombings, as well as other acts defined by nine specific treaties adopted between 1970 and 1997. The acts of terror also include “other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or

an international organization to do or to abstain from doing any act." States are required to treat as criminals not only those who finance the acts of terror, but also those who "organize or direct others" to finance terror, or who contribute to the financing of terror "by a group of persons acting with a common purpose" (so long as the contribution is made "in the knowledge of the intention of the group" to finance an act of terror or aims to "further[] the criminal activity or criminal purpose of the group.") The Convention adds that states must ensure that "considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature" can in "no circumstances" justify the crimes, and that none of the crimes outlined by the Convention "be regarded for the purposes of extradition or mutual legal assistance as a political offence or as an offence connected with a political offence or as an offence inspired by political motives." The Convention requires states to "afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences." (Nearly all countries, with the exception of the members of the Arab League, are parties.)

Another example is provided by the International Convention for the Suppression of Terrorist Bombings (1997), to which nearly all countries outside the Arab League are parties. The Convention requires parties to criminalize, with appropriate penalties, terrorist bombings, i.e., "intentionally deliver[ing], plac[ing], discharg[ing] or detonat[ing] an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility (a) with the intent to cause death or serious bodily injury; or (b) with the intent to cause extensive destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss."

Despite these and other legally binding instruments, jurisdictions where financial, military, and material support to Hamas are prevalent. We examine these funding channels in the following section.

## **B. TAXES, TUNNELS, AND THE EGYPTIAN CRACKDOWN**

Subterranean tunnels connecting Hamas-controlled Gaza to Egypt's Sinai Peninsula have for the last decade been the key to Hamas' ability to generate funds from the Gaza population. The tunnels were first created as a means to smuggle rockets and other weapons into the coastal enclave, but after Hamas conquered Gaza in 2007, prompting Israel to impose a blockade, the tunnels became a key artery for a wide range of goods. According to one estimate, Hamas, as Gaza's de facto rulers, collected some \$365 million in taxes each year from the tunnel trade.<sup>145</sup> More conservative estimates suggest that the total taxes collected

could be half that.<sup>146</sup>

To extract benefit from these tunnels, Hamas required the help of Egypt. While the tunnels yielded significant gains for Hamas under Hosni Mubarak, after Mohammed Morsi came to power in 2012 the financial benefits increased significantly. According to one report, the Hamas budget was \$428 million in 2009. It reportedly more than doubled to \$897 million in 2013.<sup>147</sup>

As one senior Israeli official explained, Cairo had become the “back office of Hamas” under Morsi. The official indicated that elements of the Brotherhood’s financial network were bankrolling Hamas, even as Egypt’s economy cratered.<sup>148</sup> Egypt was so central to Hamas’ operations, the movement held a round of internal elections in the Egyptian capital.<sup>149</sup> During Morsi’s presidency (2012-2013), Hamas reportedly charged Gazans nearly eight times the subsidized price of Egyptian fuel being imported into Gaza. Hamas also extracted taxes from all goods entering Gaza, including cigarettes and gasoline. The tax rate is believed to be 20 percent.<sup>150</sup>

As the *Forbes* report notes, “Hamas makes most of its money from a sophisticated tax system, aimed at, among other things, pocketing large portions of the international aid that flows into Gaza. For example, Hamas taxes money changers that convert foreign currency to shekels, and gains tens of millions by doing so.” The report also asserts that Hamas benefits from a variety of businesses that it controls either directly or indirectly. Finally, Hamas controls several banks “and everyone that wishes to do business with the government in Gaza need to certify they are working with the right bank.”<sup>151</sup>

While Hamas’ system of taxation is still intact—Hamas reportedly raised taxes on Gazans after the 2014 war with Israel<sup>152</sup>—the downfall of the Muslim Brotherhood government in 2013 delivered a blow to Hamas’ financial fortunes. The regime of President Abdel Fattah al-Sisi has also destroyed more than 1,639 subterranean smuggling tunnels connecting Egypt to Gaza.<sup>153</sup> The importance of the destruction of the tunnels cannot be emphasized enough. The crackdown has made bulk cash smuggling—the primary way Hamas’s bank accounts can be replenished—exceedingly difficult. Tunnels were also crucial to Hamas because of the taxes on all goods that passed through them, as noted above. Ala al-Rafati, the Hamas economy minister, told Reuters in 2013 that the anti-tunnel operations cost Hamas \$230 million—about one-tenth of Gaza’s GDP.<sup>154</sup> Subsequently, another estimated 900 tunnels were destroyed. And this was before Egypt began establishing a large buffer zone on the Gaza border to prevent further smuggling.<sup>155</sup>

The Sisi regime also froze the accounts of at least 30 Brotherhood figures,<sup>156</sup> including at least one significant contributor to Hamas’ coffers, according to a senior Israeli security official. Although it is possible that some Hamas money remains unfrozen in Egypt, Cairo continues to hunt Muslim Brotherhood and

Hamas accounts.<sup>157</sup> According to one Israeli report, Cairo-based Hamas leader Mousa Abu Marzook is currently worth \$2-3 billion.<sup>158</sup> Arab media sources put Abu Marzook's net worth at \$3 billion.<sup>159</sup> It is unclear whether Cairo has seized these assets or if Marzook is under investigation.

Marzouk is not the only senior Hamas figure reported to have amassed a significant fortune. According to a July 2014 report by the Israeli publication *Globes*, Hamas' Gaza-based Prime Minister Ismail Haniyeh is currently worth approximately \$4 billion. Most of his assets are believed to be registered in Gaza under the name of his son-in-law, Nabil, and his 11 other children, as well as in the name of other low-level Hamas officials. All of Haniyeh's 12 children reportedly have houses in Gaza worth at least \$1 million each.<sup>160</sup> It's unclear how much of this property was damaged during the conflict.

According to the same report, Ayman Taha, who is responsible for coordination between Hamas' external and internal leadership, has joined the ranks of Hamas' tycoons. He recently constructed a house in Gaza worth at least \$1 million.<sup>161</sup> Taha allegedly purchased properties and made deals for Hamas in Gaza, ensuring that Hamas officials received their dividends.<sup>162</sup>

Several of Hamas' leaders thus did not appear to have felt the effect of the Egyptian crackdown, and maintained the capability of financing the movement during a difficult financial period. But is the support of state actors that have consistently helped Hamas meet its financial needs.

## **C. STATE SUPPORTERS**

### **I. Qatar**

Until 2012, Hamas relied heavily on Iran and Syria for financial support, but the civil war in Syria prompted Hamas to reconsider this relationship. The Hamas leadership left its longtime base in Damascus after the carnage in Syria became too great as the Sunni Palestinian group could not maintain its credibility among Palestinians if it stood by the Assad regime as it killed Sunnis and Palestinians by the thousands. Before Hamas left Damascus, the group's assets there were estimated at nearly \$550 million.<sup>163</sup> It is unclear if Hamas leaders were able to leave with those funds in hand.

In the end, Iran reportedly cut a significant amount of its funding to Hamas.<sup>164</sup> However, Qatar appears to have filled much of the void left by Iran with some of the support it provides being political. During the recent conflict between Hamas and Israel, Qatar played a crucial political role for Hamas, pushing a plan designed to benefit the terrorist group above all else. The Qataris angled for a one-sided deal that would have ignored Israel's security concerns, and pushed

for Hamas' integration in the global economy.

Qatar's role is not only a political one and as one Arab diplomat stated, "Qatar finances Hamas strongly."<sup>165</sup> In 2006, shortly after the elections that brought Hamas to power, Qatar offered \$50 million to what was then a Hamas-dominated Palestinian Authority government.<sup>166</sup> In 2008, Palestinian officials claimed that Qatar provided Hamas with "millions of dollars a month" that was nominally intended for the people of Gaza.<sup>167</sup> In February 2012, Hamas announced that it would sign a deal with Qatar to receive \$250 million for reconstruction projects in Gaza, including 5,000 new homes and 55,000 repairs.<sup>168</sup> In August 2012, Qatar was reported to be opening an office in Gaza to oversee its various construction endeavors in the coastal enclave.<sup>169</sup>

More famously, in October 2012, Qatar's emir pledged \$400 million to Hamas during a high-profile visit to Gaza,<sup>170</sup> with his visit being the only visit by a world leader to Gaza after Hamas took over by force in 2007. While it is still unclear how much of these Qatari funds were delivered, U.S. officials are convinced that Qatar is bankrolling Hamas. In March of this year, David Cohen, Under Secretary for Terrorism and Financial Intelligence, confirmed that "Qatar, a longtime U.S. ally, has for many years openly financed Hamas."<sup>171</sup>

After Hamas and Fatah reached a reconciliation agreement in May 2014, Qatar pledged \$60 million to help Hamas pay salaries to its Gaza employees.<sup>172</sup> In July, Doha tried to transfer funds via Jordan's Arab Bank to pay these salaries.<sup>173</sup> Arab Bank, currently battling a lawsuit on charges of financing Hamas, declined to process the payment, reportedly as a result of U.S. pressure.

Qatar is also the home base of Hamas leader Khaled Meshal. According to Qatar scholar Allen Fromherz, "After Jordan closed the offices of Hamas in 1999, Qatar offered to allow Khaled Meshal and some of his deputies to relocate to Qatar as long as they did not engage in overt political activities." Fromherz noted that Meshal reportedly "regularly shuttle[d] between Doha and Damascus," where Hamas' external leadership maintained its headquarters until 2012.<sup>174</sup> It is worth noting that Meshal may have parked some of his cash in Qatar. According to a July 2014 report by the Israeli publication *Globes*, Meshal is currently worth \$2.6 billion,<sup>175</sup> and Arab media sources put Meshal's net worth at somewhere between \$2.5 and \$5 billion.<sup>176</sup> Companies registered under the names of Meshal's wife, Amal al-Burini and one of their daughters are involved in real estate development projects, including a large shopping mall in Qatar.<sup>177</sup> Meshal's money is also reportedly held in Egyptian and Gulf-based banks,<sup>178</sup> as well as in a number of real estate projects in Saudi Arabia, Syria, and Dubai, all registered under different names.<sup>179</sup>

Qatar also plays host to many other senior Hamas figures. As part of the 2011 deal for the release of kidnapped Israeli soldier Gilad Shalit, 15 Hamas members

released from Israeli prisons were deported to Qatar and are still believed to be operating there.<sup>180</sup> Additionally, upon the departure of the Hamas leadership from Damascus in 2012, a significant Hamas cadre of leaders relocated to Qatar.<sup>181</sup> Izzat al-Rishq, deported from Jordan in 1999, is one prominent member of the Hamas Politburo believed to be based in Qatar.<sup>182</sup> Hossam Badran, a Hamas Politburo spokesman, is also based in Qatar.<sup>183</sup> Talal Ibrahim Abd al-Rahman Sharim is a member of the Qassam Brigades, also based in Qatar, who reportedly played a recent role in passing money and directives to Hamas cells in the West Bank.<sup>184</sup>

In December 2014, Kuwaiti news reports indicated that Doha might halt its support to Hamas as part of a deal designed to lower tensions with the Sisi regime in Egypt.<sup>185</sup> Hamas denied these reports.<sup>186</sup>

## II. Turkey

Like Qatar, Turkey was a strident supporter of Hamas during the recent conflict, but it may also be a significant financial supporter of the terror group, as well. In December 2011, Palestinian news sources reported that Recep Tayyip Erdoğan, then prime minister of Turkey, “Instructed the Ministry of Finance to allocate \$300 million to be sent to Hamas’s government in Gaza.”<sup>187</sup> Both Turkey and Hamas denied this, but Reuters<sup>188</sup> and the Israeli newspaper *Haaretz*<sup>189</sup> published subsequent reports citing this number. It is also unclear how much of this assistance was delivered, if any.

Turkey, meanwhile, has not been shy about the other financial and material support it provides to the Hamas government in Gaza. Turkey has provided funds for schools,<sup>190</sup> hospitals,<sup>191</sup> mosques,<sup>192</sup> and other supplies<sup>193</sup> to the Hamas regime in Gaza, with additional funds sent to help Hamas rebuild after its November 2012 war with Israel. More funds designated for rebuilding are expected after this most recent conflict. To be sure, these funds may help the population of Gaza, and that should be welcomed. At the same time, Turkey’s politicized support also legitimizes Hamas in the process.

There also appears to be a disturbing flow of unofficial funds from Turkey to Hamas. According to an Egyptian publication, Muslim Brotherhood groups sent several million dollars to Gaza to help assist civilians in rebuilding their homes destroyed in the 2014 war. According to the report, a financial officer from Hamas named Essam al-Da’alis did not distribute the funds to civilians to rebuild their homes, but rather dispersed the funds to prominent members of the militant group.<sup>194</sup>

There is also concern in Washington over the charity that was behind the 2010 flotilla to Gaza, which led to clashes on the high seas. In or around 2001, the Humanitarian Relief Foundation (IHH) became part of the Union of Good, the



aforementioned umbrella organization chaired by the Qatar-based cleric Sheikh Yusef al-Qaradawi, who is known for encouraging suicide bombings against Israeli civilians.<sup>195</sup> The U.S. Treasury Department has expressed its concerns over whether the IHH provided Hamas with material assistance.<sup>196</sup> To date, however, no designation has been issued, and the IHH continues to operate openly in Gaza.<sup>197</sup>

Turkey also serves as the headquarters for the man described as the founder of the West Bank's Izz al-Din al-Qassam Brigades. The Israeli news website Ynet reported last year that Saleh al-Arouri "operates out of Turkey, with the backing of the Turkish government."<sup>198</sup> While al-Arouri's activities are generally below the radar, it is believed that he is raising funds for Hamas. Last year, the Israel Security Agency (Shin Bet) announced the arrest of two Palestinians involved in smuggling money for Hamas from Jordan to the West Bank.<sup>199</sup> During their interrogation, the suspects ceded that some of the money was being smuggled on behalf of al-Arouri.<sup>200</sup>

Al-Arouri is also believed to be in charge of Hamas' terrorist operations in the West Bank, despite some claims that he is simply a member of Hamas' political wing.<sup>201</sup> In January, a senior Israeli military official confirmed this when he told *Israel Hayom* that Hamas' recent West Bank operations are "directed from Gaza via Turkey."<sup>202</sup> More recently, in August, the Israelis announced that al-Arouri was at the center of a plot to bring down the Palestinian Authority government of Mahmoud Abbas in the West Bank. Al-Arouri recruited the leader of the operation, according to reports.<sup>203</sup>

Despite all of this, or perhaps because of it, al-Arouri is held in high regard in Turkey. In March 2012, for example, he was part of a Hamas delegation that took part in talks with Turkish officials, including Erdoğan. The following October, al-Arouri joined Hamas politburo chief Khaled Meshal for a high-level meeting with Erdoğan in Ankara.<sup>204</sup> He is also granted freedom of travel abroad for Hamas activities, including to Gaza and for a recent trip to meet the amir of Kuwait.

Speaking at an Istanbul conference of a group headed by Yusef al-Qaradawi, the International Union of Muslim Scholars (IUMS), al-Arouri announced that his terrorist group had carried out the kidnapping and killing of three Israeli teens in the West Bank in June 2014. Interestingly, Hamas had denied its responsibility at the time of the attack, yet as the war neared its end, with Turkey's deputy prime minister in the audience,<sup>205</sup> al-Arouri took the opportunity to laud the triple murder as a "heroic operation" carried out by Hamas operatives with the broader goal of sparking a new Palestinian uprising.<sup>206</sup>

Al-Arouri is not the only Hamas figure residing in Turkey. In 2011, Israel released 10 Hamas operatives to Turkey as part of the prisoner exchange deal with Hamas that secured the release of Gilad Shalit. The Hamas figures believed

to have gone to Turkey include Mahmoud Attoun and Taysir Suleiman. Both were sentenced to life terms in Israeli prison for murder, and both men today appear on television and lecture in Turkey and around the world about the merits of Hamas.<sup>207</sup>

Finally, after the war with Israel in the summer of 2014, long-time Hamas envoy to Iran, Imad al-Alami travelled to Turkey to receive medical treatment for a leg injury sustained under curious circumstances. Al-Alami, who played a significant role in procuring Iranian weapons and cash for Hamas over the years, appears to have remained in Turkey. It is unclear whether his presence is an indication of Turkish-Iranian collusion in support of Hamas.<sup>208</sup>

### III. Iran

While Qatar and Turkey appear to be Hamas' top patrons at this time, Iran still plays a significant role despite a decline in relations due to tensions over the Syrian civil war. In a July 2014 letter regarding the latest Gaza conflict, Major General Qassem Suleimani, Commander of Iran's Islamic Revolutionary Guard Corps Qods Force (IRGC-QF), described the leaders of Hamas as "my dear brothers" and reaffirmed Iran's support to the terrorist group.<sup>209</sup>

Iran was one of the early supporters of Hamas as notably in 1992, Hamas and Iranian officials reached an agreement that led to the formation of a political and military alliance.<sup>210</sup> According to the Chairman of the Foundation for the Defense of Democracies, testifying in 1995 in his capacity as Director of Central Intelligence, James Woolsey noted that Iran provided more than \$100 million to Hamas from 1988 to 1994.<sup>211</sup> In 1993, according to PLO allegations, Iran pledged an annual \$30 million subsidy to Hamas.<sup>212</sup> Osama Hamdan, a Hamas representative to Iran in 1994, openly gloated that the growing ties between Hamas and Iran came at the expense of the PLO after the latter's decision to enter into peace negotiations with Israel.<sup>213</sup> In 1993, Egyptian intelligence reported that Iran was training up to 3,000 Hamas militants<sup>214</sup> in both Sudan and Iran. These fighters often returned to the West Bank and Gaza for commando or suicide operations.<sup>215</sup>

Iranian funding continued through the late 1990s,<sup>216</sup> and into the second intifada. However it was not until 2003 and 2004 that the financial relationship deepened. After a series of attacks in the Kingdom of Saudi Arabia by al-Qaeda, the Kingdom elected to reduce its support to violent groups around the region, including Hamas, leaving a vacuum that Iran filled. Beginning in 2004, Khaled Meshal began to coordinate more of Hamas' military, political, and financial activities out of Damascus.<sup>217</sup> As he did, Meshal also turned increasingly to Tehran for both financing and training.<sup>218</sup>

Iran became even more vital to Hamas' finances after Hamas' January 2006



electoral victory and the Western embargo that followed. A Hamas spokesman confirmed that Iran “was prepared to cover the entire deficit in the Palestinian budget, and [to do so] continuously.” The Bonyad-e Mostazafan va Janbazan (Foundation of the Oppressed and War Veterans), a splinter of Iran’s IRGC, reportedly opened its coffers to Hamas, providing critical financial support.<sup>219</sup> During a visit by Hamas Prime Minister Ismail Haniyeh to Tehran in December 2006, Iran pledged \$250 million in aid to compensate for the Western boycott.<sup>220</sup> Iran is also believed to have assisted in Hamas’ overthrow of the Palestinian Authority in Gaza in 2007.<sup>221</sup>

In October 2007, during congressional testimony, Secretary of State Condoleezza Rice openly stated her concerns about Iranian support of Hamas.<sup>222</sup> Rice had plenty of reason to be concerned. A series of Treasury designations in 2006 and 2007 laid bare the extent of Iranian financial support to Hamas. In 2006, Treasury targeted Iran’s Bank Saderat, noting that it was “used by the Government of Iran to transfer money to terrorist organizations, including... Hamas.”<sup>223</sup> In 2007, the Treasury designated the Iran-based Martyrs Foundation, including its U.S. branch (Goodwill Charitable Organization), and described it as “an Iranian parastatal organization that channels financial support from Iran to several terrorist organizations in the Levant, including ... Hamas.”<sup>224</sup> The Treasury also designated the IRGC-QF, noting material support to Hamas, among others. Finally, a Treasury Department press release from 2007 claimed that Hamas had substantial assets deposited in Bank Saderat as early as 2005 and that Bank Saderat had transferred several million dollars to Hamas between 2006 and 2007.<sup>225</sup>

In May 2008, *Asharq al-Awsat* reported that Iran was set to provide Hamas with \$150 million.<sup>226</sup> The following year, Egypt’s then-intelligence chief Omar Suleiman reportedly told the United States that Iran provided Hamas with \$25 million per month.<sup>227</sup>

There was also a widespread recognition within the Israeli military that Hamas’ fighting capabilities had improved because of Iranian assistance. In March 2008, *The Sunday Times* reported that “Hamas had been sending fighters to Iran for training in both field tactics and weapons technology.”<sup>228</sup> Equipped with night vision goggles and other specialized hardware, the professionalism of the new Iranian-trained Hamas military led one veteran intelligence office in Israel to admit, “the Palestinians never looked like this.”<sup>229</sup>

Beginning around 2009, Iran also began to increase its efforts to arm Hamas with missiles, and the United States received multiple reports of Iranian missile smuggling via Sudan to Gaza.<sup>230</sup> In March 2011, Israeli authorities boarded the *Victoria* and seized numerous Iranian weapons, including anti-ship missiles, destined for Hamas.<sup>231</sup> During Operation Pillar of Defense in 2012, Hamas fired Iranian-engineered Fajr 5 missiles from Gaza into Israel—an indication that

rockets were getting through, despite several successful Israeli interdictions.<sup>232</sup> More recently, in March 2014, the IDF intercepted a Panamanian-flagged cargo vessel identified as the SS Klos C carrying M-302 rockets and other “advanced weaponry intended for terrorist organizations operating in Gaza shipped by Iran.”<sup>233</sup>

During the most recent Gaza conflict, one Iranian official boasted that Tehran is “sending rockets and military aid [to Hamas].”<sup>234</sup> Another official bragged that the over 4,000 projectiles launched by Hamas at Israel during the most recent round of fighting “are the blessings of Iran’s transfer of technology” to the Palestinian terror group.<sup>235</sup> Hamas also maintains an indigenous rocket-making capability now. The speaker of the Iranian parliament, Ali Larijani, claimed that Hamas gained this capability with the help of Iranian training.<sup>236</sup>

A key figure in procuring Hamas funds and weapons for Hamas is the aforementioned Imad al-Alami.<sup>237</sup> As recently as 2013, al-Alami, reportedly met with Larijani.<sup>238</sup> As Hamas’ representative to Tehran, al-Alami is a known quantity at the U.S. Treasury, which designated him in 2003.

The U.S. Treasury, it should be noted, continues to target others involved in the Iran-Hamas financial pipeline. In August 2010, the U.S. Treasury designated Hushang Allahdad, a senior financial officer of the IRGC-QF who “personally oversees distribution of funds to Levant-based terrorist groups and provides financial support for designated terrorist entities including...Hamas.”<sup>239</sup> The following year, the State Department designated Hamas operative Muhammad Hisham Muhammad Isma’il Abu Ghazala, noting his extensive links to Iran.<sup>240</sup> In August 2013, the Treasury designated four members of Hezbollah’s leadership including Khalil Harb, who is described as “overseeing work of the Islamic Resistance, including assisting with the smuggling of Hamas...operatives from Syria into the West Bank via Jordan.”<sup>241</sup>

Following the summer 2014 war, Iran boasted that it was arming Hamas in the West Bank, in anticipation of another conflict with Israel, and by December 2014, Israeli analysts confirmed this to be true.<sup>242</sup> It was also in December 2014, that Hamas thanked Iran for providing it with funding and weapons, including rockets and anti-tank missiles. It was unclear whether the financial and military assistance was predicated upon the resumption of violence with Israel.<sup>243</sup>

#### IV. Sudan

Similar to its relationship with Iran, Hamas has long-standing ties with Sudan. The group’s members regularly travel to Sudan to attend conferences, as well as to meet with Sudanese officials.<sup>244</sup> According to the U.S. State Department’s annual Country Reports on Terrorism, Hamas fundraises in Sudan and maintains

a presence there.<sup>245</sup> Hamas has reportedly established a strong relationship with Sudanese government officials and uses Sudan as a key transit route to facilitate the movement of Iranian weapons to Gaza.<sup>246</sup>

In the 1990s, Hamas maintained offices in Khartoum's Ammarat district<sup>247</sup> and used Sudanese territory to train its operatives.<sup>248</sup> In 2001, *Maariv* reported that Israeli and U.S. intelligence believed that Sudan had become a "major haven" for terrorists from a number of Middle East terror groups, including Hamas. According to the report, "Iran transfers money to the terrorists in Sudan, provides Iranian trainers, and maintains regular contacts with Hamas and Islamic Jihad men." One security source noted, "Many Hamas activists know for a fact that they have a place to run to. Therefore, they go to Sudan, where they can move freely."<sup>249</sup>

In August 2002, Muntasar Talab Salamah Frej, a Palestinian from Gaza, was arrested by the Israel Security Agency (Shin Bet). The indictment against Frej charged him with receiving bomb-making training in Sudan, under the auspices of Hamas, in addition to a number of other terror-related charges.<sup>250</sup> More recently, in February 2010, multiple sources cited a report on the Lebanese Al-Qanat website that alleged that Hamas was training operatives in Sudan to fire rockets.<sup>251</sup> In January 2013, a delegation from Hamas' Interior Ministry, led by Fathi Hammad, visited Khartoum, and reached an agreement that will see Hamas members sent to Sudan for defense training.<sup>252</sup>

Sudan's role as a physical transit point for smuggling operations, particularly to Egypt's Sinai Peninsula, is especially troubling. According to General Carter Ham, formerly of the U.S. Africa Command, "The most grave concern [regarding Iran in Africa] is the transiting of weapons and technology principally, but not exclusively, through Sudan."<sup>253</sup>

In January 2009, Israel tracked a major weapons shipment, which included Fajr missiles, from Iran to Port Sudan. After arriving in Sudan, the weapons were put on a 23-truck convoy that was intended to traverse Egypt's Sinai and end up in the hands of Hamas smugglers near the Gaza border. Israeli sources, who confirmed that "dozens of aircraft" were involved in attacking the convoy, estimated that the shipment was probably the largest ever from Iran to Hamas via Sudan. In addition, ABC News reported that a ship carrying weapons off the coast of Sudan was struck by Israel around the same time.<sup>254</sup>

By 2010, Israeli officials learned that Fajr missiles were being "assembled locally after being shipped from Iran to Sudan, trucked across the desert through Egypt, broken down into parts and moved through Sinai tunnels into Gaza." In addition they discovered that "the smuggling route involves salaried employees from Hamas along the way, and Iranian technical experts traveling on forged passports and government approval in Sudan."<sup>255</sup>

On October 23, 2012, a series of airstrikes took place at the Yarmouk Industrial Complex outside of Khartoum. Sudanese officials quickly blamed Israel,<sup>256</sup> while Israeli officials stayed relatively quiet. Meanwhile, Iran,<sup>257</sup> Hamas,<sup>258</sup> and Hezbollah,<sup>259</sup> condemned the strike and Iran soon sent two naval vessels to Sudan to “convey a message of peace and friendship to the region’s countries and to provide safety at sea in light of maritime terrorism.”<sup>260</sup> It is now believed that the Yarmouk facility was storing Fajr 5 rockets.

Today, Port Sudan is still the preferred hub for the transfer of Iranian weaponry to Hamas in Gaza. However, because of Egypt’s closure of the tunnels, less is getting through, thus rendering Sudan a less important player in the Hamas rocket pipeline. To be clear, this was not by choice.

In the meantime, Sudan appears to maintain a number of Hamas charities. For example, the Beirut-based Jerusalem Foundation International (JFI), which was designated in 2012,<sup>261</sup> maintains a presence in Sudan under the name of “Al Quds International Institution.”<sup>262</sup> In December 2011, during a visit to Khartoum, Hamas’ Ismail Haniyeh participated in a conference organized by the JFI. During his speech, he called for additional financial aid and political support.<sup>263</sup>

As an American Enterprise Institute report notes, Hamas is known to operate “a little business empire” in Sudan.<sup>264</sup> One item in the Kuwait-based Al Seyassah alleged in 2013 that Hamas operates a company known as Hassan and Abed International for Roads and Bridges, based in Khartoum.<sup>265</sup> The company appears in at least one Sudanese business listing,<sup>266</sup> and the company reportedly also has an unspecified connection to Abdel Baset Hamza, a former acquaintance of a number of al-Qaeda operatives, including Osama bin Laden.<sup>267</sup>

#### **D. CHARITIES**

While exact numbers are unavailable, Hamas continues to derive financial benefit from a network of formal and informal charities worldwide. The United States government has undertaken significant efforts to identify and freeze the assets of a number of these charities where information is available.

For example, the United States Treasury scored a major win against Hamas finance with the designation of the Holy Land Foundation for Relief and Development. Mousa Abu Marzook, a long-standing senior Hamas figure, was one of its board members.<sup>268</sup> The Foundation continues to fight legal battles.<sup>269</sup>

In 2003, the U.S. Treasury also targeted five Hamas charities: Comité de Bienfaisance et de Secours aux Palestiniens (France), The Association de Secours Palestinien (Switzerland), The Palestinian Relief and Development Fund also known as Interpal (U.K.), The Palestinian Association in Austria, and the Sanabil Association for Relief and Development (Lebanon).<sup>270</sup> In 2006, the Treasury

also took action against KindHearts, an NGO based out of Ohio, for allegedly financing Hamas.<sup>271</sup> The following year, the Treasury designated al-Salah Society based in the Palestinian Territories. The charity was accused of financing schools, stores, and the purchase of land for Hamas members. It also employed a number of members of the Izz al-Din al-Qassam Brigades, the armed wing of Hamas.<sup>272</sup> Al-Salah Society was also believed to have a connection to Hamas accounts at Arab Bank — the defendant in a terrorism finance case currently being litigated.<sup>273</sup>

The Treasury followed up in 2009 with the designation of an umbrella organization that controlled al-Salah, known as the Union of Good or Ittilaf al-Kheir. The group was created by Hamas leadership in late 2000 in order to transfer funds raised by affiliates for Hamas-managed projects in the West Bank and Gaza. The Union of Good employed a number of Qassam Brigades members.<sup>274</sup> The Union also included the Turkish flotilla, the IHH, which has close ties to Hamas (discussed earlier in this chapter). In 2012, the Treasury targeted Al-Waqfiya and Al-Quds Charities (Lebanon). Both organizations raise money for programs and projects in the Palestinian Territories for Hamas. Al-Waqfiya is a member of the Union of Good.<sup>275</sup>

While the designations of these entities make the United States an inhospitable jurisdiction for Hamas charities, the rest of the world has failed to take similar action. Many of these and similar entities are still considered legal around the world. This includes some of the United States' closest allies in Europe, Canada, Australia, and beyond.

The problem stems from the fact that the United Nations, which maintains a terrorism list of entities associated with al-Qaeda and the Taliban, has failed to designate Hamas a terrorist organization. This largely political decision has impeded a coordinated global effort to combat illicit Hamas charities and other fundraising infrastructure that helps the group underwrite its violent activities.

The problem of charities is further compounded by the fact that there are untold numbers of charities operating inside Gaza today that purport to be carrying out everyday NGO activities, but may, in fact, be cooperating with or even controlled by Hamas. This makes it challenging for the international community to provide assistance to the people of Gaza.

Hamas has sought to assuage the international community by entering into a unity government, which was to be led by the Palestinian Authority, which has declined to resort to violence since 2005. The unity government, however, has failed to function in Gaza, owing primarily to political disputes, raising troubling questions about whether Hamas will exploit the \$5.4 billion pledged by the international community for Gaza reconstruction.<sup>276</sup> Amidst the confusion, aid has slowed to a trickle, and NGOs are frustrated with the lack of progress.<sup>277</sup>

## **E. TUNNELS**

In October 2014, Hamas boasted that it was rebuilding the network of tunnels used for terror attacks.<sup>278</sup> Over 30 tunnels were demolished by the IDF during the war.<sup>279</sup> This indicates that the group is either diverting aid that has been sent to Gaza, or that it has found other ways of procuring the cement and steel needed for these structures.

Hamas' rocket procurement has apparently also not suffered. According to an Israeli military intelligence assessment released on December 28, 2014, Hamas has replenished five to 10 percent of its previous rocket count, bringing their capacities to 30 percent of what they were before the war.<sup>280</sup> Of the 10,000 rockets estimated to have been in Gaza before the start of Operation Protective Edge, it is believed that 6,000 of those rockets were under the direct control of Hamas forces.<sup>281</sup> By this estimate, at the end of the conflict, Hamas still had some 1,800 rockets at its disposal.

Because the Egyptians have made it exceedingly difficult for Hamas to smuggle these rockets through the Sinai tunnels, it is unclear how Hamas is now procuring its military material. It is further unclear how they are able to acquire the cash to make these purchases (assuming they are not donations). However, analysts tend to agree that roughly half of Hamas' budget derives from the state sources mentioned above, which underscores the need to address their contributions to one of the world's most deadly terrorist organizations, before another conflict erupts.



## Chapter 3:

# Evidence Regarding the Abuse of Humanitarian Aid to Gaza for Military and Terror Purposes, and Questions of Supervision and Accountability

### A. OVERVIEW

The 2014 Gaza conflict raised a number of questions regarding the degree to which humanitarian aid had been diverted to further Hamas' war-fighting capabilities. The construction of an extensive network of "terror tunnels" from Gaza into Israel illustrates the impact of materials that were provided as aid but then used by Hamas. These tunnels used large amounts of cement — a principal building material sent to Gaza by humanitarian organizations. In addition, as discussed above, the production of thousands of rockets commandeered pipes and additional materials distributed in Gaza intended for building projects.<sup>282</sup>

The reconstruction effort in Gaza results in a high demand for building materials, and further amplifies the issue of humanitarian aid being used by Hamas for terror in Gaza. Credible mechanisms are required to prevent future exploitation of humanitarian aid that would allow Hamas to rearm and rebuild its tunnel infrastructure, and again make renewed conflict likely. Moreover, as seen with similar circumstances in ISIS-controlled Syria and Somalia,<sup>283</sup> aid that contributes, even inadvertently, to Hamas' capabilities and arsenal is morally tainted.

In an attempt to resolve this issue, Israel and the Palestinian Authority have agreed to improved mechanisms in order to verify that materials entering Gaza are used strictly for humanitarian purposes. These mechanisms, which include UN surveillance of Gaza warehouses and spot inspections of construction sites, have been supported by the United States, Qatar, and the UN.<sup>284</sup> However, as will be demonstrated in this section, many of the non-governmental organizations (NGOs) that were involved in Gaza aid implementation in the past and hope to facilitate post-war reconstruction, lack the robust policies necessary to prevent aid commandeering by terrorist organizations.

In researching this issue, we examined the two central dimensions of the humanitarian aid dilemma: (a) the means used by Hamas to commandeer and divert large quantities of humanitarian aid for terror activities prior to the 2014 conflict, at the expense of Gaza's civilian population; (b) the policies (or



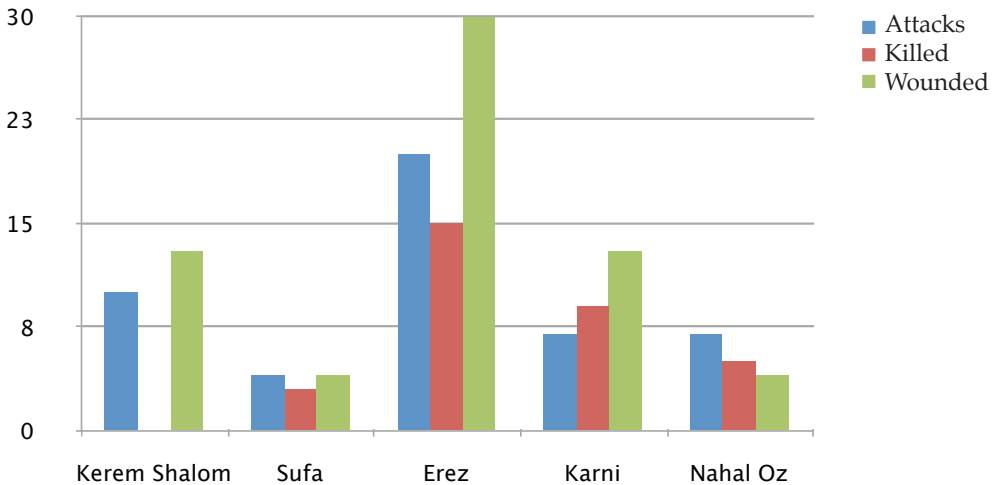
lack thereof) of governments, international organizations, and NGOs involved in humanitarian aid projects in Gaza. A survey of these governmental bodies and organizations reveals that many do not have effective and sufficient policies in place to guarantee that aid will not be diverted. Furthermore, some of these groups have relationships with Hamas that are inconsistent with adversarial safeguards against diversion.

## **B. BACKGROUND**

### **I. Gaza Terror Threat**

The thousands of rocket and other attacks on Israeli civilians carried out by Hamas and other Palestinian terror groups, detailed elsewhere in this report, are central to examining the implications of the extensive diversion of humanitarian aid for Gaza.

The difficulties in safeguarding aid begins at the border crossings between Israel and Gaza, where Israeli civilians and soldiers who operate and secure these facilities have been targeted by Hamas and other Palestinian actors using mortars, explosives, and small arms fire. A January 13, 2005 attack at the Karni Crossing claimed the lives of six Israeli civilians, and an April 9, 2008 attack on the Nahal Oz fuel terminal killed two Israeli civilians.<sup>285</sup> In total, 32 people have been killed and more than 60 wounded, including Israeli and Palestinian civilians and Israeli soldiers, in approximately 50 border crossing attacks since 2000.<sup>286</sup> This includes occasions in which rockets and mortars have landed inside or near the crossings, such as the rocket attack on the Kerem Shalom Crossing on August 10, 2014, and the mortar attack on the Erez Crossing exactly two weeks later.<sup>287</sup> It is worth noting that the first Israeli civilian fatality of Operation Defensive Edge died during a mortar attack on the Erez Crossing on July 15, 2014, which was still operating a full week after the operation began.<sup>288</sup> As will be discussed below, the proliferation of such attacks disrupts the flow of people, goods, and materials into and out of Gaza, threatening the economic and humanitarian lifeline of civilians in Gaza.

**Figure 3: Terrorist Attacks at Border Crossings 2000-2014**

## II. Smuggling: Ships and Tunnels

Following the 2005 Israeli withdrawal from Gaza, Israel instituted security measures 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. Israel accused Iran of sending the shipment, alleging that the majority of the military equipment found on board was Iranian.<sup>289</sup>

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.<sup>290</sup> The *Victoria* carried more than 50 tons of military equipment, including six anti-ship missiles, hundreds of mortar shells, and thousands of bullets; the *SS Klos C* carried dozens of Syrian-made advanced rockets, hundreds of mortar shells, and 400,000 bullets.

In addition to these attempts, Hamas and other Palestinian terror organizations have successfully smuggled weapons into Gaza using tunnels underneath the border with Egypt. Until the overthrow of Egyptian Muslim Brotherhood government headed by 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.<sup>291</sup> Once the Egyptian military began to combat the smuggling

phenomenon in earnest after Morsi's ouster, it discovered and destroyed more than 1,600 smuggling tunnels connecting Gaza to the Sinai Peninsula.<sup>292</sup>

### III. Current Arsenal: Rockets, Missiles, and Tunnels

Years in power have allowed Hamas and other terror groups to build up significant arsenals of advanced weaponry in Gaza with which to attack Israeli civilians and soldiers. As noted elsewhere in this report, Hamas devoted considerable efforts to building up a store of rockets for attacks on Israeli civilians. The IDF has estimated that approximately 10,000 rockets were present in Gaza at the start of Operation Protective Edge.<sup>293</sup> These included a variety of rockets with range capabilities of up to 160km. Hamas and Islamic Jihad are believed to possess thousands of rockets in the 40km range, hundreds more that reach distances of 80km, in addition to longer ranges of up to 160km.<sup>294</sup> 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 combat with the IDF, as well as in attacks on Israeli civilians.<sup>295</sup>

Hamas has also expanded its tunnel operations, including both smuggling tunnels for transferring materials and offensive military tunnels for infiltrating combatants across borders, and carrying out subterranean attacks. Gilad Shalit's abduction from Israeli territory to Gaza via a cross-border 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.<sup>296</sup> 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 and confirming Israeli fears that the import of such materials into Gaza will only serve to bolster the offensive terrorist capabilities of Hamas.

### C. COMMANDEERING OF AID

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.<sup>297</sup>

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.<sup>298</sup> 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.<sup>299</sup> 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.<sup>300</sup>

There are also multiple reports indicating that Hamas steals humanitarian aid and sells it. This is particularly true of medicines and other medical equipment. 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.<sup>301</sup> The PA accused Hamas of stealing \$700 million of aid during Operation Protective Edge alone.<sup>302</sup> It has similarly claimed that medical supplies sent from the PA to Gaza during this period were stolen.<sup>303</sup>

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.<sup>304</sup> According to this report, 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.<sup>305</sup> 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.<sup>306</sup>

The evidence presented here points to Hamas' active theft of aid components such as food, medicine, and blankets, as well as describing the ways in which this theft is perpetrated. By coupling this theft with a taxation policy applied to all items entering Gaza, including humanitarian supplies, a picture has emerged as to the 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.

## **D. HUMANITARIAN AID IN GAZA BEFORE 2014: FACTS AND DATA**

One of the oft-repeated accusations made by NGOs, as part of a narrative of a “humanitarian crisis” in Gaza, is that Gaza does not receive proper humanitarian attention as the result of Israel’s security measures. The reality is fundamentally different. Dozens of NGOs and international organizations have been and are implementing hundreds of humanitarian projects in Gaza. According to Israel’s Coordinator of Government Activities in the Territories Unit (COGAT), 277 projects were implemented or scheduled to begin between 2010 and 2013. The UN’s Office for the Coordination of Humanitarian Affairs (OCHA) listed 577 active projects as of September 2014.<sup>307</sup> Funding for these projects is provided by over a dozen governments, and about half are approved by and coordinated with Israeli authorities.

Some of the organizations operating in Gaza, both NGOs and other international agencies, appear on both the COGAT and OCHA lists, including NGOs such as Mercy Corps, ANERA, and World Vision and international agencies such as the International Committee for the Red Cross (ICRC), the United Nations Relief and Works Agency (UNRWA), and the UN Development Programme (UNDP). There are, however, many NGOs that appear only on the OCHA list, including the French and Palestinian branches of Islamic Relief Worldwide (IRW), Medical Aid for Palestinians (MAP), Norwegian People’s Aid (NPA), Norwegian Refugee Council (NRC), Save the Children, the Palestinian Union of Agricultural Work Committees (UAWC), the Qatar Charity, and Oxfam. The funding for these projects comes from a wide variety of government sponsors including the United States, Saudi Arabia, Switzerland, Germany, the United Kingdom, Canada, Japan, Brazil, India, South Africa, Belgium, France, Italy, and the Gulf States.

Both the COGAT and OCHA lists include projects that address health, education, home building, infrastructure, child development, and more. To choose a few representative examples, according to COGAT, UNRWA has been involved in building more than 750 housing units as part of a single project funded by the Saudi Development Fund.<sup>308</sup> The UNDP has been involved in a project to upgrade water infrastructure in Beit Hanoun as part of a project funded by the Japanese government. UNDP has also been involved in projects to improve roads, as part of a project funded by the German development bank KfW.

There are different mechanisms for the implementation of aid projects in Gaza. One requires coordination with Israel, and through this mechanism, Israel is an integral part of the approval process and project facilitation. In the first step of this process, a sponsor submits a proposal for approval by the PA. This proposal

is then examined by a joint PA-IDF team, and COGAT examines and evaluates the components of the project based on security considerations. The IDF and the implementing organization then coordinate on the manner in which the project will be executed. Finally, the project is implemented under the supervision of the international organization or NGO.

COGAT seeks to ensure high security standards throughout the approval process, by vetting project funders and implementers in order to confirm no ties to Hamas. The implementing organization is required to sign a document that places the responsibility for the implementation of the project on the organization, and requires it to report any instances of theft or similar problems to COGAT. Similarly, the organization is responsible for preventing materials from falling into the hands of Hamas, which “somewhat mitigate[s]” the “security risk.”<sup>309</sup> The organization is also required to file monthly reports to COGAT, detailing the progress made on the project.<sup>310</sup>

The underlying premise of this mechanism is that Israel relinquishes control once aid materials cross the border into Gaza, with “project implementation overseen and executed by [the] relevant international organization.”<sup>311</sup>

In the other mechanism, however, Israel is not involved at all. Many organizations choose not to coordinate with Israel and operate independently in Gaza. This is confirmed by the large discrepancies between the data provided by COGAT on the organizations and projects that are active in Gaza. Some of the organizations on the OCHA list that do not appear on the COGAT list have alleged ties to terrorism such as branches of Islamic Relief Worldwide (IRW), the Union of Agricultural Work Committees (UAWC), and Qatar Charity. IRW has been accused by the Israeli authorities of raising funds for Hamas; the UAWC is linked to the Popular Front for the Liberation of Palestine (PFLP), recognized by both Israel and the U.S. as a terrorist organization; and Qatar Charity has been linked to the activities of Osama Bin Laden. This active circumvention of Israeli authorities is cause for grave concern, particularly in the context of attempts to establish oversight of aid projects.

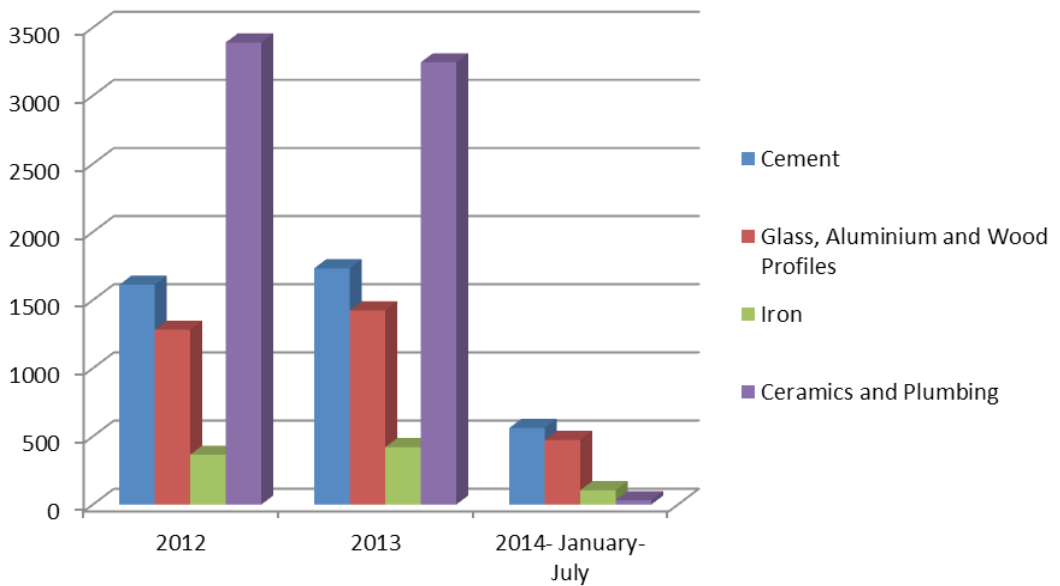
In addition to the facilitation of aid projects, Israel has also invested NIS 80 million in order to improve infrastructure at the Kerem Shalom border crossing. Israel renovated and expanded the terminal to five times its previous size, making the terminal more efficient and allowing a larger flow of materials.<sup>312</sup>

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.<sup>313</sup> These trucks transported a variety of items, including building materials such as cement and iron, humanitarian aid in the form of 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.

**Figure 4 : Truckloads of Materials Entering Gaza from Israel**



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 percent of the electricity in Gaza.<sup>314</sup> Israel also provides Gaza with 5 million cubic meters of water per year, in addition to natural gas used for heating and cooking.<sup>315</sup> Israel provides this aid even though it is under no international legal obligation to do so.

The large amount of humanitarian activity in Gaza, and Israel's role in facilitating it, belies the NGOs' "humanitarian crisis" narrative. As noted by the deputy head of the 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."<sup>316</sup>

However, concomitantly, the large presence of foreign aid organizations presents Hamas with a wide range of targets to harass, intimidate, and steal from.



This is particularly worrisome with regards to those NGOs and organizations that do not coordinate their efforts with Israel.

#### **E. CHANGES IN ISRAELI AID POLICY AND DUAL-USE ITEMS**

Over the past decade, Israel has adapted its policies to meet the changing security and political situation in Gaza, seeking to balance security and humanitarian needs. 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.<sup>317</sup> The security situation has also influenced the operation of the border crossings, with Israel again attempting to balance the humanitarian needs of the civilians in Gaza with the security needs of Israeli civilians and soldiers.

Hamas' threat to Israel's security, including attempts to acquire large amounts of advanced weaponry, has been enhanced by its control of Gaza. The implications of the violent expulsion of Fatah from Gaza were felt immediately in the form of revised Israeli policy towards Gaza. This followed the change in international donor policy towards the PA following Hamas' 2006 election victory. This violent separation between Hamas-controlled Gaza and Fatah-controlled West Bank continues to complicate the implementation of aid.

Following Hamas' takeover in 2007, the Israeli government ordered a reduction in the electricity and fuel supply to Gaza. Because both electricity and fuel are necessary to build rockets, the reduction in supply was designed to cut into the ability of Hamas and other terrorist groups to build and develop weapons. The Israeli government undertook these measures in a manner consistent with international law, as reflected in a January 2008 Israeli Supreme Court decision. In addition, before reductions were made, Israel consulted with the Palestinian Energy Authority to ensure that this policy would not harm the humanitarian wellbeing of the civilian population in Gaza.<sup>318</sup>

Another outcome of the Hamas takeover in 2007 was Israel's decision to consolidate the border crossings. As noted previously, the border crossings between Israel and Gaza have been targeted many times. Israel has also closed or reduced border crossing activity on a temporary basis in response to rocket fire directed at Israeli towns and cities, such the Israeli town of Sderot on March 21, 2013, and toward Sderot and other Israeli towns on March 12, 2014.<sup>319</sup> Security concerns dictated that Israel close some of the more vulnerable crossings, namely Karni, Sufa, and Nahal Oz. In parallel, Israel began a gradual process of expanding

the terminal at Kerem Shalom to handle the goods that had previously gone through the others.<sup>320</sup>

One of the difficulties faced by Israel is determining a way to allow for the continued flow of aid during periods of heightened conflict, while at the same time taking steps to ensure its security. During Operation Cast Lead in December 2008 to January 2009, Israel transferred more than 37,000 tons of humanitarian aid to Gaza, including food, medicine, fuel, gas, and ambulances.<sup>321</sup> The practice of allowing large transfers of humanitarian goods to Gaza, despite intense rocket fire directed at Israeli civilians and Gaza border crossings, was repeated in November 2012 during Operation Defensive Pillar and again in the summer of 2014 during Operation Protective Edge.<sup>322</sup>

Operation Cast Lead in January 2009 also marked a major shift in Israel's Gaza policy. Israel implemented a naval blockade of Gaza in an attempt to ensure that humanitarian aid shipments destined for Gaza would be inspected by Israeli authorities and would not include materials that might aid terror groups. Israel also agreed that aid sent to Gaza by sea would be unloaded and inspected at the Israeli port in Ashdod and from there it would be transferred by land to Gaza. This policy was even applied for the minimal amounts of aid on the flotillas that attempted to run the blockade.<sup>323</sup> As Gaza does not possess a commercial port, this policy of blockade was clearly unconnected to the import of goods and materials into Gaza.

Following the Mavi Marmara flotilla incident of 2010, the Israeli government relaxed some restrictions on the entry of items into Gaza.<sup>324</sup> As part of this revised policy, the IDF published a list of items that were restricted for import into Gaza, and under what circumstances, maintaining the prohibition against the import of any munitions and missile equipment. Additionally, the IDF created two different categories for items that can potentially be used in both civilian and military settings, and as such, are sought after by humanitarian NGOs and terrorist organizations alike. The prohibited "dual-use" items consisted of objects and materials likely to be used to improve the combat capabilities of terror groups. The second group, permitted dual-use items, could only be imported as part of an aid project that had been approved by the PA and was supervised by an international organization. Here again, there was an attempt to mitigate concerns that these materials would be used to further the terrorist aims of Hamas and like-minded organizations operating in Gaza.

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 arms and dual-use items,<sup>325</sup> 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.<sup>326</sup> 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.<sup>327</sup> 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,<sup>328</sup> even though these could be (and have been) used in the building of explosive devices, rockets, and tunnels.

The approval process for aid projects put in place by Israel as described in the previous section stresses a key point: Israel is unable to supervise the implementation of aid projects in Gaza and can only take measures to prevent aid from falling into the hands of terrorist organizations during the approval stage. Once Israel has approved a project, it is up to the implementing international organization to oversee and assure that aid is not misused. This arrangement is predicated on the assumption that the international organizations operating in Gaza can and will safeguard the materials in question.

Correspondingly, a lack of supervision by these organizations threatens that balance and ultimately hinders the cause of providing for Gaza's humanitarian needs. This lack of supervision can be the result of the inability of the NGO to act independently of and/or challenge Hamas, negligence on the part of an NGO, willful negligence, or in some cases, active assistance. The level to which an NGO is willing to effectively supervise its aid in Gaza according to Israeli standards may also be related to beliefs, ideologies, and attitudes concerning the role of humanitarian organizations and the privileging of humanitarian needs over security measures, the evaluation of the legitimacy of Israeli security policies, and the perception of Hamas as a regional actor.

## **F. CONDUCT OF AID AGENCIES IN GAZA**

### **I. Narratives on Israeli policy towards Gaza**

Many of the NGOs that operate in Gaza base their activities on a specific narrative relating to the causes of the humanitarian situation in Gaza. According to this narrative, Israel bears sole responsibility for Palestinian civilians in Gaza and all humanitarian difficulties in Gaza are solely the result of Israeli policies toward Gaza. Terrorist activities by Palestinians and security rights of Israelis are excluded from the narrative, or included solely as representing a pretext to excuse

alleged Israeli cruelty. Needless to say, compliance with security restrictions and domestic and international laws relating to terrorism, especially those demanded by Israel, is foreign to this agenda. The effects of the Palestinian Authority's and Hamas' mismanagement of Gaza are also airbrushed out of the narrative. Similarly, NGOs rarely, if ever, address the co-locating of Palestinian weaponry within civilian infrastructure, essentially turning homes, schools, mosques, and hospitals into military targets.

This narrative is also espoused by leading international organizations that do not take part in humanitarian efforts in Gaza. Its frequent repetition frames the public discourse over the situation in Gaza and the solutions that should be promoted, in particular those proffered by the UN, European governments, and NGOs.

A hallmark of the NGO-UN narrative on Gaza is labeling Israeli policies towards Gaza as "collective punishment." Starting in 2007, and intensifying since the blockade began in 2009, international groups such as Amnesty International, Human Rights Watch, and Oxfam, as well as local NGOs including Gisha, B'Tselem, Palestinian Center for Human Rights (PCHR), and Al Haq, have adopted this rhetoric. Even during the fighting in 2014, NGOs used this terminology, with Medical Aid for Palestinians (MAP), an organization involved in humanitarian projects in Gaza, sending a letter to British Prime Minister David Cameron, calling on him to work to "use all available diplomatic means to end the collective punishment of the people of Gaza."<sup>329</sup> (See the following chapter for a discussion on how the use of this term as pertains to Gaza is ideological and inconsistent with its meaning in international law.)

NGOs have also referred to Gaza as an "open air prison," "zoo," "ghetto," "ghetto for surplus non-Jews," "concentration camp," and "extermination camp." This extreme demonizing rhetoric is then echoed and amplified by journalists, diplomats, and UN and governmental officials.

This narrative has direct ramifications on NGO objections to Israel's blockade policy and restrictions on the import of materials. By styling Israel's attempts to monitor the flow of goods into Gaza and limit the entry of materials that may enhance Hamas' arsenal as "collective punishment," it is therefore illegitimate, and must cease. For instance, in June 2012, 50 UN agencies and NGOs, including about 20 groups involved in Gaza aid projects, released a statement that, "For over five years in Gaza, more than 1.6 million people have been under blockade in violation of international law. ...We the undersigned say with one voice: end the blockade now."<sup>330</sup>

A November 2010 joint report, "Dashed Hopes: Continuation of the Gaza Blockade," is instructive. In it, 25 major European NGOs and NGO coalitions, such as Amnesty International UK, Christian Aid, Oxfam International, and

Medico International, proceed on the allegation that Israel's naval blockade of Gaza is "illegal" (a claim rejected by the UN's Palmer Report<sup>331</sup>). The NGOs then criticize Israel's restrictions on dual-use items, particularly on building materials: "the consequence of this policy ends up restricting building materials for the international organisations that face both Israel's burdensome procedures and donor governments' restrictions on procurement." According to the NGOs, since Hamas smuggles cement into Gaza, restrictions on the import of cement to Gaza only harm the civilian population.<sup>332</sup> The prospect of Hamas co-opting their aid in order to commit deliberate attacks on Israeli civilians is not raised. These organizations also do not appear particularly troubled that Palestinian terror organizations have turned Gaza's residential neighborhoods and civilian buildings into weapons factories, storage depots, command centers, and missile launch sites.

Israeli NGO Gisha has also conducted a decade-long campaign against Israeli security measures concerning Gaza, in nearly identical terms. When Hamas-built tunnels leading into Israel were discovered in October 2013, Gisha argued that Hamas' use of concrete, despite security restrictions, demonstrates that these restrictions only harm the civilian population and should be repealed.<sup>333</sup> Once again, the possibility that bringing more cement into Gaza would contribute to Hamas' illegal terror activity and other violations of domestic and international law was ignored.

The NGO condemnation of the blockade and other restrictions continued following the 2014 Gaza conflict. Oxfam International wrote that "Lasting peace for all civilians will only be possible if Israel permanently **lifts its restrictions on Gaza's economy and people**" (*emphasis in the original*), and that "The deadly hostilities of the past 50 days are **likely to re-occur ever more frequently without an end to the blockade**" (*emphasis in the original*).<sup>334</sup> In a separate document, Oxfam claimed that "Israel has legitimate security concerns; however, these cannot continue to be addressed at the expense of the Palestinian civilian population."<sup>335</sup> Oxfam provides no suggestions as to how Hamas weapons smuggling can be prevented without a blockade, or how bolstering Hamas' rocket arsenal and military capabilities would limit rather than exacerbate the possibility of conflict with Israel.

CARE International similarly demanded that Israel remove the blockade: "A permanent cease fire by all sides and the lifting of the blockade are the necessary first steps towards a lasting peace benefitting all."<sup>336</sup> Lifting the blockade is treated as an immediate imperative, regardless of a heightened terror threat that had just been demonstrated during the summer's events. Again, no practical solutions aimed at preventing weapons acquisitions by Palestinian terror groups are offered.

NGOs also targeted governmental aid donors that support Israeli security measures, such as the U.S. Twenty-one NGOs, including ANERA and the Norwegian Refugee Council (NRC) which operate in Gaza, addressed a December 2014 letter to U.S. Secretary of State John Kerry and USAID Administrator Dr. Rajiv Shah, calling on them to “Urge Israel to fully lift the blockade on Gaza, allowing full freedom of movement of people and goods to and from Gaza and lifting restrictions on the import and export of goods.” Israeli security needs were cast aside and, in fact, used for rhetorical flourish to attack Israeli policy: “As you know well, Israel maintains that their imposition of restrictive measures related to Gaza are necessary for security reasons... Meaningful security should be rooted in the provision of basic needs and respect for human rights.”<sup>337</sup>

Aid groups also oppose the Gaza Rebuilding Mechanism, a UN-brokered framework for delivering aid in Gaza in the aftermath of the fighting, because it does not eliminate the blockade. In February 2015, 30 NGOs and UN agencies active in Gaza complained that “reconstruction and repairs...has been woefully slow.” Notably, and reflecting the political as opposed to legal purpose, the NGOs claimed that “UN Security Council Resolution 1860 (2009)” obligated, “Israel, as the occupying power [and] the main duty bearer” to “fully lift the blockade.”<sup>338</sup> However, Resolution 1860 does no such thing. Rather, it recognizes the importance of providing “arrangements and guarantees in Gaza in order to sustain a durable ceasefire and calm, including to prevent illicit trafficking in arms and ammunition.”

Similar to the humanitarian groups, Sarah Leah Whitson, an official from Human Rights Watch, argued that “The blockade of Gaza is collective punishment, and donors to Gaza should not just fulfill their pledges but pressure Israel to lift it and Egypt to stop supporting it.”<sup>339</sup>

This recurring NGO narrative raises central concerns vis-à-vis Israeli security. NGOs that operate in Gaza have made statements revealing a predisposition to disregard Israel’s perspective and erase its legitimate security needs. These organizations willfully ignore international legal obligations relating to the suppression of terrorism – some of which were passed under Chapter VII of the UN Charter and therefore, pursuant to Article 103 of the Charter, trump treaty law including the Geneva Conventions. In such an environment, Israel has just cause to question the resolve and inclination of these groups to fully comply with its policies, as well as domestic and international law, designed to prevent Hamas and other terror groups from diverting humanitarian aid.

## II. Compliance with Anti-Terror Laws

A vast majority of humanitarian projects implemented by NGOs and aid



agencies in Gaza are funded by governmental and inter-governmental bodies. As such, these donors could impose restrictions on the use of taxpayer funds, as well as demand that implementing organizations abide by standards, best practices, vetting and evaluation procedures, and other anti-terror and security measures, to guarantee that projects do not violate legal and moral principles.

In other words, NGO policies, or lack thereof, may be circumscribed by various governmental policies. We begin with countries that have stringent anti-terror laws, such as Canada and the United States, and move to states whose anti-terror policies are more lax, such as Germany, Japan, and the Netherlands. Included in this discussion is the issue of implementation, focusing on the experiences of UNRWA, UNDP, USAID, and EUBAM in Gaza.

### **a. Canada**

The Canadian government, through its Department of Foreign Affairs, Trade and Development, has issued clear guidelines to NGOs seeking funding from the Canadian government. The guidelines require any NGO receiving Canadian governmental funding to formulate and implement policies that address Canada's anti-terrorism legislation.<sup>340</sup>

The most basic requirement prohibits NGOs from providing property, financial assistance, or other related services that benefit terrorist organizations. Violation of this restriction is punishable by up to 10 years in prison.<sup>341</sup> Canada defines several Gaza-based Palestinian groups as terrorist entities, including Hamas and Islamic Jihad.<sup>342</sup>

NGOs in receipt of Canadian government funding must present a documented anti-terrorism policy when applying for funds. NGOs must also document the practical measures in place that prevent the diversion of aid for terrorist activities. The guidelines also require NGOs to describe the environment in which they operate with regards to the presence of terrorist organizations, the risk of aid diversion for terrorist activities, and the NGO's ability to effectively monitor the project.<sup>343</sup>

### **b. United States and USAID**

USAID is the U.S. federal agency tasked with implementing U.S. foreign aid policy. As such, an examination of USAID policy is the best way to understand U.S. aid policy and the way that it addresses the issue of diversion of aid by terrorist organizations.

In the midst of Operation Protective Edge, on July 21, 2014, U.S. Secretary of State John Kerry pledged \$47 million to address the humanitarian situation in



Gaza, \$32 million of which were to come from USAID.<sup>344</sup> These USAID funds were used to provide the civilians of Gaza with food, water, hygiene kits, plastic tarps, mattresses and blankets, fuel and medical supplies.<sup>345</sup>

According to a December 2014 interview with a USAID official, the agency adheres to strict guidelines designed to prevent diversion of American aid by terrorist organizations. Firstly, American NGOs receiving USAID funds are bound by U.S. anti-terror legislation prohibiting U.S. organizations from providing material aid to terrorist organizations. Non-American organizations are required by USAID to sign an anti-terrorism certificate prohibiting the organization from providing material aid to terrorist organizations.<sup>346</sup> In addition to vetting organizations receiving funds for ties to terrorism, USAID also vets second and third tier vendors and recipients to ensure that their aid is not diverted. The USAID official also expressed confidence in the security of warehouses operated by implementing partners.

USAID operations and projects are also audited by independent auditors. The USAID Inspector General can launch an investigation into USAID projects and these projects can also be subject to criminal investigation.

USAID policy is also designed to mitigate the threat of theft or of lax security provided by the organization implementing the aid project. Firstly, in the event that an organization receiving USAID funds loses aid provided by USAID, they are required to compensate the agency. Secondly, USAID claims a high turnover rate in the distribution of aid, meaning that aid does not sit in a warehouse for very long. Additionally, USAID is confident in the secure nature of the warehouses owned by implementing partners, relevant for the occasions in which aid is stored and not immediately distributed.

In reference to USAID implementing partners in Gaza, USAID is confident that it is clear to them that they have much to lose by not adhering to U.S. anti-terror legislation. The stiff fines and potential prison sentences for violators of U.S. anti-terror laws, \$50,000 per offence and jail terms that can reach 15 years in prison, serve to dissuade any implementing organization from attempting to funnel aid to terrorist organizations.<sup>347</sup>

In the past, USAID was criticized for not adhering to U.S. regulations. A 2007 internal audit regarding alleged funding to the Hamas-run Islamic University in Gaza found that USAID had, in fact, transferred approximately \$900,000 of U.S. taxpayer money to the university. The audit found that USAID "did not always follow applicable Federal laws, regulations, or USAID policies when providing assistance to Al-Quds University, the Islamic University in Gaza, and American Near East Refugee Aid."<sup>348</sup> (In addition to its Hamas affiliation, Islamic University has played a crucial role in Hamas operations. In 2007, Fatah forces discovered thousands of Kalashnikov rifles and RPGs at the university.<sup>349</sup> Unsurprisingly, the

site was also used by Hamas to conduct weapons research and development.<sup>350)</sup>

According to the audit, USAID did not properly vet the American NGO, American Near East Refugee Aid (ANERA), a major recipient of USAID funds that has implemented approximately 10 percent of all aid projects in Gaza since 2010.<sup>351</sup> A second audit, dealing with vetting processes in Gaza and the West Bank, found that “USAID’s policies, procedures, and controls are not adequate to reasonably ensure against providing assistance to terrorists.”<sup>352</sup>

### c. Complying Organizations and Noncomplying Organizations

Several NGOs that receive government funding have acknowledged their responsibilities under the anti-terror laws. One organization operating in Gaza, Global Communities, an American group formerly known as CHF International, states clearly that “CHF International complies with U.S. Sanctions and Embargo laws and Regulations including Executive Order 13224 on Terrorist Financing, which effectively prohibit transactions with persons or entities that commit, threaten to commit or support terrorism.”<sup>353</sup>

ANERA, a major recipient of USAID funding, writes, “ANERA’s policy is to supply assistance to only legitimate and capable institutions and to comply with U.S. laws. We filter individuals and agencies against computerized lists of terrorist organizations cited by the U.S. Treasury Department on its Office of Foreign Assets Control list.” ANERA also claims a robust accountability policy that includes measures such as internal audits, USAID audits, and anti-terrorism vetting of funders and partners.<sup>354</sup>

Unfortunately, many of the NGOs that are ostensibly bound by the aforementioned strict anti-terror regulations, including CARANA, AMIDEAST, and the International Orthodox Christian Charities (IOCC), do not mention Hamas or terrorism when discussing their operating standards. The IOCC does, however, submit itself to external audits by various parties, including the U.S. government and the EU.

Another group of NGOs do not have their own independent policies on such issues, but rather claim to rely on publications that attempt to outline standards and guidelines for humanitarian organizations, such as the HAP Standard in Accountability and Quality Management, the Inter Action PVO Standards, the Sphere Project, the Core Humanitarian Standard, and the Transparency International anti-corruption handbook. (These guidelines are discussed in greater detail below.)

For example, World Vision and CARE International, both beneficiaries of USAID funding, use the HAP guidelines. Catholic Relief Services (CRS), a U.S. based charity, relies on the Inter Action PVO Standards, as well as the Sphere

Project. These guidelines and standards do not necessarily correlate with the strict

government anti-terror policies outlined above, making little or no mention of the threats of terrorism on the process of implementing aid. When discussing armed conflict, the guidelines focus on the protection of civilians, not on protecting aid.

Some NGOs that are bound by U.S. anti-terror law adopt anti-Israel narratives that completely blame Israel for the situation in Gaza. This phenomenon, combined with the lack of stated policies addressing terrorism, raises concerns for Israel. When NGOs do not set anti-terror policies as a priority, this suggests that these organizations do not sufficiently recognize this threat. When combined with demands of Israel to reduce security restrictions to facilitate a freer flow of materials into Gaza, the specter of aid-diversion seems more likely.

Mercy Corps is a prime example of an NGO that makes demands of Israel to change its Gaza policies. The U.S.-based aid organization is adamant in its opposition to the Gaza blockade. In a 2009 joint publication with other NGOs, Mercy Corps dismissed Israel's security concerns, stating that "the primary responsibility lies with Israel, which must abide by its international obligations as the Occupying Power and reverse its policy of collective punishment by ending the blockade and opening all crossings. It must also stop unlawful incursions and attacks inside Gaza."<sup>355</sup>

#### **d. Europe**

As opposed to the U.S. and Canada, other governments have policies and anti-terror legislation that are less comprehensive and stringent.

##### *European Union*

The EU's aid policy incorporates terror concerns, and among the list of punishable terrorist offences is providing material aid to terrorist organizations with knowledge that it will further criminal activities.<sup>356</sup> In 2001, the EU Council Common Position ordered assets to be frozen in order to prevent these resources from reaching terrorist organizations. The EU also published a list of recognized terrorist organizations, adding Hamas to the list in 2003.<sup>357</sup>

The EU has also made an effort to prevent its aid funds from reaching Hamas and established the Temporary International Mechanism (TIM) following Hamas' 2006 election victory. The guiding principle of TIM was to provide international aid for the PA while bypassing Hamas. On an official level, the EU has passed legislation that prevents EU support to Hamas and recognizes Hamas as a terrorist group. However, the EU's lack of stringency in vetting its

aid implementation partners is of significant concern.

EU humanitarian aid to the West Bank and Gaza is channeled through the EU Humanitarian Aid and Development Department (ECHO). ECHO supports UN agencies such as OCHA, the World Food Program (WFP), the World Health Organization (WHO), and UNRWA. ECHO also funds various NGOs that operate in the West Bank and Gaza. Although ECHO does not support local Palestinian NGOs directly, it does fund European NGOs that partner with local Palestinian groups.<sup>358</sup> NGOs receiving ECHO funds are only expected to list the name, address, and role of a local partner; the NGO partners are not vetted by ECHO in any way.<sup>359</sup>

In this way, the EU indirectly funds un-vetted Palestinian organizations with unknown political affiliations, tendencies, and activities. This poses a serious threat to the EU's ability to effectively monitor and safeguard its aid components from terrorist organizations.

Israeli concerns about the EU's credibility in enforcing anti-terror policies are heightened by the abject failure of the EUBAM mechanism. Following the 2005 Israeli withdrawal from Gaza, the EU deployed a monitoring team at the Rafah Crossing between Gaza and Egypt, to address Israel's security concerns. According to an agreement reached between Israel and the PA, EUBAM would monitor and evaluate the performance of the PA in operating the Rafah Crossing. Monitors had the authority to order the re-examination of persons and goods that passed through the crossing if PA examinations proved unsatisfactory.<sup>360</sup>

However, the EUBAM team proved extremely vulnerable to threats of violence. On December 30, 2005, a mere month into its monitoring mission, EUBAM monitors fled Rafah to the safety of an Israeli military base when Palestinian police officers stormed the crossing.<sup>361</sup> Three months later, EUBAM monitors fled once again following a wave of foreigner kidnappings in Gaza.<sup>362</sup> In June 2007, EUBAM monitors permanently vacated the crossing when they concluded they could not effectively operate in a Hamas-controlled area.<sup>363</sup>

### *Germany*

Germany has legal restrictions in place to prevent the support of terrorist organizations. Although the restrictions can be construed as vague, some legal experts consider the provision of material assistance to terrorist organizations as an offence covered under German law. However, German law requires a high level of intent to commit a terrorist act in order to be convicted of supporting a terrorist organization. In this way, the actions of humanitarian organizations would not be prejudiced by German legislation, based on the claim that aid was intended to be used in support of humanitarian needs and not terrorist activities.

Germany has also not published a list of recognized terrorist organizations, although it is bound by the EU terrorist list, of which Hamas is a member.<sup>364</sup>

Despite being legally bound by the restrictions imposed by the EU terror list, Germany's international aid agency, GIZ, has no official independent policies that hinder cooperation with Hamas.<sup>365</sup> Instead the agency views Hamas as a legitimate actor in Gaza that must be engaged and cooperated with in order to further humanitarian projects in the area. In a report put out by GIZ and other German institutions, GIZ called explicitly for direct working ties to be established with Hamas. Additionally, it questioned the value of the current anti-terror regulations and suggested that opening direct operational ties to the terrorist organization would have a calming effect on the group. Though GIZ does not have the power to set policy in this area, it is alarming that the humanitarian aid organization run by the German government appears to object to the EU's anti-terror laws.<sup>366</sup>

### *The Netherlands*

The Netherlands funds UNRWA and partners with several organizations, such as UNDP and Oxfam, to administer aid to the Palestinians.<sup>367</sup>

The Netherlands has adopted anti-terror legislation meant to cut off funds and material aid to terrorist organizations. According to Article 46 of the Dutch Criminal Code, financing a terrorist organization is an offence punishable with up to 15 years in prison.<sup>368</sup> However, in order to be convicted it must be proven that the funds were given with the knowledge and intent that these would be used for a terrorist activity, an unlikely prospect for humanitarian groups that cooperate with terrorist organizations to implement aid projects.<sup>369</sup>

In relation to vetting recipients of Dutch aid, the Netherlands only funds organizations that adhere to the ICRC Code of Conduct,<sup>370</sup> the ICRC's standard on disaster relief. However, as discussed below, this Code of Conduct includes articles declaring that aid policies must be determined independently of government foreign policies, suggesting that it is insufficient to meet Israeli security needs and to protect Israeli civilians.<sup>371</sup>

### **e. Japan**

Japan has funded aid projects in Gaza, including the construction of hundreds of housing units. On the specific issue of Hamas, Japan considers Hamas to be a terrorist organization. In accordance with Security Council Resolution 1373, Japan froze Hamas' assets along with other Palestinian terrorist organizations, such as Islamic Jihad and the PFLP.<sup>372</sup>

However, the Japanese penal code has no laws specifically addressing the issue of terrorism. According to the 2002 “Act on Punishment of Financing of Offences of Public Intimidation,” it is a criminal offence in Japan to collect funds for the purpose of facilitating an act of “public intimidation.” Because the law does not enact a blanket ban on the funding of particular groups, it is less rigorous than other states’ and insufficient for addressing humanitarian aid transfers and diversions.<sup>373</sup>

#### f. UN Agencies

Since 2010, more than 25 percent of all aid projects in Gaza have been implemented by UNDP.<sup>374</sup> These include agricultural and building projects. UNDP’s 2012-2014 “Consolidated Plan of Assistance,” which details its goals for Gaza, clearly shows the organization’s political agenda. For example, the Plan contains a section dedicated to UNDP assistance for Palestinian diplomacy, such as channeling “key PA messaging to wider audiences” and supporting the “diplomatic corps of the Palestinian Authority in its national and international efforts” in order to “support the Palestinian National Authority... to monitor the implementation of the statehood agenda.”<sup>375</sup>

The report also hints at UNDP pushing for strengthening and enhancing the legitimacy of Hamas. The Plan outlines the goal of “supporting the rule of law and access to justice in the Gaza Strip”<sup>376</sup> at a time when Hamas had already ruled in Gaza for five years. To the extent that steps have been taken in this regard, this would also indicate official cooperation with Hamas institutions.

In 2010, the UNDP published a plan detailing its administrative intentions for Gaza aid projects. Although the report does not refer to Hamas explicitly, it clearly describes extensive cooperation with “Gaza local authorities.” This would make Hamas an official partner in the aid implementation process and cast doubt on UNDP’s ability to ensure that no aid will be diverted to enhance Hamas’ offensive capabilities.<sup>377</sup>

When assessing various risk factors that could potentially hinder aid administration, the UNDP plan refers a situation where “import material is tampered with/stolen/misused by contractor.” However, in detailing mitigation measures designed to deal with such a threat, the plan laconically states that “the project is designed to mitigate these risks,” without providing any concrete, practical methods as to how this is so. The document merely proscribes measures to inform stakeholders of the incident in order to prevent the contractor (if at fault) from working on future projects. UNDP does not call for the suspension of the project under these circumstances, as opposed to the recommended response to an Israeli decision to prevent the delivery of aid materials.<sup>378</sup>



In a 2014 UNDP report detailing its goals for aiding rebuilding efforts in Gaza, the organization promotes a “self-help modality,” meaning, allowing local actors or sub-contractors to implement building projects.<sup>379</sup> It is unknown whether official Hamas institutions or groups affiliated with the terror organization have been involved in this framework.

More troubling is a July 2014 UNDP internal audit, which raises questions regarding the extent Israel should trust UNDP and its ability to mitigate risks in Gaza. The audit found serious flaws in UNDP administration, including the fact that core aid components were handled by un-authorized contractors. The employment terms of these non-staff members were murky and undefined. The audit also found that UNDP’s internal financial tracking system recorded spending millions of dollars lower than actual levels, which may reflect deliberate tampering as a result of unapproved purchases.<sup>380</sup>

Another 40 percent of aid projects in Gaza since 2010, including the construction of homes, health centers, and schools, have been implemented by UNRWA.<sup>381</sup> A litany of accusations has been directed at UNRWA, making it difficult to view the organization as an impartial and trustworthy actor in Gaza.

Among the most damning accusations pertains to UNRWA’s employment of Hamas members, a charge that was confirmed when UNRWA Commissioner-General Peter Hansen said: “Oh I am sure that there are Hamas members on the UNRWA payroll and I don’t see that as a crime.”<sup>382</sup> Hansen’s statement is actually consistent with UNRWA policy: the group does not screen its employees for membership with Hamas or Hezbollah, as opposed to screening for ties to Al-Qaeda or the Taliban.<sup>383</sup>

The implications for aid diversion and commandeering are clear, as seen in the IDF discovery of UNRWA materials in Hamas terror tunnels during Operation Defensive Edge. Likewise, on multiple occasions rockets were found in UNRWA-administered schools in Gaza, and it appears that those rockets were returned to Hamas rather than confiscated.<sup>384</sup>

Rocket makers themselves have also been employed as teachers by UNRWA, as in the case of Islamic Jihad rocket engineer and UNRWA school headmaster and science teacher, Awad al-Qiq.<sup>385</sup> Although the UN promised to carry out an investigation regarding these incidents, no information relating to any such inquiry has been made publicly available.

### **III. The Humanitarian Imperative vs. Terror Laws**

#### **a. Humanitarian Imperative Ideology**

Despite the various governmental standards and restrictions, many NGOs

have no stated policy regarding interaction with Hamas. To a certain extent, NGOs essentially remove a central actor from policy considerations. This also means, however, that NGOs are ignoring, at least publically, the effect Hamas has on the implementation of aid projects in Gaza.

This is not unique to Gaza. For many NGOs, the ideological basis for their activity around the world is the “humanitarian imperative,” a concept that, as it is expressed by NGOs and other aid organizations, does not view terrorism as a definitive factor.

The humanitarian imperative is one of the principles put forth by the ICRC and UNICEF as a guide to proper conduct for aid workers and agencies. According to UNICEF, the humanitarian imperative places the provision of humanitarian aid above all other concerns and calls on humanitarian organizations to “maintain their ability to obtain and sustain access to all vulnerable populations and to negotiate such access with all parties to the conflict.”

Similarly, the ICRC writes, “the need for unimpeded access to affected populations is of fundamental importance in exercising that responsibility... when we give humanitarian aid it is not a partisan or political act and should not be viewed as such.” (The ICRC Code of Conduct, in which this language appears, was sponsored by several NGOs, including CRS, Save the Children, World Council of Churches, and Oxfam, all of which implement aid projects in Gaza.)

The prevalence of the “humanitarian imperative” ideology can also be seen in the extensive NGO literature purporting to address issues of accountability and to establish clear standards of conduct for humanitarian NGOs implementing aid projects. While there are several such humanitarian guidelines and handbooks, the standards they promote are quite similar, likely the result of the uniformity of the NGO coalitions responsible for the respective guidelines. Inasmuch as the standards reflect existing policies, views, and practices of the sponsoring NGOs, and each publication makes reference to previous iterations, the humanitarian standards form a self-fulfilling, self-perpetuating cycle.

The Core Humanitarian Standard states that “Humanitarian organisations recognise that the humanitarian imperative comes first...”<sup>386</sup> This ideology is also promoted by the Transparency International handbook. In the context of combating corruption, the handbook argues that the role of donors in combating corruption “must be driven by the principle of the humanitarian imperative...”<sup>387</sup> The Sphere Project likewise promotes the “humanitarian imperative” and in a section titled “Our beliefs,” the authors of the Sphere Handbook “affirm the primacy of the humanitarian imperative: that action should be taken to prevent or alleviate human suffering arising out of disaster or conflict, and that nothing should override this principle.”<sup>388</sup>

These guidelines share a common approach, conceiving of humanitarian aid organizations as above politics and unbound by the rules that normally govern such transactions. Restrictions on aid are framed as political in nature, negating legitimate security concerns and erasing international and domestic laws relating to terrorism.

Most guidelines make no attempt to formulate relevant, specific policies regarding aid administration in conflict areas. The Human Accountability Partnerships (HAP) Standard in Accountability and Quality Management, used by organizations like CARE International and World Vision International, both of which implement aid projects in Gaza, do not address terrorism and aid diversion in the slightest.<sup>389</sup>

The Core Humanitarian Standard guidelines make no mention of terrorism or aid diversion, nor do they set specific standards, guidelines, or practices for safeguarding aid. Instead the guidelines include vague references, offering no concrete plan of action. On the topic of dealing with authorities who are party to a conflict, the guide offers little actual guidance: "Where authorities are a party to the conflict humanitarian actors should use their judgment vis-à-vis the independence of the action, keeping the interests of communities and people affected by crisis at the centre of their decision-making."<sup>390</sup> The Core guidelines do include two references, albeit vague, to corruption, again with no concrete plan for addressing the issue. NGOs are advised to "manage the risk of corruption and take appropriate action if it is identified" and to formulate policies and processes detailing how the organization "prevents and addresses corruption, fraud, conflicts of interest and misuse of resources."

Another standard is the Inter Action PVO aid implementation guidelines, to which Mercy Corps claims to adhere. On the subject of aid diversion and the necessity to enact security measures, the Inter Action guidelines are vague, stating simply that "a member shall have policies addressing the key security issues..." Equally elusive is the statement that, "A member engaging in gift-in-kind assistance programs shall take steps to mitigate... diversion for non-humanitarian purposes." The guidelines do not address the threat posed by terrorist organizations to aid components and workers.<sup>391</sup>

While most NGO guidelines either gloss over terrorism and aid diversion or deal with them in a vague, non-specific manner, "Preventing Corruption in Humanitarian Areas," a handbook published by Transparency International, addresses these issues outright. Yet, even here, the policies promoted by the handbook seem detached from the dangerous and volatile reality that many aid organizations face on the ground and the international legal obligations that all actors face. The handbook is sponsored by a number of groups that conduct projects in Gaza, including CARE International, World Vision, ICRC, Save the

Children, and the Islamic Relief Worldwide (IRW), the latter two which operate there without coordinating with Israel. (The final sponsor of the guidebook is the Lutheran World Federation, which, although it does not run programs in Gaza, has sent doctors to aid in operations there and is involved in anti-blockade advocacy.<sup>392</sup>)

For example, the handbook addresses the challenge aid groups face against powerful local figures (government officials, militia members, local elites, etc.) that block or divert aid, or demand payment. The “solution” prescribed by the handbook for this likely scenario is anything but realistic: “Look for local anti-corruption champions... Show that a transparent, corruption-free environment based on trust is in everyone’s interests.”<sup>393</sup>

On the issue of negotiations with powerful local figures demanding payment in exchange for cooperation, the handbook accepts a certain level of flexibility on the part of the humanitarian organization: “Articulate your agency’s position (what you want), bottom line (the most or least you’re willing to accept)...Gauge your counterpart’s position, bottom line and interests for compatibility with your own, and assess the power you have to influence them.” These statements seem to encourage negotiations and compromise with these figures, including terror groups, in order to allow the organization to continue its operations; the handbook even explicitly lists: “Compromises that involve second-best solutions or concessions.”

Indeed, NGOs reportedly paid bribes to ISIS in order to deliver aid in Syria, in blatant violation of international law, as a natural outgrowth of this ideology. As it relates to Gaza, the implications of this viewpoint are clear: humanitarian aid comes before all other considerations, which are labeled “political,” and is not subject to other considerations. For instance, the aforementioned NGO publication “Dashed Hopes” asserts that “upholding the rights and needs of civilians in Gaza must not be conditional on other political objectives. Civilians in Gaza cannot wait until the Israeli-Palestinian negotiations are concluded.”<sup>394</sup> This viewpoint sees the implementation of humanitarian aid as occurring in a vacuum, without any regard for a situation’s complexity and whether aid may actually inflame and prolong conflict. It is therefore unsurprising that organizations subscribing to this worldview have a one-sided approach to aid projects in Gaza and dismiss security concerns and restrictions, both of Israel and of others in the international community.

### *Specific NGOs*

The NGOs that conduct humanitarian aid projects in Gaza are not monolithic in terms of their motivations, expectations of Israel and the international

community, and their approach to anti-terrorism legislation. However, as seen in the following examples, Israel has real concerns about entrusting NGOs with the task of overseeing aid projects in Gaza. While some governments, such as the U.S. and Canada, have strict anti-terrorism policies, many do not; hence, their NGO grantees may not be legally prohibited from working with Hamas. Independent of donor constraints, many NGOs do not address the threat of terrorism and diversion. Many that do are opposed to these restrictions and lobby against them, in addition to their vigorous opposition to the very Israeli policies designed to ensure that aid components do not end up in the hands of terrorist organizations.

As seen in the handbooks, many groups operate under the premise that the “humanitarian imperative” trumps anti-terrorism law, and that negotiation and compromise with terrorist organizations is an acceptable price to pay in order to implement aid projects. Furthermore, a significant number of organizations operating in Gaza see Hamas as a legitimate actor. Faced with this reality, it would be irresponsible for Israel not to be skeptical about the ability and willingness of NGOs to effectively safeguard their aid in Gaza.

#### **i. NGOs that Recognize the Dilemmas of Humanitarian Action**

World Vision, a Christian aid group that is involved in the implementation of agricultural and educational aid projects in Gaza, refers to the “humanitarian imperative” as a basis for its operations.<sup>395</sup> Still, some of World Vision’s staff are cognizant of the dangers and limits of this view, and have openly admitted to making compromises with militaries and armed groups. The following is from a World Vision report titled “Principled Pragmatism,” which addresses the issues of neutrality and the humanitarian imperative:

Question: From your experience, do you feel that the ethical foundations of World Vision have ever been jeopardised or threatened by engaging with armed groups?

Responses: Yes — we are not certain where the line is between being practical, and therefore liaising with the local power base, and taking a principled stand. Having armed actors to enable us to do our job has always had me debating the pros and cons of where World Vision should position itself with respect to this important matter, for which I am still not sure I have a clear-cut answer (if there is one).<sup>396</sup>

The willingness of World Vision workers to openly discuss these issues is exceptional; however, the answers leave little doubt as to World Vision’s

willingness to negotiate and coordinate with armed groups. This raises questions as to whether the group would prevent components of its aid from being misappropriated by terrorist organizations, if it felt that taking a stand would jeopardize the organization's ability to continue its operations in a given area.

## ii. NGO Opposition to Anti-Terror Legislation

Disturbingly, some NGOs, in particular Palestinian organizations, have refused to accommodate governmental attempts to prevent funds and materials from benefiting terror groups. The Palestinian NGO Network (PNGO), the largest umbrella organization for Palestinian NGOs, has categorically refused to sign the U.S. anti-terror clauses discussed above, and has made membership in PNGO conditional on not signing.<sup>397</sup> This means, that in all likelihood, when international organizations partner with local Palestinian organizations in order to implement aid programs, they are partnering with PNGO-affiliated organizations. As illustrated earlier, the EU does not vet local organizations that partner with NGOs receiving EU funding.

Other NGOs that operate in Gaza claim that anti-terrorism legislation hinders effective aid project implementation. These groups are vocal in their support for amending existing legislation in order to allow cooperation with terrorist organizations like Hamas.

For example, Mercy Corps CEO Neal Keny-Guyer has stated: "Under current U.S. law, NGOs working in the world's toughest places are sometimes forced to choose between saving lives and breaking the law."<sup>398</sup> Mercy Corps is not alone in its opposition to international anti-terror laws. The ICRC is vehemently opposed to legislation that would require it to make distinctions between different groups and actors.

"Broad language, or broad interpretation of language, in criminal legislation prohibiting 'services' or 'support' to terrorism could prove to be a serious impediment for the ICRC... The fulfilment of the ICRC's mandate... may likewise be effectively hampered in contexts in which such services would involve contacts with persons or entities associated with 'terrorism'. ...legislation creating criminal offences of 'material support', 'services' and 'assistance' to or 'association' with persons or entities involved in terrorism **should exclude from the ambit of such offences activities that are exclusively humanitarian and impartial in character and are conducted without adverse distinction.**"<sup>399</sup> (*emphasis added*)



Action contre la Faim (ACF – Action Against Hunger) has also made problematic statements about working in complex environments. In a 2013 report detailing its operating principles, the group states its willingness to “persist in negotiating access with local power holders without prejudice to humanitarian principles and with minimal risk for the security of its staff.” ACF also states that when deciding whether or not to denounce human rights abuses it will weigh the “moral duty of condemning violations and consequently running the risk of being expelled from the area.”<sup>400</sup>

For its part, Norwegian Refugee Council (NRC) is clear in its position that “counter-terrorism measures remain the primary obstacle to humanitarian action within Gaza.”<sup>401</sup> Likewise, the World Food Programme: “In every country that we work in, we deal with the authorities - so in Gaza we deal with the Ministry of Social Affairs. If the next question is ‘Are they Hamas?’, then the answer is ‘Yes they are’.”<sup>402</sup>

Other NGOs believe the international community must engage with Hamas as the legitimately elected rulers representing Palestinians in Gaza, and there can be no conflict resolution without Hamas participation. In this vein, Medico condemns Israel’s attempt to isolate Hamas as a lesson in “divide and rule.”<sup>403</sup>

Norwegian Refugee Council (NRC) also shares this view. In 2006 it called on the Norwegian government to “support Hamas as the democratic elected government and not impose actions that lead to more instability.”<sup>404</sup>

Similarly, the World Council of Churches (WCC) lobbied the EU not to cut off funding for the PA following the 2006 elections, and a WCC subsidiary lobbied the EU to reconsider its “no-contact” policy with Hamas.<sup>405</sup> Other organizations operating in Gaza that have pushed the international community not to change its policy towards the PA despite Hamas’ electoral victory include Doctors Without Borders (MSF), Oxfam, Mediciens du Monde (MDM), and Save the Children.<sup>406</sup>

In July 2009, Norwegian Church Aid (NCA) officials met with Ahmed Yousef, a political adviser to Hamas’ Prime Minister Ismail Haniyeh, to discuss building projects in Gaza. At the meeting, NCA condemned Israel and others for not working with Hamas as the de-facto ruler in Gaza.<sup>407</sup> In its 2011-2015 action plan, NCA clearly states its intent to work with “the Government of Israel, the Palestinian Authority, the Hamas government and local authorities.”<sup>408</sup>

### iii. NGOs Linked to Terrorism

Beyond the organizations that are generally supportive of Hamas as a political organization and view it as a legitimate political player, a handful of NGOs have themselves been linked and tied to terrorism. One of the organizations that has pledged funding for the rebuilding efforts in Gaza is the Qatar Charity, an

organization that had alleged ties to the Union of Good. The Union of Good was banned by Israel in 2008 as a result of their being part of Hamas' fundraising network.<sup>409</sup> The United States has also designated the group as a terrorist organization.<sup>410</sup> The Qatar Charity itself was named by Osama bin-Laden as having raised funds for terrorist attacks.<sup>411</sup>

Another organization with alleged ties to terrorism that is active in aid projects in Gaza is Islamic Relief Worldwide (IRW). In June 2014, Israeli Defense Minister Moshe Ya'alon banned the IRW from operating in Israel and the West Bank.

Israel's defense establishment maintains that the group funnels money to Hamas: "[The IRW] is another source of funds for Hamas, and we have no intention of allowing it to operate and assist terrorist activity against Israel."<sup>412</sup> The group is actively involved in the implementation of several projects in Gaza, including building, medical and water related projects. The United Arab Emirates (UAE) also declared IRW to be a terrorist organization.<sup>413</sup> For its part, IRW denies the allegations made by Israel and the UAE; in December 2014, it announced it had commissioned an "independent investigation" that found "absolutely no evidence of any links with terrorism" and that "not one of these many audits over many years has found a shred of evidence that Islamic Relief funds terrorism or has terrorist links anywhere in the world."<sup>414</sup> However, the full audit was never made public, and it is impossible to ascertain the extent of the investigation, or analyze the methodology or process by which the audit came to its conclusions and results.

The Union of Agricultural Workers Committees (UAWC), an Oxfam funded organization involved in food security projects in Gaza, has been linked to the PFLP, a group designated as a terrorist organization by Israel, the United States, EU, UK and Australia.<sup>415</sup>

Finally, the Palestine Welfare Association, a group involved in various building, health and other related projects in Gaza, is funded by the Islamic Development Bank (IDB). According to a report by the American Center for Democracy, IDB has transferred hundreds of millions of dollars to support the families of suicide bombers and has transferred funds directly to Hamas.

## **G. AID POST-OPERATION PROTECTIVE EDGE**

Following Operation Protective Edge, Israel once again finds itself in the precarious situation of balancing the need to allow humanitarian aid to reach Gaza while at the same time ensuring that that same aid will not be diverted to further terrorism. In order to maintain that balance, Israel reached an agreement with the PA on a mechanism for allowing for aid to enter Gaza while at the same time addressing Israel's security needs.

According to the UN-brokered Gaza Reconstruction Mechanism (GRM), Palestinians that are in need of building supplies have their property assessed by engineers to determine how much materials are necessary for rebuilding. Israel is informed of the planned building project, the amount of materials that are to be used and their cost before approving construction. The Palestinian civilians are then required to sign a declaration that the building materials will only be used for the rebuilding of the approved property and are then issued a coupon with which to purchase the necessary materials from a UN monitored warehouse.<sup>416</sup> The agreement also states that the UN will perform spot-checks of construction projects.<sup>417</sup>

While clearly taking into account Israel's security needs, the mechanism has many flaws. Firstly, the coupon system is susceptible to abuse. Reports have surfaced of coupons being resold on the black market. More worrisome are the allegations that excess coupons have been produced by bribed officials involved in the rebuilding process.<sup>418</sup>

These flaws in the GRM are compounded by reports that Hamas is still successfully diverting building materials to rebuild the tunnels destroyed by Israel during Operation Defensive Edge.<sup>419</sup> Hamas is even boastful about its continuing development of tunnels with which to attack Israeli civilians and soldiers. Additionally, Hamas has continued its policy of taxation on humanitarian aid, once again profiting financially from aid intended for civilians in need.<sup>420</sup>

Another important aspect of the reconstruction process is foreign funding. At a donor's conference in Cairo in October 2014, various international donors pledged \$5.4 billion for Gaza reconstruction. The vast majority of the pledged funds have not of yet been delivered.<sup>421</sup> One of the main reasons for the delay in the transfer of promised funds is the continued infighting between Hamas and Fatah. A unity government based on power sharing between the rival groups is supposed to distribute the funds allocated by international donors. As the two groups have traded accusations over corruption and Hamas has destroyed the homes of Fatah officials and prevented Fatah members from entering Gaza, it is not surprising that international donors have not been willing to trust this government with their funds.<sup>422</sup> Fatah has been quite clear in stating that as long as the administrative and security control of Gaza is strictly in the hands of Hamas and not of the unity government, the government will be unable to oversee rebuilding efforts. Hamas has strongly resisted the demands made by Fatah, understanding that acquiescing to them would curb its power in Gaza.<sup>423</sup>

It appears that through the GRM, the international community is exhibiting a greater understanding of the need to implement robust security measures to prevent terrorist organizations such as Hamas from benefitting from international

aid. That being said, it seems safe to say the mechanism is not as effective as it could be. Corruption seems to be taking place in the process of distributing building materials, an issue which is problematic in and of itself but is even more so when the corruption presents Hamas with an opportunity to once again take advantage of international aid. Reports have surfaced that indicate that Hamas is once again taxing aid materials and that it is actively rebuilding its tunnel infrastructure.<sup>424</sup> Furthermore, Hamas is actively resisting cooperation with Fatah, a necessary component of the rebuilding plan. Therefore, it seems at present that the current mechanism is both ineffective in preventing Hamas diversion of aid as well as being incapable of advancing large scale rebuilding projects, so long as Palestinian infighting continues.

## **H. CONCLUSION**

This chapter has dealt with the threat that Hamas poses to the rebuilding process in Gaza. Hamas has actively designed mechanisms for diverting aid and profiting from it, be it through brute force or taxation. As noted, Israel, not to mention the international community, is limited in its ability to supervise humanitarian aid projects in Gaza. It is dependent on the NGOs and other implementing groups on the ground to assure that aid materials are not misused or mislaid.

In this context, various gradations exist when it comes to the commitment of NGOs operating in Gaza to adhere to anti-terror legislation and to protect their aid from being commandeered by Hamas and other terrorist organizations. The NGOs run the spectrum from those that state their commitment to anti-terror laws all the way to those that cooperate with, if not support, Hamas. In between these two poles can be found many organizations that view Israel's blockade as illegal, generally dismiss and disregard Israel's security concerns, and see the principle of "humanitarian imperative" as taking precedence over binding anti-terror legislation.

Given this constellation of groups and viewpoints, Israel is justified in being concerned about the rebuilding process in Gaza. The NGOs' weak or non-existent policies on interactions with terror groups, coupled with a self-perception as being unencumbered by international law, underscore the fear that aid groups will either be incapable, unprepared, unwilling, or disinclined to take the necessary steps to prevent humanitarian aid from going to advance terrorist objectives.

The reality on the ground in Gaza warrants rebuilding efforts, and NGOs could have a critical role to play. However, the implementation of aid must be conducted in a manner that is drastically different from the way in which aid has been implemented until now, and in a manner consistent with international law and Israeli security. As actors in a highly political environment, with moral

responsibility for their engagement in a conflict zone, NGOs must not put the lives of civilians at risk in the short or long term.

## **Chapter 4:**

# **The Credibility of Reports and Allegations from Non-Governmental Organizations (NGOs) Regarding the 2014 Conflict**

### **A. INTRODUCTION**

**P**ublications by non-governmental organizations (NGOs) were ubiquitous during Operation Protective Edge in 2014. They were featured in hundreds of media accounts and repeated by policy makers. NGO lobbying and campaigns also played an integral role in the establishment of the UN Human Rights Council's Schabas Commission. Yet, while the journalists, UN officials, and diplomats relied heavily upon NGO claims, very few examined the underlying methodologies, legal, and factual bases. Had they done so, they would have discovered that most NGO statements did not comport with ethical and legal fact-finding principles; exhibited severe bias and double standards; lacked legal, forensic, and military expertise; gave minimal attention to Israeli human rights; and ignored or justified Palestinian abuses.

This chapter examines NGO publications issued during the war and analyzed their severe methodological deficiencies. First, we provide a brief background of the role of NGOs in the Arab-Israeli conflict. Next, we will outline core fact-finding principles, such as transparency and impartiality, and detail how NGO reporting fell short of these standards. We then document the NGOs' lack of military expertise, heavy reliance on "witness" testimony, and distortions of the applicable law, including NGO claims on human shielding, "collective punishment," targeting, and violations of international law by Hamas. We also look at how NGOs have manipulated casualty statistics to bolster their campaigning against Israel. We then provide several illustrative examples of NGO reporting on specific incidents that occurred during the fighting. Finally, the chapter will highlight significant aspects of the conflict that were ignored in NGO publications.



## **B. BACKGROUND**

### **I. General**

Since its creation, the State of Israel has been subjected to violence, warfare, and terror attacks deliberately targeting civilians. Thousands have been murdered and injured in suicide bombings, mass shootings, stabbings, rocket attacks, car bombs, 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 Brigades, the Popular Front for the Liberation of Palestine, and even Al Qaeda and ISIS. They not only outwardly reject the existence of a Jewish state within any borders, but their ideology is also marred by antisemitism and calls for genocide of the Jewish people.

Unfortunately, many so-called Palestinian moderates and supporters also refuse to recognize Israel as a Jewish state, and seek to reverse the November 29, 1947 UN General Assembly resolution calling for two states, which was accepted by the Jewish nation and rejected by the Arab states.

This "hard power" terror war is bolstered by a corresponding "soft power" political war led by NGOs that claim the mantle of universal human rights and humanitarian goals. Many powerful organizations are involved in these soft power campaigns, groups whose budgets and influence rival that of large multinational corporations -- such as Amnesty International, Human Rights Watch (HRW), and Oxfam.<sup>425</sup>

The NGO leadership role in this "soft power" war was crystallized at the NGO Forum of the 2001 UN World Conference Against Racism in Durban, South Africa where officials from 1,500 NGOs gathered, issuing a resolution singling out Israel as "a racist, apartheid state" and labeling "Israel's brand of apartheid as a crime against humanity." These NGOs accused Israel of the "systematic perpetration of racist crimes including war crimes, acts of genocide and ethnic cleansing" and called upon the "international community to impose a policy of complete and total isolation of Israel as an apartheid state."<sup>426</sup>

The Durban NGO Forum Declaration was the latest incarnation of the campaign that produced the 1975 UN General Assembly declaration that "Zionism is racism."<sup>427</sup> Although this declaration was repealed in 1991, NGOs resuscitated both the tactic and the canard at the Durban Conference in order to advance Palestinian political interests.

This "Durban Strategy" has been used to promote anti-Israel BDS (boycott, divestment, and sanctions) campaigns; universal jurisdiction lawsuits against Israeli officials and corporations or states doing business with Israel; and lobbying and campaigning at international institutions such as the UN, the European

Parliament, the International Court of Justice (ICJ), and the International Criminal Court (ICC). Many of these efforts are funded via large grants provided by the Europe Union, European governments, and prominent foundations including George Soros' Open Society Institute.

NGOs utilizing the Durban strategy adopt the rhetoric of human rights and international law in their publications and campaigns. By couching political attacks in legal terms, NGOs seek to create a veneer of credibility and expertise for their claims. Since 2001, this process has repeated itself numerous times — Jenin in 2002, the ICJ case against Israel's security barrier in 2004, the 2006 Lebanon War, and the 2010 Gaza flotilla. Israel is faced with a spate of terror attacks targeting civilians in major populations centers; Israel responds with counter measures of increasing severity; NGOs immediately issue countless condemnations accusing Israel of "war crimes," "crimes against humanity," and the "intentional targeting of civilians" based on little to no hard evidence; the media and the international community adopt these claims at face value, rarely performing independent verification; the UN, and in particular the UNHRC, engages in further one-sided condemnations, calling for international investigations and war crimes trials; and NGOs are called upon to play an integral role in these processes further entrenching their influence and claims.

NGOs like HRW, Amnesty International, Oxfam, Save the Children, B'Tselem, and others issue splashy, full-color publications, accompanied by videos and interactive multimedia. Under a façade of universality and morality, they push their narratives using highly sophisticated and expensive efforts led by media, advertising, and fundraising professionals; the inevitable harrowing and emotional results of their "investigations" and accompanying PR can be leveraged to generate millions in donations. Their campaigns achieve visibility globally in the biggest news outlets, including The New York Times, the BBC, and Le Monde.

NGOs escape critical evaluation by the media and other actors due to a "halo effect," by which groups perceived to promote "good" principles are insulated from scrutiny by a cloak of morality. This "halo effect" compensates not only for the lack of accountability but also for the lack of expertise in the military and diplomatic spheres with which many NGOs concern themselves. According to Peter Willets, "There is a widespread attitude that NGOs consist of altruistic people campaigning in the general public interest, while governments consist of self-serving politicians....such an attitude should not be adopted as an unchallenged assumption..."<sup>428</sup>

NGOs are self-appointed and, unlike sovereign democratic governments that are generally held accountable through political processes, NGOs are accountable only to their donors or — in the case of mass membership organizations such

as Amnesty International — to their members, usually through opaque and amorphous processes. Moreover, while NGOs “have taken roles that traditionally have been the sole province of states or intergovernmental institutions,” their officials “are not bound to act in the public interest. Neither are their actions justified by formal democratic procedures, as is the case with states.”<sup>429</sup>

## II. NGO Campaigns in Gaza

Since the Hamas terrorist organization took control of Gaza in 2007 in a violent coup against its rival Fatah party, a key focus of NGO campaigning has centered on condemning Israel’s policies towards the territory. Numerous NGOs have issued hundreds of statements, reports, press releases, and “urgent calls” in condemnation of Israel. In general, these documents grossly misrepresent international humanitarian law by labeling Israeli policies “collective punishment” and claiming Gaza remains “occupied” despite Israel’s 2005 complete withdrawal from the territory.

Few of these NGO accounts examine the activities and violations of the Palestinian Authority, Hamas, and other terror organizations. The rights of Israelis are likewise ignored. NGO reports minimize the more than 15,000 mortar and rocket attacks (each one a war crime) directed at civilians living in Israel’s largest cities including Ashdod, Ashkelon, Be’er Sheva, Jerusalem, Rehovot, and Tel Aviv.

In their myopic and obsessive focus on Israeli actions, NGOs level charge after charge of supposed Israeli violations of international law. Every measure taken by Israel is found to be illegal, and these groups frequently “shift the goalposts” so that Israel is always found to be guilty. In conjunction with proclaiming legal standards that do not exist and that no state could ever meet, these same groups are silent as to how Israel could respond to attacks on its civilian population, short of doing nothing. These NGOs also ignore the clear international law prohibiting any support, whether direct or indirect, for terror organizations and have no workable solutions as to how Israel can prevent weapons smuggling to Gaza from Iran and Syria.

NGO campaigns during the summer 2014 war between Hamas and Israel were no exception. During the 51-day conflict and its aftermath, NGOs issued hundreds of statements on the fighting, almost all targeting Israel. Their staffers were quoted in media outlets, and their claims were highlighted in countless stories. NGO statements to the Human Rights Council played a significant role in the creation of the Schabas Commission, and NGO lobbying led to parliamentary sessions throughout the world. NGO efforts were integral in the December 17, 2014 convening of the High Contracting Parties for the Geneva Conventions (a

meeting that has taken place only three times in history — each one aimed at condemning Israel).

NGO campaigns invariably made factual and legal accusations of Israeli “war crimes,” “disproportionate” and “indiscriminate” attacks, and “targeting civilians” in Gaza without “military necessity” or “justification.” Their publications sought to criminalize legitimate forms of self-defense, weaponry, and warfare. As in their previous campaigns on Gaza, NGO distortions and inventions of international law asserted that, even in the context where Hamas fights from and hides within the civilian population of Gaza, any military response by Israel is impossible and illegal.

Despite the ubiquitous presence of NGO allegations during the conflict, few consumers of these NGO products actually examined the methodologies and factual bases underlying the NGO claims. Had they done so, they would learn that NGOs do not employ set standards for their “investigations,” as no agreed upon standards exist for them, and they have largely rejected efforts towards professionalizing their work, unlike almost every other industry.

As a result, the NGO statements issued during the war did not comport with the core ethical and legal principles of independence, impartiality, and accuracy; they exhibited severe bias and double standards; lacked legal, forensic, and military expertise; focused overwhelmingly on condemning Israel; ignored or gave minimal attention to Israeli human rights and casualties; and ignored or justified abuses and legal violations committed by Hamas, the Palestinian Authority, and other Palestinian terror groups.

## **C. FACT-FINDING STANDARDS AND NGO METHODOLOGIES**

### **I. General**

According to 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.”<sup>430</sup> There is often difficulty in distinguishing “between objective facts and slanted information provided for partisan purposes.”<sup>431</sup> In order to prevent NGO 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.”<sup>432</sup> Otherwise, NGO fact-finding will “solely [] be used for propaganda purposes and to support generally pre-conceived political views on the situation investigated.”<sup>433</sup>

Similarly, Weissbrodt and McCarthy, acknowledge that NGOs “live from press release to hasty drawn report, without time for methodology.”<sup>434</sup> As a result, it

is critical that they “pursue reliability by using well-accepted procedures and by establishing general confidence in the fairness, impartiality, and wisdom of the organization.”<sup>435</sup>

The key components for credible fact-finding are independence, impartiality, thoroughness, and promptness. Franck and Fairley list five indicators of impartiality for fact-finding missions: “(1) choice of subject, (2) choice of fact finders, (3) terms of reference, (4) procedures for investigation, and (5) utilization of product.”<sup>436</sup> In 2009, the International Bar Association and the Raoul Wallenberg Institute released “Guidelines on International Human Rights Fact-Finding Visits and Reports” (Lund-London Guidelines). These guidelines aimed to set an agreed international standard of good practice for NGOs “in the conduct of fact-finding visits and in the compilation of reports.”<sup>437</sup> Key principles emphasized in the Lund-London Guidelines are objectivity, transparency, and proper sourcing, to ensure that a report prepared in adherence to the guidelines “can be reasonably relied upon, thus enhancing the efficacy and credibility of the report.”<sup>438</sup>

Despite these recommendations, NGOs have rejected adopting generally accepted procedures for fact-finding. NGO missions often lack terms of reference, a clear agenda, selection procedures for team members, detailed descriptions of on-site methodology, distinction between direct evidence and inferences from indirect evidence, and explanation of legal standards used.<sup>439</sup>

Professor Robert Charles Blitt notes that “no prerequisite or certification is required for pursuing classic [human rights organization] activities, and none is in place to distinguish or legitimize [human rights organizations] from any other third party.”<sup>440</sup> This absence of standards “necessarily detracts” from the “ability to authoritatively ascertain truth or falsity [in NGO publications] with any degree of legitimacy, and moreover, from the industry as a whole.”<sup>441</sup> In other words, there is no clear distinction between the reliability of a report from NGOs like HRW and Amnesty International and that from any individual reporting from the ground.

## II. NGO Reporting in Armed Conflict

The absence of fact-finding standards is particularly noticeable in NGO reporting on armed conflict, and it significantly calls into question the reliability and credibility of their publications. 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.”<sup>442</sup>

The following analysis highlights some of the major problems stemming from NGO failure to adhere to accepted fact-finding principles:

#### **a. Lack of Transparency, Conflicts of Interest, and Selection Bias**

Franck and Fairley recommend “a fact-finding mission should not begin its quest without clearly defined terms of reference that circumscribe the precise area in which it is to operate.” It is critical that these “terms of reference should be neutrally stated in the form of questions of fact” and that the mission be “insulated from socio-political passions and assumptions.” Terms of reference must be “nonconclusory and nonprejudicial to the mission’s objectivity.”

NGOs like HRW and Amnesty rarely provide the terms of reference for their fact-finding undertakings, the mandate, or their purpose. Readers are therefore unable to determine the content and scope of NGO investigations and whether they are being conducted for advocacy purposes, fundraising, or for some other reason.

Failure to disclose the purpose of their fact-finding exercises raises serious questions regarding the credibility and reliability of NGO reports. Publications issued for advocacy and/or fundraising are particularly problematic because an NGO’s desire to garner public support for its agenda may conflict with accurately conveying the situation on the ground. The more dire a situation the NGO can portray, the more likely it will be able to generate outrage leading to action (government pressure, sanctions campaigns) and will be able to increase donations. There is therefore a strong incentive for NGOs to exaggerate and overstate, in contrast to conducting careful, thorough, and accurate investigations.<sup>443</sup>

For example, William Arkin, a former military analyst for HRW and now a consultant and independent investigator, explains how the pull to exaggerate manifested itself in NGO reporting during the 2006 Lebanon War and led to statements that did not accurately portray the facts on the ground:

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.<sup>444</sup>

Similarly, a 2006 study, conducted by researchers from University College London and the Colombian think tank, CERAC, analyzed Amnesty and HRW publications on the armed conflict in Colombia. A key finding by the group was that while NGOs gave the impression of careful investigation, the tendency of



the NGOs was to overstate their claims. For instance, the researchers noted that during the 10 years of reports studied, both Amnesty and HRW annually issued an almost automatic statement that the conflict had intensified, even when, in fact, it waxed and waned during the time period studied.<sup>445</sup>

Highly emotive and exaggerated reporting under the guise of serious fact-finding was a central feature during Operation Protective Edge. Reporting by the Palestinian NGO “Al Mezan” is representative. The NGO accused Israel of “harvesting” civilians and targeting them in an “unprecedented manner.” It claimed, “Israeli forces targeted and damaged electricity networks, electricity lines and water supply networks.”<sup>446</sup> Al Mezan further alleged, “The IOF [“Israel Occupation Forces”] prevented emergency crews from reaching a group of injured civilians and let them bleed for hours to death. In several incidents the IOF directed attacks on civilians as they tried to flee from areas under IOF’s attack; mostly women and children.”<sup>447</sup> Similarly, HRW accused Israel of targeting Gaza civilians, “Depriving them of food, medicine, fuel and other essential supplies. Hundreds of thousands of people have no access to clean water. Hospitals are desperately over-stretched.”<sup>448</sup>

Medical Aid for Palestinians, a British NGO, published an article, “Gaza - Working Under the Bombs”:

I’m not sure why the children in Gaza have become a target. All they want to do is to play. Their houses are small and overcrowded and it’s the summer time and the school holidays. They don’t know why they can’t go outside. The killing of four children playing hide and seek on Gaza City beach and three children on the roof of their house in less than 24-hours has generated great feelings of injustice. Why were these children killed and why are others buried under the bricks of the homes that have now become their graves?<sup>449</sup>

Israel Social TV went so far as to claim that Israel was using the war to test weapons and improve its “killing mechanisms”:

**How do you turn blood into money?** Like every military operation, ‘Protective Edge’ is fertile ground for testing new weapons and improving the killing mechanisms. For there is a need to maintain Israel’s place in exporting unmanned aerial vehicles, and there is no better place for that than bombing the Middle East’s densest area.”<sup>450</sup>

Another core indicator of whether fact-finding can be considered credible and reliable is looking at the “selection of subject.” In addition to publishing highly

emotive advocacy and fundraising pieces, ostensibly styled as investigations, NGOs were similarly non-transparent regarding subject selection. NGOs did not disclose why they chose to focus on particular aspects and incidents of the conflict as opposed to others. Almost all NGO reporting centered on Palestinian suffering and promoted a narrative of Palestinian victimhood and Israeli venality. Few NGOs even mentioned the thousands of rocket attacks on Israeli civilians (each one a war crime) and the complex military infrastructure established by Hamas within homes, mosques, schools, parks, hospitals, cemeteries, etc... To the extent these subjects were mentioned, they were not analyzed in any systematic way and were often discounted as contributing to the events in Gaza.

This NGO “selection bias” is reflected, for instance, in a full-page ad placed by Save the Children in *The Times* (UK) in July. More than two-thirds of the advertisement consists of a seemingly staged color photograph of a bleeding and crying Arab child wearing red, cradled by a man in white. Superimposed on the photo in large type is the phrase, “STOP KILLING CHILDREN,” and the text, “A child is dying every hour in Gaza. How many more must die?” While the text in much smaller font at the bottom of the ad mentions children in both Gaza and Israel, it is notable that Save the Children did not mention the trauma suffered by Israeli children in the larger text. A second ad placed by the NGO in August again highlighted the suffering of Palestinian children while ignoring Israeli children. At no time did the organization take out advertisements to highlight Palestinian rocket attacks on Israeli children.

Similarly, Oxfam ran an ad nationally in the British press on August 14-15. The ad featured a picture of disheveled Gazans, mostly children, accompanied by the words “Gaza. Trapped. Join our call to end the blockade in Gaza now.”<sup>451</sup> The ad was accompanied by a social media campaign. Like the Save the Children ad, Israelis were ignored — in particular how the thousands of rockets fired at Israeli civilians had led to the displacement of hundreds of thousands of Israelis and severely restricted every day activity for Israelis in major population centers. Moreover, the ad ignored that Israelis were also “trapped” by the fighting, given that Israelis are either barred from entering neighboring regions (Lebanon, Syria, Areas A and B of the West Bank) or experience extreme difficulty and potential violence in the others (Jordan, Egypt). They also ignored that only a small minority of Israelis were able to travel abroad via air to escape the rocket barrages and that Israel’s airport had even been shut down due to attacks. In sum, Oxfam placed no ad to highlight the suffering of Israelis.

B’Tselem and Amnesty devoted significant resources towards publications accusing Israel of “war crimes” for targeting houses used by Hamas and other terror groups. Amnesty’s highly emotive report full of heart-wrenching accounts was accompanied by weeks of promotion on social media, a press release, and

media push to garner publicity for its claims. B'Tselem created an expensive and glitzy interactive graphic and formulated an extensive advertising campaign on Israeli radio and TV to highlight its allegations against Israel.

In contrast, neither NGO did any significant documentation of the nearly 10,000 rocket and mortar attacks targeting Israeli civilians — each one a war crime. There were no reports, and the NGOs did not invest in fancy multimedia tools or splashy full-color publications to highlight Palestinian violations, apart from a token report with half-hearted condemnations of Hamas issued by Amnesty seven months after the war.<sup>452</sup> B'Tselem made no effort to do an ad buy in Palestinian media outlets to criticize the actions of Hamas endangering Gazans nor to expose the suffering of Israelis. Neither group explained why it invested extensive resources in attacking Israel for targeting Hamas command centers, while essentially ignoring 10,000 war crimes on Israeli civilians.

The selection bias employed by the NGOs in their highly emotive campaigns, emphasizing Palestinian suffering while ignoring the impact of the war on Israelis, was also reflected in their reporting globally.

As the chart in Figure 5 demonstrates, major international NGOs chose to overwhelmingly focus on Israel while devoting considerably less attention and resources to other armed conflicts occurring contemporaneously with the Gaza war, even though these other conflicts were much more severe in terms of gravity, scale, scope, and impact on civilians.

**Figure 5: Number of NGO Publications Issued (July-August 2014)**

	HUMAN RIGHTS WATCH	AMNESTY INTERNATIONAL	OXFAM	FIDH	SAVE THE CHILDREN
Israel/PA	17	27	7	10	20
Ukraine	17	14	0	6	0
Iraq	9	13	0	2	8
Syria	14	15	1	5	2
Nigeria	4	7	0	1	0
South Sudan	9	7	4	1	7
CAR	4	5	0	2	0
Libya	1	5	0	3	0
Yemen	2	0	0	0	0
Somalia	2	0	0	0	0
Afghanistan	3	6	0	1	0
Pakistan	9	2	0		0

## b. NGO Staffing

NGOs not only lacked transparency and objectivity relating to the purpose and subject selection of their reporting during the conflict, but NGO staffing was marred by these problems as well. Franck and Fairley note that impartiality “certainly implies that the persons conducting an investigation should be, and should be seen to be, free of commitment to a preconceived outcome.” The Lund-London Guidelines state that NGO fact-finding missions “should comprise individuals who are and are seen to be unbiased.”<sup>453</sup> Professor Frederic Megret notes that expressions of trenchancy, polemics, and activism by those conducting fact-finding all weigh against impartiality.<sup>454</sup>

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 backgrounds in anti-Israel activism and even “direct action” extremism, they often express highly trenchant and polemical sentiments regarding Israel both privately and publicly.

HRW is a prime example. 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 conflict was no exception, and if anything, Roth’s activities, particularly on Twitter, reflected even greater personal animus and provided 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.<sup>455</sup> 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 percent.<sup>456</sup>

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 the 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 was 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.)

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.<sup>457</sup>

Figure 6: Tweet of Petition Comparing Operation Protective Edge to the Holocaust, by HRW's Lotte Leicht



HRW's Director of its Middle East and North Africa Division, Sarah Leah Whitson, has also exhibited similar animus and bias. Whitson's Twitter account includes 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.*<sup>458</sup>

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 U.S. 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."<sup>459</sup> In 2009, Whitson fundraised for HRW in Saudi Arabia, citing the need to counter pro-Israel "pressure groups."<sup>460</sup>



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;<sup>461</sup>
- Whitson was responsible for marketing the Qaddafi regime as "human rights reformers";<sup>462</sup>
- 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;<sup>463</sup>
- The NGO appointed a suspected senior activist in the PFLP terrorist organization to its Mid-East advisory board;<sup>464</sup>
- HRW's "Emergencies Director" was exposed making prejudicial statements about Israel on a secret Facebook group, including commenting on a report as "typical IDF lies."<sup>465</sup>

Like HRW, Amnesty also employs several highly questionable figures to report on Israel, including four individuals that have a background in extreme anti-Israel advocacy:

### **Kristyan Benedict**

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.<sup>466</sup>

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.<sup>467</sup> The hashtag, which stands for “Jewish State in Levant,” is used by extreme anti-Israel groups to compare Israel to the Islamic terror group, ISIL/ISIS. In April 2011, Benedict threatened a pro-Israel activist with violence<sup>468</sup> and allegedly, “Amnesty took disciplinary action against Benedict” following the threat.<sup>469</sup>

### **Edith Garwood**

Edith Garwood serves as Amnesty USA’s “Country Specialist on Israel, Occupied Palestinian Territories, and Palestinian Authority.” AIUSA’s Country Specialists are unpaid volunteer leaders who provide expertise and strategy for a given country.<sup>470</sup> Before joining Amnesty, Garwood volunteered as a member of the International Solidarity Movement (ISM),<sup>471</sup> a group involved in direct actions aimed at provoking violent confrontations with the Israeli army and whose members have served as voluntary human shields for terrorists. 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.<sup>472</sup>

### **Deborah Hyams**

Amnesty hired anti-Israel activist Deborah Hyams in 2010 as an “Israel, Occupied Palestinian Territories and Palestinian Authority” researcher. Hyams has an extensive background in radical anti-Israel activism, including acting 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.<sup>473</sup> Hyams calls Israel “a state founded on terrorism, massacres and the dispossession of another people from their land,”<sup>474</sup> and “[some] of Israel’s actions, all the way back to 1948, could be called ‘ethnic cleansing.’”<sup>475</sup> 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.’”<sup>476</sup> In another instance she defended violence stating that, “Occupation is violence...and the consequence of this action must result in violence [against Israelis].”<sup>477</sup>

### **Saleh Hijazi**

Saleh Hijazi is Amnesty’s campaigner on Israel and the OPT. 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!" In 2010, Hijazi was an on-campus volunteer at Badil (a Palestinian NGO known for publishing antisemitic cartoons and campaigning for Palestinian "return" to Israel), via the Al-Quds Human Rights Clinic program.<sup>478</sup> Further calling into question his ability to objectively report on Israel and the Palestinians, while a researcher for HRW in 2011, Hijazi revealed that his father had been arrested by Israeli authorities.

In addition to working for Amnesty, Hijazi is also the Clinical Supervisor and Academic Coordinator at the Al-Quds Human Rights Clinic, which partners with radical anti-Israel NGOs including Al-Haq, Adalah, Badil, Addameer, Society of St. Yves-Catholic Human Rights Legal Center, and Stop the Wall - The Grassroots Palestinian Anti-Apartheid Wall Campaign.<sup>479</sup>

### **Rasha Abdul-Rahim**

Abdul-Rahim is Amnesty's Arms Control Campaigner and has described herself as a "ranty Palestinian activist." Her Twitter feed includes links to many BDS propaganda items and stories from fringe sources, including a false story from Press TV that, "Israeli settlers lynch a Palestinian driver, Hassan Yousef Rammouni, 32, and father of two children, in occupied..." Following the November 2014 massacre of worshippers by Palestinian terrorists at a synagogue in Jerusalem, Abdul-Rahim tweeted, "Killing of worshippers at synagogue is abhorrent & nothing can ever justify such an attack." Yet, the tweet immediately following appeared to erase these sentiments by retweeting BDS activist Katherine Gallagher that the "Occupation [was] responsible for the attack." She has also retweeted posts with the "#JSIL" hashtag. During the 2014 Gaza War, Abdul-Rahim obsessively tweeted allegations about Israel while ignoring Hamas shielding and rocket attacks on Israeli civilians. Some posts even contained gross obscenities.<sup>480</sup> She did not make any comments regarding the kidnapped and murdered Israeli teenagers except to retweet false claims that Hamas was not responsible for this atrocity.

The extent to which other staffers at Amnesty have backgrounds in extreme anti-Israel activism and therefore unqualified to objectively report on the Arab-Israeli conflict is unknown because the NGO is not transparent regarding its organizational structure and employees.<sup>481</sup>

### **c. Terrorism & Islamism**

In addition to hiring activists with backgrounds in extreme anti-Israel advocacy, many NGOs have expressed sympathy with Islamists, raising questions as to whether they can adequately report on violations committed by

these actors. For example, Amnesty fired the head of its Gender Unit after she spoke out against Amnesty's partnership with a supporter of the Taliban.<sup>482</sup> 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. He also compared Amnesty's partnership with the Taliban supporter to that of working with the Catholic Church on death penalty issues.

In 2012, more than a dozen women's rights groups took Ken Roth to task for his call to embrace the newly elected Muslim Brotherhood in Egypt and Tunisia. Pointedly, the groups admonished "you are not a state; you are the head of an international human rights organization whose role is to report on human rights violations . . . You, however, are so unconcerned with the rights of women, gays, and religious minorities . . . This is the voice of an apologist, not a senior human rights advocate." In response, Roth, Whitson, and other HRW officials accused the women's rights NGOs of Islamophobia and likened the role of religion in an Islamist regime to that of the role played by Christianity in the United Kingdom or Norway.

Not only have NGOs expressed support for Islamist regimes and ideologies, NGOs working in the Arab-Israel conflict often refer to illegal acts of terrorism on Israeli civilians as "resistance."<sup>483</sup> 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."<sup>484</sup> 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 to terror organizations. For instance, Shawan 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 [Popular Front for the Liberation of Palestine terror group]" and a "Jekyll and Hyde."<sup>485</sup> 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.<sup>486</sup> 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.<sup>487</sup> 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.<sup>488</sup>

Active cooperation between terror organizations and NGOs is of particular concern in territory held by terrorist groups such as Hamas-controlled Gaza (see the preceding chapter). 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.<sup>489</sup> 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."<sup>490</sup> 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."

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 member of the Norwegian Aid Committee, NORWAC, Gilbert repeatedly and falsely accuses Israel of deliberately targeting civilians and using experimental weapons on Palestinians.<sup>491</sup> 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.**"<sup>492</sup> 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"**<sup>493</sup> (*emphasis added*). There is also evidence that in the 2008-09 conflict, Gilbert helped stage emergency room scenes for a "propaganda effect."<sup>494</sup>

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"** (*emphasis added*). 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."<sup>495</sup>

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 Gilbert. The few sources that do not reference Gilbert are from the extreme fringe, including Iran's PressTV.<sup>496</sup>

#### d. Antisemitism

Another factor that must be taken into account when analyzing NGO reporting is the impact of antisemitism. 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.

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*.<sup>497</sup> Other images feature violent themes, such as blood and individuals brandishing weapons. Many 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," 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."<sup>498</sup> The authors' claims included calling the IDF's response to the Hamas rocket attacks on Israeli population 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) promoted<sup>499</sup> 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...<sup>500</sup> A third author, Sir Iain Chalmers, speaking at a public event in the UK, echoed antisemitic themes by decrying of how “the Zionists” have “control in so many different domains.”<sup>501</sup> 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.”<sup>502</sup>

As mentioned, several officials of HRW and Amnesty have also expressed extreme hostility and animus towards Jews and Judaism and have compared Israel to Nazis. For example, in 2009, HRW’s “senior military expert” who was, inter alia, responsible for reports on Israel, was forced to leave the NGO after he was exposed as obsessed with Nazi memorabilia, and Amnesty staffer Kristyan Benedict has had numerous complaints against him for antisemitic sentiments.

#### e. Military Expertise

In addition to the failure to uphold the fact-finding principles of transparency and impartiality, lack of expertise significantly impairs the reliability of NGO reporting. Since the early 1990s, NGOs have increasingly turned their focus to the laws of armed conflict and issued publications on alleged violations taking place during fighting. According to the founder (and now critic) of HRW, Robert Bernstein, this has not necessarily been a positive development. He comments that 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!”

While NGOs have increasingly taken on the role described by Bernstein, they have little to no military experience or understanding of how armies operate. Without such knowledge it is impossible to credibly report on armed conflict. Leading scholar and military advisor Michael Schmitt highlights just some of the issues with which an investigator must be familiar:

An investigator who does not understand, for example, weapons options, fusing, 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.<sup>503</sup>

Yet, NGOs do not possess any of this expertise, and on the rare occasion that they utilize “experts” to assist, these individuals often do not have the requisite qualifications. In many instances, these “experts” are not identified at all, making independent assessment of their abilities impossible.

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.”<sup>504</sup> 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.

For example, in its publications “Families Under the Rubble” and “Nothing is Immune,” Amnesty claims that “the organization consulted on the interpretation of photos and videos with military experts.” These experts are not named, nor does Amnesty disclose what photos and videos were shared, nor their provenance (were they taken by Amnesty fieldworkers? residents? journalists? Hamas members?). Amnesty does not disclose what steps it took to authenticate the materials and whether it provided information from the IDF to its “experts.” To the extent Amnesty provides the “conclusions” of these “experts,” they invariably relate to guesses as to the weapons used in a particular strike: “Amnesty International shared photos of the damage and the weapon fragments at the site with military experts who examined them and described them as remnants of large guided missiles which were likely to have been launched from the air”; “A military advisor supporting Amnesty International’s work confirmed that the damage was consistent with that which would be caused by a large air-dropped bomb”; “A military expert helping Amnesty International’s investigations examined photographs of the destruction and the shrapnel found in the rubble. He said that the scale of destruction could only have been caused by an air-dropped munition and fragments suggested a large air-dropped bomb of the Paveway type, guided by either laser or GPS, which, in the case of the Israeli army, is likely to have been equipped with a Joint Direct Attack Munition (JDAM).”

Regardless, this information is largely irrelevant. Even if a weapon could be identified simply from photos of damage (authenticity unverified), this identification provides no information as to what was targeted, why it was targeted, and what information was available to military commanders at the time of a strike. Moreover, there is no way of knowing if the images depicted are

genuine reflections of an attack site or if the scene was staged. Amnesty's factual and legal claims, based simply on this "evidence," cannot be deemed credible.

An analysis of Amnesty's reporting on US drone strikes in Pakistan's tribal regions also reveals a striking lack of military 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.<sup>505</sup> Significantly, these witnesses would also not necessarily know if attacks were launched by the Pakistani military, rather than the U.S., 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."<sup>506</sup> 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.

A former director of research for HRW has remarked that HRW utilizes an "Arms Experts Panel," a supposedly independent group described as "a body which is secretive, deliberates in secret," to advise the NGO on weapons claims. The scope of the group's work is not disclosed nor how it contributes to HRW's publications. Even the former HRW employee is highly troubled by the lack of transparency regarding the Panel and its role: "Who is on it? Are they credible? How do they make findings? Why is it so secret? Who funds it? Are these the same funders as HRW?"

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, precise GPS coordinates, and weapons specifications.

Unlike HRW's emphasis on anecdotal suffering derived from brief on-site surveys and interviews, other investigators have noted that "images of bomb

damage and enumerations of a relentless effort could also end up conveying exactly the opposite of the actual meaning." In fact, "divining Israeli and Hezbollah intent through examining destruction on the ground" for instance, "can, if one is not careful, convey a much distorted picture."<sup>507</sup>

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 conflict, leading to civilian deaths in the 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.<sup>508</sup>

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."<sup>509</sup> 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."<sup>510</sup>

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.<sup>511</sup> 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 science and therefore failed to incorporate critical details like weight and drag when issuing its claims on the attacks.

These fundamental problems of Amnesty and HRW are also endemic in

almost all NGO reporting on armed conflict.

#### f. Witness Testimony

To the extent a methodology exists, NGO reporting on armed conflict relies extensively, if not entirely, upon interviews with residents of conflict zones. NGO publications overwhelmingly comprise emotive accounts and anecdotes with “survivors.” These “witnesses” almost always claim 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 are 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 fail to disclose many key issues related to these witness statements. For instance, they do not provide information as to how witnesses are selected for interview, who translates the interviews, whether members of Hamas or Hezbollah are present, and whether interviewees were contacted by Hamas or Hezbollah prior to or following the NGO meetings. This information is critical in areas like Gaza and Southern Lebanon 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.<sup>512</sup> 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.”<sup>513</sup> As a result, he remarks that senior ICTY staff noticed “a clear difference between the standards adopted by ‘professional police or criminal prosecutors’ and that of the NGOs.”<sup>514</sup>

In his independent analysis of the 2006 Lebanon War, Arkin also 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 an 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.<sup>515</sup>

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 acknowledges:

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.<sup>516</sup>

In addition, she explains 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 admits:

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.<sup>517</sup>

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.

#### **g. Applicable Law**

Another significant problem marring the claims of NGOs on armed conflict,



and in particular on the Gaza conflict, relates to their discussions of the applicable law. Despite the fact that NGOs are not judicial bodies and do not serve in any official capacity (unless specifically hired to do so), they fill their publications with legal claims, accusations, and conclusions of criminal guilt.

These publications purport to provide analysis regarding violations of International Humanitarian Law, International Human Rights Law, and International Criminal Law. While these bodies of law are distinct, NGOs often confuse which body of law is applicable and at what times. Moreover, much of the applicable law is ignored altogether by NGOs.

Compounding the problem of applicability is that international law is ill-defined, particularly as it relates to human rights and the law of armed conflict. According to legal scholar 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.”<sup>518</sup> 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,<sup>519</sup> in many cases, a customary rule will be claimed even though a significant number of states do not abide by the rule.<sup>520</sup> Often the necessary conditions of state practice and *opinio juris* are conflated. Furthermore, those invoking customary law often rely upon tendentious and selective sources.

A report analyzing the Gaza war authored by U.S. military officials echoes these sentiments:

An accurate understanding of LOAC [laws of armed conflict] is essential to properly and credibly assess the legality of combat operations. Unfortunately, it is poorly understood, allowing it to be easily distorted to present a false narrative that combat operations producing civilian casualties are inherently unlawful. Such distortions are further enabled by the almost instinctive, but legally invalid, tendency to judge military actions based on effects of combat operations.<sup>521</sup>

Despite the legal uncertainty, NGOs frequently adopt legal positions that are not widely accepted or even accepted at all. They do not provide competing views of the law in their publications, and they rarely, if ever, inform their readers that they are adopting an obscure position and how they can justify this decision.

Often, they will claim to provide the existing law but not disclose that the

actor in question is not a party to a particular international treaty and therefore not bound by the rule at issue. When there is no existing treaty, NGOs will simply turn to supposed principles of customary law. In some cases, an NGO will simply invent a legal position out of whole cloth. In all too many instances, NGOs selectively rely on legal provisions while ignoring the overall context or the existence of conflicting law. Consequently, many legal experts recommend that fact-finding missions avoid developing legal conclusions and instead leave legal questions to the international community and courts.<sup>522</sup>

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.”<sup>523</sup> Yet there is no international agreement stating that cluster munitions “violate the laws of war,” nor is there any customary law preventing their use.<sup>524</sup> 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 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.<sup>525</sup>

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 rarely 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, 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.”<sup>526</sup> 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.

Many NGOs seem to share the approach of William Schabas, the tainted figure who was originally selected to head the Human Rights Council’s Gaza

Commission of Inquiry, but resigned in February 2015 after he failed to disclose his paid consulting work on behalf of the PLO. In a September 2009 interview discussing the Goldstone Report and the effort to have Israeli officials indicted at the ICC, 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.”

Echoing Schabas, officials from HRW and B’Tselem have stated, “focus on specific cases can distract from bigger-picture questions about Israel’s prosecution of a war.”<sup>527</sup>

In other words, NGOs, like Schabas, craft legal allegations not in order to address actual crimes that may have been committed on the battle field, but rather to seek to criminalize Israel’s military operations altogether in order to serve as a substitute means to achieve political objectives regarding Israeli policies that these organizations have not been able to accomplish via democratic processes.

#### **h. Inconsistent Definitions, Distortions, & Double Standards**

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 study analyzing Amnesty and HRW publications on Colombia<sup>528</sup> examined whether the NGOs clearly define a discrete group of variables to cover “regularly and systematically” and how those variables are measured and sourced.<sup>529</sup> 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.<sup>530</sup>

For example, while HRW had definitions for “political assassinations” and “massacres,” those definitions varied from report to report.<sup>531</sup> In some years, HRW included combatants in their political assassinations figures, and in other years it excluded them.<sup>532</sup> 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.<sup>533</sup> 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.<sup>534</sup>

The problems identified by the UCL/CERAC researchers of HRW and Amnesty reporting in Colombia are also prevalent in NGO reporting on Gaza, as the following sections demonstrate.

### **i. Collective Punishment**

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, 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. 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.<sup>535</sup>

Moreover, as noted by legal expert Yoram Dinstein, electricity, cement, and gas do not fall within the category of relief (food, water, medicine, minimal shelter) covered by international law.<sup>536</sup> Similarly, responding to rocket attacks on the civilian population with military action is also not “collective punishment,” but rather the exercise of the legal right of self-defense.

Nevertheless, Hamas has diverted mass amounts of supplies from Gaza’s civilian population and frequently commits attacks on the Israeli border crossings to prevent the delivery of such goods. Although Israel is under no legal obligation and despite the diversion and attacks, Israel continues to provide and facilitate passage of 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.<sup>537</sup>

In many cases, NGOs have applied this idiosyncratic use of the term “collective

punishment” solely with regards to Israel. For instance, in all other situations in which HRW uses this term, it does so in a manner more consonant with the legal definition.

Cases that are somewhat parallel to that of Israel and Gaza, but are not labeled “collective punishment,” include Azerbaijan’s blockade of Nagorno Karabakh and Armenia, as described in Human Rights Watch 1994 World Report:

Electricity, gas, oil and grain — necessary for the basic human needs of civilians in Armenia — were in extremely short supply... The lack of gas and electricity deprived Armenians of heat in the freezing winter... a rise in deaths among the newborn and the elderly was accompanied by a higher suicide rate and growing incidence of mental illness. The blockade had ruined Armenia’s industry...

HRW does not refer to this “blockade” as “collective punishment” and, indeed, recommends that “all but humanitarian aid should be withheld from Armenia because of Armenia’s financing of the war.” It is not clear why HRW promotes a policy of limiting non-essential supplies for Armenia, but when Israel responds to daily rocket attacks on civilian population centers — over 15,000 since 2000 — HRW condemns a similar policy as constituting “collective punishment.”

Similarly, in a 1999 press release on Chechnya, HRW described the humanitarian situation there as “rapidly deteriorating, with no functioning hospitals, electricity, running water, gas, or heating since the beginning of November, and dwindling food supplies”<sup>538</sup> This was clearly a more desperate situation than in Gaza, where humanitarian aid enters daily. Yet HRW did not refer to Chechnya as suffering from “collective punishment.”

In 2007 the term “collective punishment” was used by HRW in 13 items not referring to Israel. These cases generally provide evidence of punitive intent against third parties in accordance with the actual legal definition.

For example, in testimony to the U.S. House Committee on Foreign Affairs, Subcommittee on Africa and Global Health, an HRW staffer remarked, “in the Ogaden, we have documented massive crimes by the Ethiopian army, including... villages burned to the ground as part of a campaign of **collective punishment**” (*emphasis added*). Another example is found in an August 2007 article authored by HRW’s London Director, Tom Porteous. There, he asserts that “dozens of civilians have been killed in what appears to be a deliberate effort to mete out **collective punishment** against a civilian population suspected of sympathizing with the rebels [*emphasis added*].”<sup>539</sup>

## j. 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. 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 a non-combatant [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].<sup>540</sup>

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 by Hamas, Hezbollah, and other terror groups to carry out their war efforts. 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.<sup>541</sup>

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. Bill van Esveld, a researcher with HRW, 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.”<sup>542</sup>

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.<sup>543</sup> 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...<sup>544</sup>

And on CNN, Van Esveld claimed:

...But I would just say that there's a lot of, I think, misleading or not helpful discussion about human shielding on the Hamas side. And there's a very specific legal definition for human shielding, and that's forcing a civilian to be right next to your military target when you're shooting a rocket or something like that. We haven't seen that kind of forcing or coercion happen yet, although we are investigating it....<sup>545</sup>

Amnesty also echoed the comments of HRW:

Amnesty International is aware of [claims of human shields], and continues to monitor and investigate reports, but does not have evidence at this point that Palestinian civilians have been intentionally used by Hamas or Palestinian armed groups during the current hostilities to 'shield' specific locations or military personnel or equipment from Israeli attacks.

In previous publications, HRW has even absurdly blamed Israel for Hamas' practice of exploiting civilian areas. In *Rockets from Gaza* (August 2009), HRW states that Hamas "did not...force civilians to remain in areas in close proximity to rocket launching sites." Instead the authors hold Israel responsible for Hamas' rocket fire from populated areas.<sup>546</sup> Under HRW's version, Hamas "redeployed from more open and outlying regions — many of which were...controlled by Israeli ground forces...into densely populated urban areas." In other words, Israel's successful military operations targeting rocket fire is blamed for Hamas' violations of the laws of war. And the numerous rocket attacks from these same urban areas — long before and after the December 2008-January 2009 offensive — are not mentioned.

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'."<sup>547</sup> In a report 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."<sup>548</sup> 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."<sup>549</sup>

Despite the legal acrobatics employed by HRW and other NGOs to minimize or deny Hamas shielding, an analysis regarding the Gaza war authored by U.S. military officials, concluded that they "saw evidence that Hamas at least directed, if not forced, innocent civilians to areas that they knew were to be attacked by the IDF. Hamas provided leaflets telling people to stay in place and paid 'helpers' to remain in battle areas until fighting began and block the evacuation of neighborhoods in Gaza." In other words, even under the extremely narrow definition proffered by HRW and Amnesty, Hamas was carrying out extensive violations.<sup>550</sup>

#### **k. Targeting**

Minimizing and denying human shielding directly relates to the NGOs' approach towards targeting. 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."<sup>551</sup> 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."<sup>552</sup>

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 U.S. 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."<sup>553</sup> 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 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."<sup>554</sup> 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."<sup>555</sup>

In contrast to the views of the most senior and experienced military officials, NGOs level 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. Deliberate attacks against civilians and civilian property are a grave breach of international humanitarian law.<sup>556</sup>

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. However, 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.<sup>557</sup>

Interestingly, immediately after Amnesty accuses Israel of acting disproportionately, it also admits, “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 “the likely military advantage” and whether the attack was “out of proportion.”

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.

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, 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.<sup>558</sup>

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 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 had no investigators on the ground in Gaza.<sup>559</sup>

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 response to the UCL/CERAC study finding 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 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."<sup>560</sup>

## I. 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.

For instance, in a statement criticizing Israel's policy of warning civilians prior to attacks,<sup>561</sup> 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" is 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, Amnesty ignores the many statements of Hamas leaders telling its citizenry to ignore Israeli warnings and to act as human shields.<sup>562</sup>

Similarly, in a New York Times article discussing human shielding, HRW's Van Esveld 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."<sup>563</sup> 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 illegal as they 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 cannot fight at all.

Brookings Institution scholar Ben Wittes summarizes the damaging 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 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.<sup>564</sup>

### **m. Civilian Casualties**

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 collocating fighters, weapons, and tunnels within Gaza’s civilian infrastructure in order to maximize civilian harm and by manipulating casualty counts. As noted by a group of U.S. military officials and experts analyzing the Gaza war, this strategy is emboldened by “widespread misunderstanding of LOAC not just among warring parties but also media, observers and the international public – a misunderstanding built on the false assumption that the law prohibits the infliction of any and all civilian casualties.”<sup>565</sup>

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).<sup>566</sup> Guidelines issued by Hamas during the war prohibited the publication of names, affiliations, photos, and details of combatant deaths. This policy was enforced not only on Palestinians but on the international media via threats and intimidation.<sup>567</sup> Hamas used this same tactic during the 2008-09 war. It was only in 2010, that Hamas finally admitted that 700 of its fighters (around 60 percent of total number of estimated casualties in the war) were killed.<sup>568</sup>

Despite the myriad of evidence documenting Hamas’ efforts to manipulate the coverage of the war and its casualties, NGOs were willing participants in Hamas’ propaganda efforts. They too manipulated casualty statistics to advance their narrative of Israel committing “indiscriminate” or “disproportionate”

attacks in Gaza. In particular, NGOs used their unsupported casualty claims as the sole basis for charges of “disproportionate” or “indiscriminate” Israeli attacks against Gaza civilians, even though as discussed above, under international law, the number of casualties is not a dispositive factor in determining whether war crimes were committed.<sup>569</sup>

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 likely included in the overall casualty count attributed to Israel), 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.<sup>570</sup>

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 were 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 percent 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 percent of Gaza’s population.<sup>571</sup> An analysis conducted on the casualty list issued by Al Jazeera found that 80 percent of those killed were male and nearly 70 percent were aged 18-38.<sup>572</sup> A study conducted by Hebrew University reviewing B’Tselem’s casualty figures of the 2008-09 fighting found similar results.<sup>573</sup> These studies, documenting the high proportion of deaths for fighting-age males, suggest that the strikes in Gaza were highly discriminate.

NGO exploiting and shaping of casualty figures also occurred during the 2006 Lebanon war. A study co-authored by Abraham Bell and Gerald Steinberg, "Methodologies for NGO Human Rights Fact-Finding in Modern Warfare: The 2006 Lebanon War as a Case Study,"<sup>574</sup> examined the publications of HRW and Amnesty from both a quantitative and a qualitative perspective. The study analyzed "seven significant events and battle areas allegedly involving civilian casualties," including incidents in Srifa, Qana, Bint Jbeil, and Marwahim.

In the analysis, HRW publications regarding these seven central incidents were found to be "highly partisan," and the NGOs factual claims varied "substantially from the initial reports through the later statements." The study also found that claims "generally echoed the Lebanese/Hezbollah characterizations and figures during and after the war."<sup>575</sup> Indeed, in "nearly every case, [HRW's] initial estimation of Lebanese casualties was exaggerated," and "the lack of reliable sources of information [was] prominent."<sup>576</sup> In one example, the study notes that a 249-page HRW report, "Why They Died," relied solely on casualty figures provided by Hezbollah, even though there was a wide discrepancy among many sources regarding the actual number.<sup>577</sup> Overall, the study concludes that "[HRW's] reports were closer to unverified claims than researched conclusions."<sup>578</sup>

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.<sup>579</sup>

As mentioned, Oxfam conflates Palestinian combatant and civilian casualties while taking care to separate the Israeli figures. The NGO claims that 85 percent of Palestinians are "thought 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.<sup>580</sup> 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 was 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).<sup>581</sup> 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.<sup>582</sup>

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 figures were inherently unverifiable and based solely on information from Palestinian sources in Hamas-controlled Gaza.<sup>583</sup> B’Tselem had 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 was 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.”<sup>584</sup> 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" was 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.

Moreover, these errors remain on highly inflammatory graphics produced by B'Tselem used to raise the specter of disproportionate attacks and generate international outrage against Israel. As mentioned earlier in this chapter, B'Tselem produced a slick infographic purporting to show "families bombed at home" by Israel.<sup>585</sup> 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. No context is provided for the incidents and independent studies have shown that B'Tselem failed to identify at least 14 combatants (see Fig. 7). Nevertheless, the NGO has not taken steps to correct the graphic, continuing to disseminate a false narrative of Israeli venality rather than accurate information.

**Figure 7: Palestinian Combatants Identified 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	<a href="http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf">http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf</a>
July 8/9, 2014	Hamad Family	Ibrahim Mohammed Ahmad Hamad	al-Qassam	<a href="http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf">http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf</a>
July 8/9, 2014	Hamad Family	Mahdi Mohammed Ahmad Hamad	PFLP	<a href="http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf">http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf</a>
July 10, 2014	Al Haj Family	Omar al-Haj	al-Qassam	<a href="http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf">http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf</a>
July 12, 2014	Al-Batsh Family	Nahed Na'im al-Batsh	al-Qassam	<a href="http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf">http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf</a>
July 12, 2014	Al-Batsh Family	Bahaa Majed al-Batsh	al-Qassam	<a href="http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf">http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf</a>
July 12, 2014	Al-Batsh Family	Jalal Majed al-Batsh	al-Qassam	<a href="http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf">http://www.terrorism-info.org.il/Data/articles/Art_20687/E_124_14B_472268844.pdf</a>

July 16/18, 2014	Al- Astal Family	Hussein Abd al-Nasser al-Astal	al-Qassam	<a href="http://www.terrorism-info.org.il/Data/articles/Art_20695/E_134f_14_1598950107.pdf">http://www.terrorism-info.org.il/Data/articles/Art_20695/E_134f_14_1598950107.pdf</a>
July 19, 2014	A-Zweidi Family	Mohammad Khaled Jamil al-Zweidi	Al-Quds	<a href="http://www.terrorism-info.org.il/Data/articles/Art_20704/E_147_14_1542981406.pdf">http://www.terrorism-info.org.il/Data/articles/Art_20704/E_147_14_1542981406.pdf</a>
July 20, 2014	al-Hayah Family	Osama Khalil Isma'il al-Hayya	al-Qassam	<a href="http://www.terrorism-info.org.il/Data/articles/Art_20704/E_147_14_1542981406.pdf">http://www.terrorism-info.org.il/Data/articles/Art_20704/E_147_14_1542981406.pdf</a>
July 20, 2014	Ziyadah Family	Omar Sha'ban Hassan Ziada	Terrorist operative	<a href="http://www.terrorism-info.org.il/Data/articles/Art_20708/E_151_14_1970189202.pdf">http://www.terrorism-info.org.il/Data/articles/Art_20708/E_151_14_1970189202.pdf</a>
July 21, 2014	Siyam Family	Mohammad Mahrous Salam Siam	National Reistance Battalions	<a href="http://www.terrorism-info.org.il/Data/articles/Art_20708/E_151_14_1970189202.pdf">http://www.terrorism-info.org.il/Data/articles/Art_20708/E_151_14_1970189202.pdf</a>
July 20/21, 2014	Siyam Family	Kamal Mahrous Salam Siam	al-Qassam	<a href="http://www.terrorism-info.org.il/Data/articles/Art_20708/E_151_14_1970189202.pdf">http://www.terrorism-info.org.il/Data/articles/Art_20708/E_151_14_1970189202.pdf</a>
July 29, 2014	Dheir Family	Izat Dheir	PIJ Al-Quds Battalions operative.	<a href="http://www.terrorism-info.org.il/Data/articles/Art_20734/E_191_14_1801441599.pdf">http://www.terrorism-info.org.il/Data/articles/Art_20734/E_191_14_1801441599.pdf</a>

In parallel, B'Tselem repeats claims from PCHR and Al Mezan — both Gaza-based NGOs. 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 percent) and 252 resistance activists (17.8 percent)." 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 claimed that more than 80 percent of those killed in the 2014 fighting were civilians (84 per cent and 82 percent, respectively).<sup>586</sup> They say they distinguished between civilians and combatants by visiting Gaza hospitals and morgues. If there was no clear evidence (i.e.,

casualties with weapons), these NGOs claimed 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.<sup>587</sup>

For instance, one study, reviewing PCHR's casualty claims, found nearly 40 individuals were misidentified as civilians by the NGO. See Fig. 8.

**Figure 8: Palestinian Combatants Identified by PCHR as Civilians<sup>588</sup>**

Date	Name	Terrorist organization
7/12/2014	Haitham Ashraf Zo'rob	Hamas, Al Qassam Brigades
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 Hwaisheh	Commander in the Qassam Brigades
7/23/2014	Na'im Jum'a Abu Mized	Islamic Jihad's Al Quds Brigades
7/24/2014	Abdul Qader Jameel al-Khalidi	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 Shurrah	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 Shurrah	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 Mohamma-dain	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 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	Islamic Jihad
8/4/2014	Yousef Jaber Darabih	Islamic 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.<sup>589</sup> Despite the questionable status of those working for Al Aqsa TV as "civilian journalists," a video posted on YouTube, showed Murtaja giving a "martyr" statement and revealed him to be a member of Hamas' Al Qassam Brigades.<sup>590</sup>

On November 14, UNESCO issued an update, 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."<sup>591</sup> 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 percent of the casualties in Gaza were civilian, independent analysis conducted by the Meir Amir International Terrorism Information Center of more than 75 percent of the casualties claimed by Palestinian sources, demonstrates that the actual casualty breakdown is approximately 55 percent combatant and 45 percent civilian.<sup>592</sup> Of the civilian casualties, it is not yet known how many were killed in military strikes, how many were killed by Hamas or other Palestinian terror groups and how many died of natural causes or accidents. Colonel Richard Kemp has also remarked that civilian casualties in the Gaza conflict were only one-fourth of the global average in warfare.<sup>593</sup> 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.

### III. Illustrative Examples

The previous sections detail the many methodological failings in NGO publications, including lack of transparency, conflicts of interest, selection bias, staffing bias, lack of military expertise, and legal and factual errors and distortions. The following examples illustrate the lack of NGO credibility in reporting on specific events during the 2014 conflict:<sup>594</sup>

#### 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 then returned, just as the missile was being fired; at that point, it was technically impossible for the bomb to be recalled.<sup>595</sup> 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 shields went to the house, and a Hamas spokesman confirmed it.<sup>596</sup> Seven people were reportedly killed.<sup>597</sup>

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.”<sup>598</sup>

Contrary to B’Tselem’s claims, international law provides a broad definition for what constitutes legitimate targets. Moreover, B’Tselem does not explain why targeting senior commanders and a Hamas command center would not fall within even the narrow definition proffered by the NGO, nor why destroying it would not “effectively assist military efforts” and “provide a military advantage.” 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 comment that “Retroactively calling family home of Hamas militant a command center doesn’t justify #Israel attacking it.”<sup>599</sup> Yet, Roth neither provides 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 that took place on July 8. The IDF targeted Hafez Hamad, commander of Palestinian Islamic Jihad (PIJ) military operations in Beit Hanoun, and a group of other terror operatives conducting an operational meeting outside Hafez’s home.<sup>600</sup>

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 the 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.<sup>601</sup>

In its account, B’Tselem erased the complex reality surrounding the strike.<sup>602</sup> 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-Mezan 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."<sup>603</sup> 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.

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."<sup>604</sup> 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 Watch levied legal charges that this strike (and others that took place on July 8) was "collective punishment" and "indiscriminate."<sup>605</sup> 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 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.<sup>606</sup> 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.<sup>607</sup> Others claimed the plant would be inoperable for at least a year.<sup>608</sup>

In contrast to the 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.<sup>609</sup> Based on IDF intelligence, it appeared that a misfired Hamas rocket hit the plant instead. Nevertheless, the IDF opened an investigation into the circumstances.<sup>610</sup> 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 estimates of between 10 and 20 percent of Palestinian rockets that hit Gaza during the fighting,<sup>611</sup> causing significant damage and casualties, NGOs did not address errant rocket fire as a possible explanation for the strike. Moreover, NGOs 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.”<sup>612</sup>

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.”<sup>613</sup> While HRW admits that it has no idea what actually happened and acknowledges that the IDF denied it struck the plant, the NGO still went on to provide a lengthy exposition on how Israel “violated” international law in the attack.

#### **Al-Bakri Home, August 4**

On August 4 the IDF targeted Omar Al-Rahim, a senior commander in the PIJ. Al-Rahim was staying in the house of Ramadan Al-Bakri, also a PIJ fighter, along with several other PIJ members. As a result of the strike, Al-Rahim, was injured, and Ibrahim Al-Masharawi, a senior commander at a rank equivalent to a battalion commander in the PIJ, was killed, along with Al-Bakri and four civilians.

In contrast, PCHR presented the incident as an illegal strike on a civilian home claiming that “at approximately 10:05 on Monday, 04 August 2014, in violation of the humanitarian truce declared by Israel, an Israeli warplane launched a missile at a two-storey house belonging to Kamal Mohammed al-Bakri, in which 30 people live, in the densely populated al-Shatti refugee camp, west of Gaza City. As a result, the house was destroyed and five Palestinian civilians were instantly killed: Ibtissam Ibrahim al-Bakri, 31; her children: Aseel, 4; and Mohammed, 4 months; Ramadan Kamal al-Bakri, 36; and Ibrahim Mohammed al-Masharawi,

32. Kamal Ahmed al-Bakri, 4, died of his wound on Tuesday morning. Five neighboring houses were also destroyed.” PCHR fails to mention any fighters were present or killed in the strike, claiming all were civilians.<sup>614</sup>

B’Tselem’s graphic of “Families killed at home” includes this incident, yet lists the two high ranking militants killed in the strike as civilians, and does not list the wounded terrorist Omar al-Rahim at all.<sup>615</sup> B’Tselem thus omits critical details about the incident and adding to false claims of indiscriminate attacks by Israel. This incident highlights the inability of B’Tselem to credibly report on events during armed conflict and/or its deliberate manipulation of the record.

### Abu Dahrouj Home, August 23

On August 23, the IDF targeted a weapons cache in Gaza. Due to an apparent malfunction in the guidance system, the launched bomb struck 100meters from the intended target and instead hit the home of Hayel abu Dahrouj. Abu Dahrouj, a member of the PIJ was killed along with four other members of the family. Shortly thereafter, a second strike was launched and the cache was destroyed.

Despite the fact that the strike on the Abu Dahrouj house was a mistake and that the intended target was a weapons cache nearby, PCHR accused Israel of deliberately targeting the home.<sup>616</sup> PCHR also fails to mention that Hayel abu Dahrouj was a member of PIJ. Similarly, Al Mezan portrayed the incident as a deliberate attack on the house.<sup>617</sup>

Highlighting the lack of NGO expertise and intelligence regarding military operations, Amnesty claimed that the target was Abu Dahrouj himself and complained that “there are important questions about why no warning given, as was apparently done before the 16 July attack, and why the Israeli military did not choose a time and means of targeting him that was less likely to kill civilians.”<sup>618</sup> As noted, however, Abu Dahrouj was not the intended target and Amnesty does not contemplate the possibility that the attack was a mistake.

## IV. NGO Omissions

In addition to the severe methodological failures in NGO reporting on the Gaza war, serious and extensive omissions also exist in these publications, further detracting from their credibility and capacity to report on human rights and humanitarian law violations. Below are some of the most glaring issues ignored by NGOs.

**Context:** While NGOs frequently wrote about the “blockade” and “siege” of Gaza and the Israeli “occupation,” providing justifications for Hamas attacks, they rarely provided context on Hamas itself as an organization — its structure,

financing, tactics, governance role, and weaponry. Similar information was missing about other terror groups operating in Gaza.

**International Law Regarding Terrorism:** While NGOs often pilloried the U.S. and Europe for supporting Israel and called for sanctions and embargoes, the NGOs offered no global context including information on the role of Iran, Turkey, Qatar, and Syria in supporting, financing, and supplying weaponry to Gaza. They did not address 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.

**Israeli Suffering:** NGOs focused in-depth on Palestinian suffering during the war, but 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. NGOs ignored the attacks on Israel's airport and attempts to strike Israel's nuclear installations, potentially causing catastrophic damage. NGOs have many representatives in and unfettered access to Israel to investigate these aspects of the war, but they chose not to. NGOs never ascribed responsibility to Hamas or demanded compensation and other redress from the Palestinians.

**Intimidation of Journalists:** NGOs were almost completely silent regarding Hamas operations in Gaza, including how control of information and propaganda played a major role in Hamas' war strategy. One of the key components of this tactic was 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 #Hamas retaliation: misfired rocket killed children yday [yesterday] in Shati. Witness: militants rushed and cleared debris.”*

*He said, “@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.

The NGOs did not report on this phenomenon and the intimidation experienced by journalists, which raises the question as to whether NGOs were also prevented from reporting the truth or, more troubling, were willing partners to Hamas' propaganda.

**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. The Secretary General's Board of Inquiry report on the Gaza fighting revealed gross incompetence on the part of UNRWA employees and officials and possibly even complicity in attacks on IDF soldiers and Israeli civilians from UN facilities.<sup>619</sup> In addition, UNRWA officials, most notably Chris Gunness, and UN agencies like OCHA were instrumental in disseminating worldwide Hamas propaganda.<sup>620</sup> These aspects were invisible in NGO reporting.

**Violations of International treaties and agreements by "Palestine":** On April 1, 2014, the so-called "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.<sup>621</sup> 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. Since April and in particular during the war, however, there have been thousands of violations, as shown in figure 9:

**Figure 9: Violations of Treaty Obligations by “Palestine”<sup>622</sup>**

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
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 Statute	Art. 8(2)(b)(vii)	Violence aimed at spreading terror among the civilian population
Additional Protocol I	Art. 51(2)	Targeting civilian objects, such as airports or nuclear power plants
Additional Protocol I	Arts. 48, 52(2)	Indiscriminate attacks
Additional Protocol I	Art. 51(4)	Failure to provide advance warning of attacks which may affect the civilian population
Additional Protocol I	Art. 57(2)(c)	Failure to protecting civilians
Additional Protocol I	Art. 58(c)	Attacking medical units
1899 and 1907 Hague Regulations	Art. 27	Failure to protect journalists



First Geneva Convention	Art. 19	Mistreating the dead
Additional Protocol I	Art. 12	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
Additional Protocol I	Art. 79	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
Hague Convention (X)	Art. 16	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
Fourth Geneva Convention	Art. 16	Conscription of children to build Hamas attack tunnels and other war infrastructure
Additional Protocol I	Art. 34(1)	Conscription children for Palestinian war effort; forcing children to riot and engage in other harmful activities
Convention on the Rights of the Child (CRC)	Art. 3	Conscription of child soldiers under age 15
CRC	Art. 17	Discriminatory laws directed at women including dress codes; failure to provide legal recourse to women for domestic violence, honor killings, and rape
CRC	Art. 24	Restrictions on transmission by women of nationality to children
CRC	Art. 32	Permitting polygamy and child marriage
CRC	Art. 36	Failure to take action to prevent torture; summary executions of "collaborators"

CRC	Art. 38	Failure to provide system of redress for torture victims
Convention on Elimination of Discrimination Against Women (CEDAW)	Art. 1	Failure to prevent and punish crime of genocide
CEDAW	Art. 9	Engaging in acts of genocide — killing and causing harm with intent to destroy national and religious group
CEDAW	Art. 16	Engaging in genocide, conspiracy to commit genocide, public incitement to genocide, attempts to commit genocide, and complicity in genocide
Convention Against Torture (CAT)	Art. 2	Failure to enact legislation to prevent acts of and incitement to genocide
CAT	Art. 14	Violations of equal rights for women, particularly in Gaza
Convention Against Genocide (CAG)	Art. 1	Violation of the right to life by deliberate attacks on Israeli civilians, use of human shields, and summary executions
CAG	Art. 2	Torture, execution and degrading treatment in prisons and on street
CAG	Art. 3	Failure to provide persons deprived of liberty with humanity and respect
CAG	Art. 5	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
International Covenant on Civil and Political Rights (ICCPR)	Art. 3	Mass system of war propaganda including manipulation of casualties, covering up crimes, and intimidation of journalists
ICCPR	Art. 6	Advocacy of national and religious hatred against Israelis and Jews to incite discrimination, hostility, and violence
ICCPR	Art. 7	Allowance of child marriage and polygamy
ICCPR	Art. 10	
ICCPR	Art. 18, 19	

ICCPR	Art. 20	
ICCPR	Art. 20	
ICCPR	Art. 23	

Despite this overwhelming list of violations, and aside from a few perfunctory comments on Hamas violations, NGOs have been silent on these mass and systematic abuses.

## **D. CONCLUSION**

NGOs are key players in how armed conflicts are reported and addressed by the international community. They serve as filters of information, framing issues and creating narratives in order to set and advocate for their narrow political agendas. NGO narratives are adopted by the media, policy makers, and international institutions.

Yet, in their publications, NGOs do not abide by international fact-finding standards and do not possess the knowledge and expertise to make the claims that they do. NGOs lack the humility and self-reflection to admit that there is much they do not know.

NGO reporting during the 2014 conflict, therefore, cannot be viewed as reliable or credible without undertaking independent verification of the facts and claims contained therein.

Or as the founder of Human Rights Watch, Robert Bernstein appropriately stated:

...while there should certainly be oversight over democratic forces in battle, I question whether human rights organizations, unless they change their methodology and in my view, their attitudes, and are more accountable in terms of accuracy, are the right parties to do this. If they wish to continue as judges of democratic armies whose lives are at risk, they must be accountable.<sup>623</sup>

## **Appendix 1:**

### **Submission to the United Nations Independent Commission of Inquiry on the 2014 Gaza Conflict**

*by Colonel Richard Kemp CBE*

*Geneva, 20 February 2015*

I was a Colonel in the British Infantry. Much of my 29 years' military service was spent countering terrorism in Iraq, Afghanistan, Northern Ireland, Great Britain, Germany, Saudi Arabia and Macedonia. I was Commander of British Forces in Afghanistan in 2003. I fought in the 1990-91 Gulf War and commanded British troops in Bosnia with the UN Protection Force and in Cyprus with the UN Force.

From 2002 – 2005 I was seconded to the UK Cabinet Office working on intelligence relating to international and domestic terrorism. Hamas and Palestinian Islamic Jihad were among the extremist groups that I monitored and assessed in this role, and I had access to all secret intelligence available to the UK on these and other Palestinian extremist groups.

I was appointed Member of the Order of the British Empire by the Queen in 1994 for counter terrorist intelligence services and Commander of the Order of the British Empire in 2006 also for counter terrorist intelligence services.

I was in Israel for much of the summer 2014 Gaza conflict, specifically from 14 July – 8 August and from 27 August – 5 September. During these periods I met, was briefed by and questioned Israeli political leaders, senior officials and Israel Defence Force (IDF) soldiers from general officer down to private soldier. I spent a considerable amount of this time close to the Gaza border where I also met, was briefed by, questioned and observed many IDF officers and soldiers immediately before and after they had been in combat.

I was in Israel also for much of the Gaza conflict in 2012. I visited IDF units and held meetings with many IDF officers, government officials and political leaders before and since then. I have been acquainted with the IDF and the Israeli intelligence services for many years, both during and after my military service.

This submission to the UN Commission of Inquiry on the 2014 Gaza conflict is based on observations on the ground during the conflict, 29 years' military experience of conflicts of this type, intelligence work relating to Hamas and

Palestinian Islamic Jihad, knowledge of the IDF and Israeli intelligence services, study of the Israel-Palestine conflict and observations on the ground during the 2012 Gaza conflict. I should add that I have no formal, paid or unpaid, connection with the IDF or with any other organ of the Israeli government.

In my opinion the actions taken by the IDF were necessary to defend the people of Israel from the ongoing, intensive and lethal attacks by Hamas and other groups in Gaza. It is the inalienable duty of every government to use its armed forces to protect its citizens and its terrain from external attack.

In this case there was a sustained assault on the Israeli population from rockets and mortar bombs; attacks on Israeli military posts using tunnels; apparent plans to launch further attacks on Israeli military posts and on civilian settlements also using tunnels; and attempted attacks from the sea.

As the Gaza Strip is effectively a separate state, outside of Israeli control, these actions amounted to an attack by a foreign country against Israeli territory. In these circumstances I know of no other realistic and effective means of suppressing an aggressor's missile fire than the methods used by the IDF, namely precision air and artillery strikes against the command and control structures, the fighters and the munitions of Hamas and the other groups in Gaza. Nor have I heard any other military expert from any country propose a viable alternative means of defence against such aggression.

The only other options, which I do not consider realistic in these circumstances, would have been:

A strategy of carpet-bombing to force Hamas and the other groups to desist from their attacks.

A large-scale ground invasion to find and destroy the offensive capabilities of Hamas and the other groups.

Either of these means would have resulted in far greater civilian casualties, and a ground invasion would also have incurred significant numbers of Israeli military casualties. The destruction of Hamas would also have left Gaza under full Israeli control, which would have needed an investment in military resources that Israel could ill afford given the wide range of threats and potential threats that the country faces, including from Iran, from Hizballah in Lebanon and Syria, from the Islamic State in Syria and from Islamist extremists in Sinai.

In reality, the offensive missile capabilities of Hamas and the other groups could never have been totally destroyed using air operations alone. Recognising this, the IDF commanders and their political leadership calculated that to have eradicated the threat completely would have required a ground offensive that would have caused large numbers of casualties among Gaza civilians – far more than were sustained during the operation in the summer. They also took account of predicted Israeli military casualties which would have been substantial.

The consequence was an acceptance that while it would be possible to halt Hamas's aggression on a temporary basis, there would in the future be a resurgence of such activity, forcing yet another defensive operation along the lines of 2008-09, 2012 and 2014, and causing further Israeli and Palestinian casualties. Though unsatisfactory in the longer term, this was a proportional and pragmatic response – indeed in my opinion the minimum possible response – to the rocket fire from Gaza.

While Israel can act to reduce the prospects for such future action, including by trying to prevent munitions or materiel with the potential for offensive military use entering Gaza, it cannot fully achieve this. In the interests of a lasting peace I would strongly urge the Commission to recommend effective international cooperation against the continued re-militarization of the Gaza Strip.

It is grossly irresponsible of international actors to rely on accusations against Israel of a so-called illegal blockade and occupation of Gaza, and demand that Israeli control of Gaza's borders be lifted, when it is clear that Israeli action is necessary to prevent the re-armament that will lead to further attacks by Hamas and other groups. It should be noted that Egypt takes similar preventive action against Gaza extremists for the same reason as Israel.

In the absence of effective international pressure and cooperation there is certain to be another Gaza conflict in the coming months and years. This Commission could play a constructive role in advocating an international approach in order to avert further conflict.

Equally, in my opinion the IDF had no alternative than to conduct a limited ground incursion into the Gaza Strip to locate and destroy the attack tunnels that directly threatened Israeli people and territory. This could not have been achieved from Israeli territory alone, especially given the fact that close reconnaissance on the ground inside Gaza was necessary to identify the locations of the tunnels. Nor could the tunnels have been identified or neutralized from the air without ground forces.

If, as I am asserting, it was necessary for Israel to conduct military action to defend its people against attack from Gaza; and if, as I am also asserting, the IDF conducted, in general terms, the most appropriate form of operations, namely precision air and artillery strikes against the command and control infrastructure and the missile launching infrastructure, and a limited ground incursion to locate and destroy the tunnels; the question then arises as to how these operations were conducted in relation to the Laws of Armed Conflict.

Much of the Hamas military infrastructure was located amongst the civilian population in Gaza. In these circumstances, neutralizing the threat from Hamas made civilian casualties unavoidable. Under the Laws of Armed Conflict this fact does not render such operations illegal assuming they were necessary. However



the IDF had a duty to distinguish between legitimate military targets and civilians and to ensure that operations were conducted in accordance with the principle of proportionality as well as necessity.

It is worth emphasizing that proportionality is not, as often believed by critics of Israel, a relationship between the numbers of casualties on either side in a conflict, but a calculation that considers whether the incidental loss of civilian life, injury to civilians or damage to civilian objects would be excessive in relation to the concrete and direct military advantage anticipated in an attack.

From my own research as well as briefings from and discussions with Israeli legal, military and political leaders, I understand and know well the ethos and operating principles of the IDF and I know that their commanders place great emphasis on adherence to the laws of armed conflict. This includes the principle of proportionality, which is set out in Israel's manual of military law and is recognized by the International Committee of the Red Cross.

The IDF is accountable to the democratically elected government of Israel and also to the Israeli legal system. The laws of Israel require adherence to the laws of armed conflict as well as domestic military and civilian criminal law. The Israeli military and civilian legal systems – both widely respected by international legal authorities – are empowered to take appropriate action against IDF personnel who transgress domestic or international law. There are numerous examples of such action in relation to previous conflicts. I am aware that such processes are currently underway in relation to the 2014 conflict.

As with all Western armed forces the IDF codify the relevant laws into rules of engagement that determine when Israeli military personnel may or may not use lethal and less than lethal force and into regulations that govern military conduct in relation to treatment of civilians, enemy combatants and property in an operational area. As with British and US rules of engagement, in normal circumstances IDF rules of engagement keep the IDF soldier within the laws of armed conflict by a significant margin. All Israeli soldiers are trained on these rules and regulations and the IDF emphasizes continuous updating of this training for their troops.

I have frequently questioned senior and junior IDF personnel on these issues and I have found that communication of these directions is effective. In my experience the most junior soldiers in the IDF understand them and the imperative of adhering to them in conflict.

I questioned Israeli commanders and soldiers on the ground on their actions in combat on the Gaza border immediately before and immediately after they were fighting in Gaza and during ceasefire periods. I spoke to soldiers from infantry, tank, artillery and engineer forces.

Many of them expressed frustration at the restrictions imposed upon them by

the rules of engagement, in the same way as British, US and other Western soldiers express such frustration. This was generally explained to me as frustration due to the additional risks imposed on their own lives and the lives of their fellow soldiers and also on the reduction in effectiveness against an enemy brought about by adherence to the highly restrictive IDF rules of engagement. The latter relates to restrictions that I was told frequently allowed enemy fighters to escape rather than take the risk that innocent civilians might be killed.

Nevertheless all of the soldiers that I questioned – including those who claimed they were frustrated by these restrictions – accepted and understood the need to adhere to the rules and told me that they and their comrades did adhere to the rules during combat in Gaza. I found this level of acceptance to be higher than would generally be found among soldiers from other Western armies that I have commanded or served alongside. The expressions of frustration also, in my view, tend to confirm adherence to the rules of engagement – even though they didn't necessarily like the rules they still apparently complied with them.

Many soldiers that I questioned told me about encounters with Palestinian fighters among the civilian population and the steps they had taken to avoid civilian casualties. Soldiers told me that not only were they not permitted to kill, wound or mistreat innocent civilians but also that their own morality would not allow it. For example, one engineer soldier who had recently emerged from a Hamas attack tunnel told me that even while advancing along the tunnel, faced by a wide range of potential threats to his life, uppermost in his mind was the need to avoid killing innocent civilians. He explained that he knew Hamas sometimes used innocent civilians as human shields in the tunnels.

I spoke to a group of IDF pilots who had that morning been flying attack missions against fighters in the Gaza Strip. Again all of them knew, understood and accepted the rules of engagement that applied to them. The level of frustration was reduced, partly because they were in less personal danger than troops on the ground. One of them told me that he had attempted to attack a Hamas target that morning but had aborted the attack because civilians had been identified in the target area. He told me that he had made 10 further attempts to attack the same target and each time the attack was aborted due to the presence of civilians. Eventually he abandoned the mission altogether.

I asked him whether he found this frustrating. He said he did not. He told me that “the best thing about the IAF (Israeli Air Force)” was that they were not allowed to strike a target if they knew civilians were present in the target area. He said that whatever the rules and the laws, in any case he could not live with himself for the rest of his life if he had knowingly killed innocent civilians.

Although I did not witness these events personally I know and understand soldiers, having been a soldier myself and commanded soldiers for 29 years. I

know how they think, act and speak. I would know if I was being deceived or misled in such discussions. I do not believe that this was the case and I therefore consider that the comments made to me by IDF soldiers immediately before and after combat were truthful. This was by no means a scientific survey, but my questioning covered a large number of soldiers from a very wide range of IDF units, at different times and in different circumstances and I believe it to be indicative of the true overall ethos of the IDF.

Of course this does not mean that no soldier breached the rules of engagement at any time, whether deliberately or by error. And it does not mean that mistakes were not made that resulted in civilian casualties. I will refer to this later.

I have been briefed in detail on the procedures used by the IDF to avoid civilian casualties in Gaza during the 2014 conflict. I previously commented in relation to the 2008-09 Gaza conflict that no army in the history of warfare had taken greater steps than the IDF to minimise harm to civilians in a combat zone. My observations during the 2014 conflict confirmed this. No other army that I have served in or alongside or that I have studied and researched has yet taken such extensive precautions. This includes British and US forces. It is in part due to the specific circumstances of the Gaza conflict, which allow the IDF to go to such lengths whereas other armed forces in other situations may not be able to do so.

However, during some operations in Afghanistan, British and US forces adopted some methods developed by the IDF in Gaza. And in November 2014, General Martin Dempsey, Chairman of the US Joint Chiefs of Staff, said that the IDF 'went to extraordinary lengths to limit collateral damage and civilian casualties' during the 2014 conflict in Gaza. He revealed that he had sent a delegation of US military officers to Israel to learn about the measures that the IDF took to prevent civilian casualties.

Israel's emphasis on preventing civilian casualties during this conflict started at the top. The Prime Minister, the Minister of Defence and the Chief of Staff of the IDF made clear their directions that civilian casualties were to be minimised. I was told that the first item on the agenda of every meeting of the Israeli security cabinet during the conflict was Palestinian civilian casualties. This illustrates the priority placed by all elements of the Israeli government engaged in the conflict on minimising civilian casualties in Gaza.

This flowed down from top to bottom. On questioning military personnel at all levels I found that even the most junior private soldiers on the ground understood and said they complied with this priority.

I was briefed on the following procedures that were routinely implemented prior to launching an attack in Gaza.

Before a target could be attacked at least two separate and independent

intelligence sources had to verify that it was a legitimate military target. Intelligence includes human sources, aerial surveillance, ground surveillance and communications intercept.

Each separate aerial attack mission had to be personally authorised by the Commander of the Israeli Air Force or one of his deputies, at least one of whom had to be present in the operations centre throughout the conflict. Authorisation was also subject to legal advice.

To confirm whether or not civilians were in the target area surveillance had to be conducted by both manned combat aircraft and unmanned air vehicle (drone), the latter enabling greater visual recognition.

If surveillance or other intelligence sources confirmed the presence of civilians, or the presence of civilians was suspected, one or more of a series of measures was taken to warn the civilians before the attack could go ahead. These measures were:

Leaflet drop.

Broadcast radio message.

Phone call.

Text message.

Warning via UN.

An additional measure was the use of a specially designed harmless air-dropped munition known as 'knock on the roof' which was dropped on buildings to make a loud percussion and to warn those inside of an impending attack.

Further surveillance was then conducted to confirm the civilians had left the target area. If they had not the attack would not be carried out until they had.

Once a pilot was authorised to attack he had authority – and it was his duty – to abort the attack if he had reason to believe civilians were present when he made his attack run.

Pilots utilising lazer-guided munitions were required to identify a safe open area in advance so that if civilians were identified in the target zone even after the missile was launched, it could be diverted in flight to the safe area.

I make the assumption that in some circumstances all of these procedures could not be followed, for example in an air operation in support of ground forces in danger. This might require more rapid action than these procedures would allow.

All of the procedures described above were not of course applicable to ground operations although the principles that brought them about did apply, namely the need to avoid or minimise civilian casualties. A further consideration for ground operations was the safety of the IDF's own forces. This factor was less significant in relation to pilots, to whom the danger from enemy fire was greatly reduced.

As any military commander must minimize the risk of civilian casualties in a combat zone so he must also minimize the risk of casualties to his own forces

for moral reasons, because of his duty of care and for reasons of fighting morale and combat effectiveness against the enemy. This is often overlooked when investigating human rights issues in a conflict. But every military commander must take this factor into account when calculating necessity and proportionality in his decision-making.

This consideration is an important factor that affects the extent of civilian casualties in ground combat, including in Gaza, and will sometimes lead to increased civilian casualties. A further factor is the inaccuracy of some ground combat systems compared to air systems, for example the infantry assault rifle compared to precision-guided munitions.

Additionally even the best trained ground forces are inevitably affected by fear, exhaustion, pain, smoke, noise, enemy fire, disorientation, sensory distortion, confusion and death and destruction around them. In a combat situation there can be so many moving parts and so much chaos that inevitably errors occur and some of these lead to unintentional civilian casualties.

A further likely cause of civilian casualties – both from the air and the ground – was equipment malfunction. Weapon guidance systems fail, computers fail, surveillance systems fail, communications fail or are distorted, explosives act aberrantly.

There is also non-combat related human error. This applies in all human activities and in all walks of life and it also applies in military operations. It is possible that this was the cause of some of the casualties in Gaza.

Nor is intelligence a perfect science – far from it. Undoubtedly there will have been cases where IDF commanders believed that an area was free of civilians. There will also have been cases where commanders believed civilians to be fighters. This circumstance is difficult to avoid when an enemy is uniformed; far more difficult when fighters such as Hamas do not wear a uniform and indeed deliberately endeavor to appear to be civilians.

None of these things are inherently willful and therefore their consequences are unlikely to be criminal in nature. Anybody who doubts the relevance of these factors need only consider friendly fire incidents that occur on virtually all battlefields even with 21st Century technology. A number of IDF deaths were caused by friendly fire during this conflict. It is hardly likely that these would have been deliberate. They were also likely the result of battlefield conditions, human error, weapon inaccuracy and technical failure.

However, as with all armies the IDF have bad soldiers. Willfully or through carelessness or negligence, such individual soldiers may have been responsible for some civilian casualties and for other wrongdoing such as ill treatment of civilians or fighters or damage to property, looting and theft. Such actions may be criminal and may have led to war crimes or offences against military discipline

during this conflict.

I have been briefed in detail on the IDF system of fact-finding, learning lessons for the future, investigation and criminal and military legal action against offenders. This system is not exclusively an internal military process; the Supreme Court of Israel oversees it. It is a system that enjoys wide respect among international legal authorities.

All of the reported cases in which civilians became casualties, protected locations were attacked, civilians or enemy combatants were ill treated or where theft, looting and damage was caused are being investigated by the Israeli authorities. The Military Advocate General of the IDF has ordered a number of criminal investigations into the actions of the IDF. More may follow. I will not go into detail either on the process or the cases under investigation but I would urge you to study the relevant documents which have been published on the Israel Ministry of Foreign Affairs website which provides details in relation to investigation of incidents in this conflict. They can be found at: <http://mfa.gov.il/ProtectiveEdge/Documents/IsraelInvestigations.pdf>

In addition to the IDF's policy of minimising civilian casualties during this conflict, other Israeli actions significantly contributed to saving the lives of Gaza civilians. The considerable Israeli financial and technological investment in the Iron Dome counter missile system prevented the majority of missiles fired out of Gaza that would have hit population centres from killing and wounding civilians and destroying property. The sophisticated monitoring, warning and shelter system put in place by Israel saved the lives of many Israeli civilians. Both also provided some reassurance to the Israeli civilian population under intensive fire from Gaza.

Without these systems being in place, in my opinion the many salvoes of rockets fired from Gaza during the summer of 2014 would have killed and wounded perhaps hundreds of Israeli civilians and caused widespread panic among the population. In such circumstances it is likely that the Israeli government would have had no option other than to launch a large-scale ground offensive, in concert with the air operation against Hamas and other groups in Gaza. This would have led to many more casualties among Gaza civilians and it can therefore reasonably be asserted that Israeli investment in these systems not only saved the lives of Israelis but also of Gaza civilians.

Despite Israeli efforts to save civilian lives it is estimated that a significant number of those killed in Gaza were civilians. Total estimates of deaths in Gaza during the conflict range from around 2,100 to around 2,200. The estimated proportion of those who were non-involved civilians varies considerably. The Gaza ministry of health, controlled by Hamas, asserts that a significant majority, at least 70%, were civilians. The UN OCHA puts the figure at over 67%. The Meir



Amit Intelligence and Terrorism Information Center, an independent research group based in Israel, currently estimates that approximately 48% were civilians. Whereas the other estimates are based on information supplied by Hamas, this estimate is based on systematic analysis of information gleaned from social media and other sources but is as yet incomplete.

Of all the civilians who died during the conflict, some died of natural causes, some in accidents not related to the fighting, others were reportedly executed or murdered by Hamas and other groups and still others were killed accidentally by Hamas missiles that were intended to kill Israeli civilians but fell short and landed in Gaza. Undoubtedly many of those who were killed as a result of Israeli military action died due to Hamas's way of fighting, including the use of human shields (see below).

Taking these factors into account I would urge the Commission to exercise caution over attribution of Gaza civilian casualties at this stage as the picture is far from clear. I would also recommend that the Commission examines the ratio of civilian to combatant casualties in other comparable conflicts. Accurate and reliable information is understandably hard to obtain, though the UN Secretary General has estimated that on average the ratio in this form of conflict since the Second World War has been 3 civilians for every combatant killed. In Afghanistan the estimate is 3:1. During the Iraq conflict that began in 2003 the UN estimate was 4:1. Other studies estimate far higher civilian casualty rates in these and other conflicts.

Turning now to Hamas's conduct in the 2014 conflict. During my time in Israel during this conflict I witnessed what I believe to be a series of war crimes and planned war crimes by Hamas and other Gaza groups, both by missile attack against civilians and by construction of attack tunnels from which to kill and abduct civilians. I am also aware of, but did not witness, Hamas and other groups' use of their own civilian population as human shields.

I personally observed 19 separate missile attacks, some involving multiple missiles, fired at Israeli population centers. Hamas do not possess the capability to carry out precision attack using missiles and therefore these attacks were all indiscriminate, and therefore unlawful under the Laws of Armed Conflict, carrying the risk of killing or wounding innocent civilians and causing damage to civilian property. My own life, as a visitor to Israel, was also in danger during many of these attacks.

Of these 19 attacks, 18 were, to my knowledge, intercepted and destroyed by the IDF's Iron Dome system or exploded in unpopulated areas. One was a direct hit on a house causing severe damage to property. These incidents are detailed below.

14 July, 1700 hours – I observed Iron Dome intercept a rocket over Tel Aviv.

15 July, 1900 hours – I observed Iron Dome intercept two rockets over Tel Aviv.

16 July, 0920 hours – I heard what was apparently Iron Dome interceptions of rockets over Tel Aviv.

16 July, 1325 hours – I observed rockets in the area of Sderot.

16 July, 1445 hours – I observed Iron Dome intercept a rocket over Be'eri.

16 July, 1515 hours – I observed Iron Dome intercept a rocket over Be'eri.

16 July, 1518 hours – I observed rockets in the vicinity of Ashkelon.

17 July, 2207 hours – I observed Iron Dome intercept two rockets overhead Tel Aviv.

18 July, 1558 hours – I observed Iron Dome intercept rockets overhead Tel Aviv.

18 July, around 2000 hours – In vicinity of Reim I observed numerous outgoing rockets launched from Gaza.

22 July, 1003 hours – I observed Iron Dome intercept two rockets overhead Tel Aviv.

22 July, 1105 hours – I observed two rockets apparently explode in the sea off Tel Aviv beach.

24 July, 1118 hours – I observed four rockets overhead Tel Aviv.

25 July, 1048 hours – I observed rockets overhead Tel Aviv.

26 July, 1952 hours – I observed Iron Dome intercept rockets overhead Ashkelon, breaking cease-fire.

29 July, 2213 – I observed Iron Dome intercept a rocket overhead Tel Aviv.

2 August, 0600 – I observed Iron Dome intercept a rocket overhead Tel Aviv.

3 August, 1502 – I observed Iron Dome intercept a rocket, possibly two, overhead Tel Aviv.

8 August, 0715 – I was on board a plane at Ben Gurion International Airport when flying was suspended as a result of rocket fire, in violation of a ceasefire. I did not hear or observe any rockets.

During the majority of these incidents I witnessed the trauma and fear for their lives that was deliberately imposed by Hamas and other groups on innocent Israeli civilians, men, women, children and old people, as well as visitors from outside the country. I also observed the disruption to daily life caused by these attacks. In the area of Israel around Gaza, this disruption was most severe, compounded by the high frequency of attacks.

On 16 July I visited the home and consulting rooms in Ashkelon of an Israeli doctor shortly after it had sustained a direct hit from a missile fired from Gaza. I was told that often the doctor's waiting room would be filled with young children. The missile caused severe damage to the house including this waiting area. Fortunately no children were present at this time.

The only occupant was the 17-year-old daughter of the doctor. I questioned

her and she told me that when she heard the attack siren she only just made it to the reinforced shelter area before the missile exploded in the house, throwing blast and debris into the room where she had been sitting and causing partial structural collapse. I have seen the effects of many explosions and in my opinion had she not reached the shelter in time she would very likely have been killed or severely wounded by shrapnel, blast, debris and flying splinters of glass.

I know of the deliberate policy of using human shields, including women and children, which is also a war crime, by both Hamas and Palestinian Islamic Jihad. I am aware of this as a result of my previous British government work involving secret intelligence on these groups, from public statements made by the Hamas leadership on a number of occasions since the 2008-09 Gaza conflict, from media reports including film footage showing such action and statements by individuals forced to remain in declared target areas, from publication of training manuals found in Gaza by the IDF and from debriefing of IDF personnel and journalists. From the same sources I am also aware of Hamas's use of buildings and vehicles protected under the Laws of Armed Conflict including schools, hospitals, UN buildings, mosques and ambulances. Use of such facilities for military purposes constitutes a war crime.

During the conflict I visited and entered an attack tunnel which ran from the Gaza Strip into Israeli territory. This tunnel had been expertly constructed with concrete walls, ceiling and floor. It had rail lines running along the floor, ducted power cabling along the walls (imprinted, incidentally, with Hebrew lettering), lighting and electric motors built into the walls. The tunnel emerged within a few hundred metres of an Israeli civilian community. This tunnel, along with many of the others located by the IDF, could only have been designed with one purpose in mind: to infiltrate Israeli territory to attack, kill and abduct Israeli civilians and soldiers.

In conclusion, in my opinion the IDF took exceptional measures to adhere to the Laws of Armed Conflict and to minimise civilian casualties in Gaza. During the conflict many politicians, UN leaders, human rights groups and NGOs called on the Israelis to take greater action to minimise civilian casualties in Gaza. Yet none of them suggested any additional ways of doing this. I conclude that this was because Israel was taking all feasible steps. I believe Israel to be world leaders in actions to minimise civilian casualties; and this is borne out by the efforts made by the US Army, the most sophisticated and powerful in the world, to learn from the IDF on this issue.

In my opinion Israel is also making strenuous efforts to investigate incidents where civilians were apparently unlawfully killed, wounded or ill-treated, and where civilian property was unlawfully damaged or stolen. I am not aware of any nation that has conducted more comprehensive or resolute investigations

into its own military activities than Israel during and following the 2014 Gaza conflict.

On the other hand, Hamas and other groups in Gaza took the opposite approach to that of the IDF. Their entire strategy was based on flouting the Laws of Armed Conflict, deliberately targeting the Israeli civilian population, using their own civilian population as human shields and seeking to entice the IDF to take military action that would kill large numbers of Gaza civilians for their own propaganda purposes. There was and is of course no accountability or investigation of any allegations against Hamas and other extremist groups in Gaza.

I strongly urge the Commissioners to condemn Hamas and the other groups for their actions during this conflict. Failure to do so would be tantamount to encouraging a repeat of such actions in the future, by Hamas and other Gaza groups and by extremist groups around the world who would wish to emulate the actions in Gaza. This would undoubtedly result in further loss of life in Gaza, in Israel and elsewhere.

Similar encouragement is given to extremist groups by the lamentable tendency of some international actors to afford moral equivalence to Hamas, an internationally proscribed terrorist organization, and Israel, a liberal democratic state.

I also urge the Commissioners to give fair consideration to Israel's actions during this conflict and not simply to jump on the over-burdened bandwagon of automatic condemnation. Where the actions of the IDF were genuinely wrong then of course the Commission should criticise them, call upon them to bring the perpetrators to justice where appropriate and to adjust future procedures as necessary. But false accusations of war crimes, as were made by the Commissioners that investigated the 2008-09 Gaza conflict (the 'Goldstone Report'), will do nothing to advance the cause of peace and human rights. Instead, such accusations will encourage similar action by Hamas and other groups in the future, leading to further violence and loss of life.

Many people believe that your findings are a foregone conclusion, as the findings of the 2008-09 Commission regrettably proved to be. They believe that you will roundly and without foundation condemn Israel for war crimes while at best making only token criticism of Hamas and other Gaza extremist groups. If you genuinely want to contribute to peace and to improve human rights for the people of Gaza and of Israel then you must have the courage to reject the UN Human Rights Council's persistent and discriminatory anti-Israel programme and produce a balanced and fair report into these tragic events.

**Appendix 2:**  
**Letter to Mary McGowan Davis, Chair of United Nations Independent Commission of Inquiry on the 2014 Gaza Conflict**

*by Trevor S. Norwitz*

*February 15, 2015*

The United Nations  
Independent Commission of Inquiry  
on the 2014 Gaza Conflict  
Palais de Nations  
CH-1211 Geneva  
Switzerland

Attention: Mary McGowan Davis, Chair  
Dear Judge McGowan Davis.

I am writing to respectfully offer some suggestions to help you avoid errors that made the 2009 Gaza Report (called the Goldstone Report before its eponym repudiated its essence) such a travesty of justice.

You may have come across my letter to Justice Richard Goldstone pointing out many of the procedural flaws in that report. If you have not, it is readily accessible online or I would be happy to provide a copy.

I will not belabor the question of the legitimacy of your mission. I am certain that you are fully cognizant of the structural and historic bias of the UN Human Rights Council against Israel. If that and the prejudicial resolution establishing the mission did not deter you from accepting the position, nothing I say will convince you to resign. I assume you will at least acknowledge these predispositions, as Justice Goldstone did, even as you seek to assure that your group behaved evenhandedly, its brief notwithstanding.

One general admonition that can be derived from the 2009 report is that you – the members of the mission whose name it will bear – cannot simply accept as credible the drafts prepared by the staff hired to support you. It is very likely that many of the individuals volunteering or recruited for the task

will have longstanding enmity towards Israel, as was the case in 2009 (although it was not known at that time). You may come under pressure to accept what they write because “they were the ones who spent the most time examining the evidence,” but I hope you will be skeptical of anything that seems one-sided or is prejudicially phrased, lest you allow your reputation to be used to promote the agenda of others, as Justice Goldstone sadly did.

Here are a few other lessons that can be derived from the mistakes in the 2009 report:

1. Availability of Evidence. As in 2009, Israel has chosen not to cooperate with a mission created by a biased organization by way of a lopsided resolution. While you may disagree with their decision, I hope you do not fall into the trap that the 2009 mission did of embracing it as an excuse to purport to make factual determinations while knowing you have only heard from one side. Even if the Israeli government will not formally cooperate, there are other avenues to obtain relevant information regarding the incidents you are investigating. (If you do not know how, please ask me and I will try help as best I can.) You most certainly should, for example, seek to obtain the perspective of General Martin Dempsey, Chairman of the US Joint Chiefs of Staff, who studied the Gaza situation and has observed that “Israel went to extraordinary lengths to limit collateral damage and civilian casualties.” He has sent US military personnel to learn from the Israel Defense Forces (IDF) how to minimize civilian casualties in this kind of conflict against irregular forces fighting from among a civilian population. I urge you to also seek the views of Colonel Richard Kemp, a former Commander of British forces in Afghanistan and senior adviser to the British government on military issues who said: “I don’t think there has ever been a time in the history of warfare when any army has made more efforts to reduce civilian casualties and deaths of innocent people than the IDF is doing today in Gaza”.

2. Quality of Evidence. Everyone knows what will happen to a person in Gaza who speaks against Hamas. Accordingly, any information obtained from residents of Gaza will be tainted by duress (at a minimum). Although the 2009 report briefly acknowledged this fact, it did not seem to affect the credit given to such testimony. In addition, the shameless, almost pathological, mendacity of Hamas (and other Palestinian spokespersons) has been exposed over and over again. While this may be politically delicate, any respectable jurist must weigh such matters seriously in considering the value of evidence provided.

3. Hearsay. The 2009 mission relied heavily on anonymous allegations and hearsay, and when criticized for this, its members simply declared that they did not have to meet judicial standards because theirs was not a judicial inquiry. I hope you will better appreciate the grave consequences of accusing the nation-state of the Jewish people of war crimes and be more rigorous in your evidentiary



procedures. I have heard that you will be taking submissions of “evidence” by private telephone call. This would be a highly irregular process and raise a multitude of issues impacting the credibility of any information so received. I urge you to be as open as possible, making full disclosure of all information so gathered and its source (with appropriate protections where there is a genuine risk to the source).

4. Selection of Incidents to Investigate. The gross imbalance of the incidents the 2009 mission chose to investigate, and their failure (or refusal) to look at egregious actions by Hamas, were among the more obvious indications of their prejudice. You cannot simply choose incidents based on casualty count, which would punish Israel for protecting its civilians and reward Hamas for endangering theirs. You obviously have to look at where missiles and other weapons were stored and where they were fired from, even if the damage they were intended to produce was ultimately thwarted. And especially in those tragic cases where there were civilian casualties, you have to ascertain who is responsible for that location being targeted. Just as not all civilian casualties result from war crimes, not all war crimes lead to civilian casualties. If you do not investigate the allegation (as to which there seems to be substantial prima facie evidence) that Hamas moved its headquarters beneath the Al Shifa Hospital – which would be one of the most heinous war crimes imaginable – your report will lack all credibility.

5. Historical Context. Ideally you would locate the 2014 Gaza conflagration in its proper historical context. It is impossible to understand what is happening in that region without reference to Hamas’ charter calling for the destruction of the State of Israel and the elimination of the Jewish people, and its history of suicide terrorism which preceded its rocket attacks on Israel’s cities. Neither of these even merited a mention in the 2009 report, which highlighted its partisan nature by locating that conflagration within a simplistic revisionist “Palestinian narrative”. Your report does not have to include historical context, but if you choose to, and proceed from the same disingenuous rewriting of history that the 2009 report adopted, you should not be surprised when honest people dismiss it also as mere politics.

6. Double Standards: The 2009 report was rife with double standards being applied to Israel, on the one hand, and the “armed Palestinian groups” on the other. For example, that mission purported to be able to ascertain Israel’s intent to target civilians from circumstantial evidence (like the fact that they possess precision weapons), but could never find any bad intent in Hamas’ firing its rockets from densely populated residential areas. Their assessment of the credibility of testimony provided and public statements by Israeli and Palestinian leaders also illustrated their clear favor for the Palestinian cause. It is an unfortunate fact that the Middle-East conflict is, in general, subjected to a double-double-standard,

with a much higher standard of morality and restraint expected of the “Jewish state” than of any other global actor, and a much lower standard expected of Arab states and non-state actors. This is the bigotry of low expectations in action. The need to avoid such double standards in your work is of course obvious, although as noted above you can and should take into account past honesty or the lack thereof in assessing the credibility of testimony and other information provided to you.

7. Fact Finding. I urge you to stick to finding facts and avoid (as the 2009 report did not) either trying to establish legal principles or basing your report on fallacious assumptions or legal conclusions. The obvious example is the assertion that Gaza remains occupied by Israel despite Israel’s complete withdrawal almost ten years ago, so that the laws governing belligerent occupation should apply. Others are the thoroughly debunked assertion that Israel’s sea blockade of Gaza to limit the flow of weapons to Hamas and other terrorist groups is illegal, and the dubious proposition which animated the 2009 report that Hamas is a legitimate political organization separate from its armed wing.

8. Proportionality. If your report is honest (as the 2009 one was not) it will be clear that Israel did not directly target civilians. While it is always possible that an individual soldier may have out of fear or worse broken the rules of engagement, by and large the civilians who were killed in the last Gaza fight were the tragic casualties of a war planned and instigated by Hamas which took place in a densely populated area fortified and designated by Hamas as the battlefield.

The focus of your report as it relates to Israel will thus presumably be on the question of whether actions taken in the battle were “disproportionate” in a manner inconsistent with international humanitarian law. It is imperative that your report not misconstrue the principle of proportionality as the 2009 report did when it concluded that Israel’s actions in that battle constituted a “deliberately disproportionate attack”. As you well know, the legal concept of proportionality does not involve a simplistic BBC/New York Times-style body count.

As the former Chief Prosecutor of the International Criminal Court, Luis Moreno-Ocampo, has explained:

Under international humanitarian law and the Rome Statute, 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. A crime occurs if there is an intentional attack directed against civilians (principle of distinction) (Article 8(2)(b)(i)) or an attack is launched on a military objective in the knowledge that the incidental civilian injuries would be clearly excessive in relation to the anticipated military advantage (principle of proportionality)

(Article 8(2)(b)(iv)). Assessing proportionality thus involves a series of logistically and morally complex determinations, ascertaining and comparing expected military advantages with anticipated civilian injuries. These decisions often have to be made quickly under extremely stressful conditions, while bullets are flying and one's soldiers are in peril. Aside from the challenge of second guessing such decisions long after the fact with the benefit of hindsight, it is extremely difficult to see how you would be able to do this at all without the full cooperation of the IDF.

Fortunately, as you noted in your report following up on the 2009 Gaza report, Israel takes its obligations in this area extremely seriously and devotes substantial resources to investigating any allegations of illegal activity or other incidents where there are significant civilian casualties. I believe that the IDF makes the results of these investigations public.

It will take enormous courage for you to write a fair and honest report, because (as you know in your heart) that is not what you were commissioned to deliver. The Council, and the OIC which dominates it, are looking for support to declare the one country on the planet that Jewish people can call their "home" guilty of war crimes. It is irrelevant that they are also willing to have Hamas tarred with the same brush: Hamas is already widely recognized as a terrorist group. Moral equivalence between the State of Israel and the terrorists is precisely the victory Israel's enemies have commissioned you to give them.

The tragedy of the 2009 Gaza report is that it missed a golden opportunity to provide moral clarity and deter the cynical manipulation of international law and institutions that has become the hallmark of modern lawfare. Instead of placing the blame for the civilian casualties in that war where it clearly belonged – with Hamas – the 2009 report provided a blueprint for terrorist groups as to how they could use international law to protect themselves and shift criticism to those trying to contain them. There can be little doubt that Hamas was emboldened by the 2009 report to dig its tunnels and fire rockets at Israeli towns and cities. I can only hope and pray you have the wisdom, honesty and courage to avoid making the same mistakes made in 2009, so that you do not provide further encouragement to Hamas, Hezbollah and all the other terrorist groups out there who, to put it mildly, do not share our passion for human rights. It is not only Israel and the Jewish people who will be damaged if you simply toe the line and give the UN Human Rights Council and the OIC what they want, but the entire system of international law.

Sincerely,

Trevor S. Norwitz

## Appendix 3:

# Why the Schabas Report Will Be Every Bit as Biased as the Goldstone Report

*by Hillel Neuer*

*(originally published in The Tower, March 2015, reprinted with permission)*

For more than five years, the question of who exactly authored the UN's 2009 Goldstone Report has been an enduring mystery. The report, written under the auspices of South African Judge Richard Goldstone, was a shocking 500-page indictment of Israel that accused its political and military leadership of deliberately targeting Palestinian civilians during the 2008-2009 Operation Cast Lead in Gaza, and condemned the Jewish state as a whole for systematic and institutionalized racism, among other atrocities and abominations.

The answer to that riddle—which involves a radical Marxist law professor who held the equivalent of a general's rank in the global lawfare movement against Israel, and more broadly, the UN department that selected her—has additional importance today because of the controversy swirling over the upcoming sequel to the Goldstone Report dealing with 2014's Operation Protective Edge, which will be presented to the UN Human Rights Council (HRC) in Geneva on March 23.

Understanding who wrote the 2009 report—and how the establishment behind it remains in place—constitutes a direct rebuttal to the latest campaign by HRC backers and activist groups to salvage the reputation and legitimacy of the Goldstone II commission of inquiry into alleged Israeli war crimes.

Following the February 2 resignation of commission chair William Schabas under a cloud of bias accusations, including the revelation that he had done paid legal work for the PLO, defenders have insisted that Schabas' stewardship of the probe for six out of its seven months is a non-issue. His resignation has cured all defects, if they ever existed in the first place. "In this way," says HRC president Joachim Ruecker, the German ambassador in Geneva, "even the appearance of a conflict of interest is avoided, thus preserving the integrity of the process."

Yet the discovery of who really wrote Goldstone I challenges everything about the integrity of the "process" that is now producing Goldstone II, with or without the discredited Schabas.

In 2009, the fact that the UN commission was headed by Judge Richard Goldstone—who is Jewish and, apart from his involvement in UN circles and occasional criticism of Israeli actions, had been considered a supporter of Israel and of Jewish causes—was what gave the report its explosive impact, and deepened the mystery of how he could possibly have authored a report so dripping with malice. Indeed, it is worth stating again that the 2009 report cast Israel as a wicked and racist predatory state whose leaders gathered around a cabinet table to orchestrate crimes against humanity.

In weighing the evidence and various accusations, the report repeatedly gave the benefit of the doubt to the terrorist group Hamas. By contrast, Israeli defensive actions were consistently interpreted as part of an over-arching plan to oppress, discriminate against, and murder Palestinian civilians. For example, evidence of perfidy by Hamas gunmen, such as their well-known policy and practice of pretending to be civilians, was summarily dismissed with logic and language that strained credulity and coherence:

While reports reviewed by the Mission credibly indicate that members of the Palestinian armed groups were not always dressed in a way that distinguished them from the civilians, the Mission found no evidence that Palestinian combatants mingled with the civilian population with the intention of shielding themselves from the attack.

Likewise, despite common knowledge and the existence of considerable evidence, the commissioners also “found no indication” that Hamas used human shields, that its chiefs employed the al-Shifa hospital as their headquarters, or that Hamas stored rockets in mosques.

The report did not restrict itself to examining Operation Cast Lead, but offered lengthy narrative sections on the Israeli-Palestinian conflict in which Israel was portrayed in Manichean terms as an oppressive state.

And while Israel’s Sunni Arab neighbors had noticeably opposed Hamas’ actions during the 2009 war, fearful of the role played by Iran in financing, training, and arming Hamas and Hezbollah, the Shi’a theocracy was mentioned nowhere in the report.

In summary, the report excoriated and demonized Israel, while exonerating Hamas.

The question of how Goldstone could have authored a report dismissed by international legal experts as enormously weak, and considered by Israel and the Jewish world as a modern-day blood libel, was only compounded by his subsequent op-eds in two major publications.

In April 2010, writing in *The Washington Post*, Goldstone retracted the most significant and inflammatory charge of the report: That Israel's leaders deliberately targeted civilians. A year later, Goldstone published a *New York Times* op-ed, "Israel and the Apartheid Slander," retracting another key accusation, which appears in the report no less than 40 times:

That Israel's security measures were motivated by racism rather than, as the South African jurist now made clear, the need "to stop unrelenting terrorist attacks."

How could the pre-2009 and post-2009 Richard Goldstone be the same person who wrote the Goldstone Report? The question was never, as admirers of the report like Roger Cohen imagined, how and why Goldstone retracted. This made perfect sense given his eventual acknowledgment of the travesty of the report, as well as the political and legal positions he took before and after it. The mystery, rather, was how Goldstone could ever have authored the anti-Israel manifesto in the first place. This did not make any sense at all.

Part of the answer to the mystery of the Goldstone Report is well known: He was not the only commissioner. Goldstone was joined on the panel by three others, each of whom was known to have one-sided views of Israel: Hina Jilani of Pakistan; Christine Chinkin, who declared Israel guilty before she began work on the commission; and Col. Desmond Travers, who has stated that "Jewish lobbyists" control UK foreign policy. Clearly, since the report dealt extensively with supposed violations of international law, Chinkin, the law professor, played an important role.

Yet what no one has understood or appreciated until now is the decisive role in the "process"—to use the words of the current HRC president—played by the UN's Office of the High Commissioner for Human Rights (OHCHR).

To understand the OHCHR, one must understand the close relationship between two distinct but closely related UN entities. One is the 47-nation Human Rights Council, a political body heavily influenced by the vote-trading power and petrodollars of the Arab and Islamic states. It meets regularly three times a year for month-long sessions.

At the Arab states' initiative, and with varying degrees of complicity by the EU and others, half of the resolutions passed by the HRC condemn Israel; there is a special agenda item against Israel at every HRC meeting; and the HRC has produced more emergency sessions and inquiries against Israel than any other country in the world.

The OHCHR is based nearby in Geneva. It is a thousand-strong bureaucracy that serves the council by carrying out its investigations, writing requested reports, staffing the council sessions, and acting year-round as its secretariat. From 2008 until this summer, the office was headed by High Commissioner Navi



Pillay, who famously said that “the Israeli Government treats international law with perpetual disdain.”

Those who work in the OHCHR see themselves as an independent and neutral agency of the UN dedicated to promoting and protecting human rights. Indeed, in many instances, well-intentioned OHCHR officials draft valuable reports for council-appointed experts that call out various countries’ violations of freedom of speech and use of torture and arbitrary arrest. In addition, they support the High Commissioner’s role as an independent voice that can criticize countries for human rights abuses.

At the same time, it is also OHCHR officials who supply the material demanded by politically-motivated if not Orwellian resolutions initiated by non-democracies like Cuba, China, and Syria.

It is OHCHR that conducted a workshop on “the impact of unilateral coercive measures on the enjoyment of human rights,” an anti-American initiative backed by regimes subject to sanctions; and which circulated questionnaires on Cuban resolutions like “the promotion of a democratic and equitable international order” and the Syria-backed resolution on “the right to peace.”

From time to time, some OHCHR bureaucrats act on the margins, and only in small ways, to try to resist the more absurd and harmful dictates they receive from the political body. Yet when it comes to Israel, the position of the OHCHR under Navi Pillay has been more in line with the HRC than ever before. The most inflammatory and vitriolic notes from Arab speeches delivered to the council find their echo in the reports drafted by European nationals working for the OHCHR, many of whom are graduates of British universities and come from organizations like Amnesty International. If that weren’t enough, their work is subject to the scrutiny and constant pressure exerted by the 56-nation Islamic bloc.

Israel launched what it called Operation Cast Lead on December 27, 2008, declaring that it intended to stop rocket attacks from Gaza. Indeed, since 2001, Palestinian terrorists fired some 8,600 rockets at civilian areas in southern Israel. The fighting had not yet ended when the Geneva-based UN Human Rights Council passed a resolution condemning the Jewish state for “grave violations” of human rights and called for an “independent” international investigation. An initial Council mandate authorized an inquiry to document only those violations committed by Israel. Yet when Council President Martin Uhomoibhi, the Nigerian ambassador in Geneva, announced the formation of the UN Fact Finding Mission on the Gaza Conflict on April 3, 2009, naming a four-person team headed by Goldstone to serve as the inquiry’s public face, he stated that Council would now examine “all violations.”

It is important to note that when the council calls an emergency session and votes to create a commission of inquiry, it is actually the OHCHR that does most

of the work. First, top officials of the OHCHR draw up a shortlist and propose names of commissioners to the council president. The presidency is a position that rotates every year among the ambassadors from five regional groups. While it is the president who nominally has the power to make appointments, in practice the OHCHR plays an outsized role. In other words, like Sir Humphrey in the iconic British comedy *Yes Minister*, it is the top bureaucrats of the OHCHR who, in many ways, really run the show.

Thus, while Goldstone was appointed by the ambassador of Nigeria, who was council president in 2009, he himself acknowledged that he was first approached by High Commissioner Pillay, a fellow South African. Likewise, while Schabas was appointed in August by the ambassador from Gabon—the president during 2014—he too stated that he was first approached by Pillay. It is clear that the OHCHR plays a decisive role in picking the judges.

Second, and far more importantly, after the commissioners are appointed, the OHCHR's role only increases. The commissioners only make a few short trips to Geneva in order to hear testimony, discuss the evidence, and give guidance. The drafting is done by a staff comprised of full-time OHCHR officials and outside staff recruited for the project by OHCHR itself.

At the time of the Goldstone Report, UN Watch highlighted the role of OHCHR's Francesca Marotta as head of the secretariat. Questions were raised about her neutrality, not only because of the work she had done for the UN in Gaza, but also because of her scheduled participation in an anti-Israel lobbying event in Switzerland that was supporting the "Russell Tribunal on Palestine." After a protest from UN Watch, which reminded UN Secretary-General Ban Ki-moon that Article 100 of the UN Charter requires that members of the UN Secretariat avoid partisan and political entanglements that compromise the principles of neutrality, objectivity, and professionalism, Marotta pulled out of the event.

Something that is vital to understand about UN commissions of inquiry is that, in practice, their commissioners don't write the resulting report. The secretariat does. To be sure, some commissioners may provide directions and revisions—and it is clear that Schabas would have been more hands-on than others—but the bulk of the work is performed by a professional staff that can be comprised of human rights officers, forensics experts, and lawyers. As a result of this, chief-of-staff Marotta had the power to oversee the entire project.

Thus, through Marotta, senior officials within the OHCHR would have had the ability to exercise influence over the report—officials like Mona Rishmawi, a Palestinian lawyer who, prior to joining the OHCHR, had written articles comparing Israelis to Nazis.

The role of Marotta and the OHCHR was known at the time, if not fully

appreciated. What a probe by UN Watch has now revealed, however, is that outside staff recruited by OHCHR included some of the most radical anti-Israel activists in the world.

One of the known staff members was Sareta Ashraph, whose job, as she described it, was to assist in the investigations, conduct interviews with victims and witnesses, and gather exhibits. Ashraph has also revealed that she was “responsible for drafting several chapters of the final report.”

When it comes to Israel, Ashraph is, to put it mildly, less than impartial. She was and remains a member of Amnesty International, one of the leading groups accusing Israel of war crimes in 2009, and which pushed for and defended the UN inquiry. She was the main organizer of a London lecture on behalf of Lawyers for Palestinian Human Rights, featuring anti-Israel lawfare activists Raji Sourani (head of the Palestinian Center for Human Rights) and Daniel Machover. She also worked in the West Bank on “investigations of allegations of violations of international humanitarian law following ‘Operation Defensive Shield’ in 2002.”

What has not been known until now is that the other key figure on the staff was, through her substantial anti-Israel publications, activism, and leadership role in waging lawfare, exponentially more problematic—someone whose life’s dream was to prosecute Israelis for war crimes and who devoted several years of her life to making this dream come true.

In the summer of 2009, Israeli and Palestinian witnesses were invited to Geneva to give testimony before Goldstone and the other three commissioners. An administrative information note issued to the witnesses and obtained by UN Watch reveals that there were just two secretariat staffers designated as lead contact persons on “substantive questions.” One was Ashraph. She was responsible for gathering the testimony of Israeli witnesses, and apparently wrote the report’s relatively minor chapter on Hamas rocket attacks. In a follow-up email, Ashraph told an Israeli witness that she hoped he would read the report and be “proud” of his contribution.

The only other name listed alongside Ashraph was Grietje Baars, a Dutch-born law professor who teaches in London. In contrast to Ashraph, who in the immediate aftermath of the report wrote in detail about her role in the Goldstone Report, Baars took pains to obscure her participation.

For some time afterwards, her LinkedIn profile page only admitted to her having served as a generic “United Nations Human Rights Officer” for the several months during which she worked on the Goldstone Report. (She now states that she was “a member of the secretariat” of the Goldstone Commission and did “legal and factual research & analysis.”) Other profiles at the time, even though they mentioned her lecture on the Goldstone Report—for example, at the German National College for Security Studies—declined to list her role in

writing it. Indeed, the degree to which Baars herself believed her activities were a threat to the report's legitimacy was illustrated by her extraordinary efforts, in the initial period after the report came out, to keep her participation under wraps. It is easy to see why. If people knew who Baars was and her role in the report, there would have been justified outrage at OHCHR for selecting her. This would not have been for lack of legal credentials. Known today as Dr. Baars, she teaches international human rights law at the City Law School in London and previously taught at the University of East London and University College London (UCL). She holds a degree in English Literature from the University of Utrecht, a Master's of Law from UCL, and is a qualified solicitor. She completed her PhD at UCL in 2012, and has held visiting scholarships at numerous universities.

This means that, when OHCHR hired her to work on the Goldstone Report, they must have known about Baars' scholarship. They must have known that she was a self-described Marxist whose doctoral thesis was "a radical Marxist critique of law and capitalism," and that her academic focus included "anti-occupation struggles and their intersection with other solidarity/liberation struggles" such as "anti-capitalism, anarchism, animal, and queer liberation."

OHCHR would certainly have known of Baars' prominent advocacy scholarship against Israel, such as her 2007 law journal article in the *Yearbook of Islamic and Middle Eastern Law*, entitled "Corrie et al. v Caterpillar: Litigating Corporate Complicity in Israeli Violations of International Law in the US Courts." The article analyzes case law and suggests best practices regarding Palestinian lawfare efforts against Israel and the movement to boycott companies doing business with Israel, with numerous comparisons to the Nuremberg trials against the Nazis. Publications by Baars subsequent to her time on the Goldstone Report have also accused Israel of "war crimes, crimes against humanity, and grave breaches."

But OHCHR must also have known that Baars was much more than a scholar: She was a hardcore anti-Israel activist who has risen to become a leading figure in the global lawfare movement—a worldwide campaign to erode Israel's international standing through the misuse of the language and mechanisms of international law, with the goal of blunting Israel's ability to defend itself by putting the country on notice that any measures taken against terrorists based among civilians will be put under an international microscope.

By 2009, Baars already had a disturbing track record of extreme hostility against Israel. Because of the sensitive nature of her position, OHCHR must have examined her resume and conducted a basic Google search, all of which would have revealed her prejudice and made it clear that prosecuting Israelis in international courts was essentially her life's dream. In other words, that she was the very opposite of the impartial, neutral, and objective member of the secretariat

envisioned under the UN Charter.

Baars' prejudice was not only legal or academic in nature. She clearly saw herself as akin to the young radicals of the "International Solidarity Movement," ready to undertake militant or stealthy action to confront or evade the Israeli occupiers. In a 2007 public forum message which also shows her personal contempt for Israel, Baars offers tips on how travelers with something to hide might pass through Israeli security. After having her laptop confiscated at Israel's Ben-Gurion Airport, she advised, "Don't take your laptop. If you do, make sure it's clear of anything you don't want (fill in the blank) to see." The words "fill in the blank" are her own.

In a 2008 message, Baars advised a freelance photojournalist on how to enter blockaded Gaza, suggesting he "get a ride" with one of the Free Gaza boats, which were successfully running the Israeli blockade at the time, or "try the tunnels" that run beneath the Gaza border with Egypt, through which terror networks smuggle weapons.

But Baars is at her most sardonic and anti-colonial in another 2008 response to a forum user seeking a "proper Western-style gym" in the Palestinian city of Ramallah. "What's a 'proper, Western-style gym'?" she asks. "Something like 'proper, Western-style democracy'?? Anyway, I'm sure/hope you didn't mean to offend—there are lots of nice gyms in Ramallah, like Downtown, Oxygen, and Tri Fitness, and if you adjust your words/attitude you might even make some A-rab friends there."

An email Baars sent to her activist colleagues as the Gaza conflict unfolded in December 2008—the war she would later investigate for the Goldstone Commission—preemptively declared that Israel was conducting a "massacre" in the territory and ranted about Israeli "lies we have to fight."

Baars sent the email after receiving a purportedly leaked copy of guidelines for pro-Israel spokespeople responding to questions about the incursion. "These are the lies we have to fight to end the massacre in Gaza," her email says. "This has been leaked from sources in Washington DC. Please study this and prepare a response as defiantly yet respectfully as you can do. This is easy to trash, but do so in a civil manner please. Outrage is our weapon, but respect is our salvation." Similar partisanship was evident in the many anti-Israel workshops she helped organize as a legal advisor in Jerusalem to the radical and pro-Palestinian Swedish development group Diakonia. In one lawfare briefing for activist attorneys, her PowerPoint presentation celebrated the numerous "opportunities" to prosecute Israeli soldiers or officials, because, after all, Israelis were responsible for a "war crime a minute." With undisguised glee, Baars concluded, "See you in Court!" In another PowerPoint for European diplomats, Baars emphasized that the Palestinian Authority has no legal power to make concessions that, in her view,



would “sign away” obligations or rights.

It was also as Diakonia’s representative that she traveled to Gaza to meet with key Palestinian contacts. Among them was reported Hamas official Dr. Maher al-Huli, the “Faculty of Sharia & Law Dean” at the Gaza-based Islamic University. The *New York Times* called this institution “one of the prime means for Hamas to convert Palestinians to its Islamist cause” and the reported site of a Hamas arms cache during Hamas’ 2007 fight with its Palestinian rival, Fatah. Indeed, because Diakonia made submissions to the Goldstone probe, Baars’ pre-2009 employment with the group may even have constituted a legal conflict of interest for her as an inquiry official.

It seems clear that throughout this time, Baars was playing a leadership role in the global lawfare movement. In July 2008, for example, she met with the head of the Gaza-based Palestinian Center for Human Rights, Raji Sourani—perhaps the leading proponent of lawfare. (This is the same Sourani who had been brought to London by Baars’ colleague on the Goldstone staff, Sareta Ashraph.) Their meeting focused on an ambitious upcoming conference in Brussels aimed at organizing and training Palestinian and European activist lawyers in how to conduct the “pursuit of Israeli war criminals” through “joint action in international courts.” Organized by Diakonia’s Jerusalem office—meaning Baars—the conference took place in September 2008 under the name “Palestine/Israel: Making Monitoring Work: (Re-) Enforcing International Law in Europe.” The event was a major gathering of some of the world’s top activists and lawyers in the anti-Israel lawfare movement, and was designed to mobilize, network, and share best practices. It was Baars’ signal accomplishment.

Indeed, many of Baars’ Diakonia workshops were pure lawfare endeavors, training activists in how to isolate Israel or Israeli interests internationally, building human rights cases against Israeli soldiers and officials, as well as companies doing business in the settlements. She also lobbied European governments to endorse her boycott and lawfare campaigns.

In her “war-crime-a-minute” presentation, Baars ironically suggested that the dearth of prosecutions to date resulted from international bias in favor of Israel. “Courts don’t necessarily dispense justice,” she said. And at least one forum included a discussion of the “rights” of “armed resistance” groups in relation to the “siege.”

And even while a member of the UN inquiry staff, Baars showed overt disregard for objectivity by signing a petition backing an anti-Israel campaign called the “Toronto Declaration.” Bearing names that included familiar activist celebrities Jane Fonda and Danny Glover, as well as anarchist academic Noam Chomsky, the September 2, 2009 declaration protested the Toronto International Film Festival’s “celebratory spotlight” on Tel Aviv, Israel’s largest city. It also



referred to the Israeli government as an “apartheid regime” that operates a “propaganda machine.” OHCHR appeared to be unconcerned about Baars’ endorsement of such claims.

Baars’ ongoing activism—after the inquiry, for example, she openly served as a key contact person for the May 2010 flotilla that tried to break Israel’s blockade of Gaza—suggests that, rather than a fair assessment of the Gaza conflict, weakening Israel was one of her preferred outcomes of the report.

There seems to be little doubt that, for Baars, working on the Goldstone Report was a dream come true. All of her hard work at Diakonia, her visits to Hamas-linked activists in Gaza, her lobbying of European diplomats to sanction Israel, her global conference to orchestrate universal jurisdiction cases against Israelis—all of this was going to pay off in a colossal UN report. Her dream was suddenly within reach, and it would be published under the name of an ostensibly pro-Israel Jew. She could not have asked for anything more. Her experience writing chapters of the Goldstone Report was so impactful that she dedicated her PhD thesis to, among others, Richard Goldstone and chief-of-staff Francesca Marotta, “those fighting for a better world each in their own particularly heroic and inspiring way.”

She certainly did everything she could to ensure success. Given Baars’ immense on-the-ground experience and credentials with Palestinian and international lawfare activists, along with her substantial legal writing experience, she was arguably the most influential behind-the-scenes member of the Goldstone probe. As a front-line researcher with the inquiry, she was responsible for being a first point-of-contact for many of the witnesses giving testimony. As such, she was in a position to prioritize incoming evidence, a critical responsibility that a truly objective inquiry would assign only to a truly impartial expert. Clearly, Baars was anything but. Not surprisingly, many of the NGO lawfare groups from her 2008 conference were featured prominently as evidentiary sources in the Goldstone Report.

Beyond what it says about the credibility of the Goldstone Report, Baars’ involvement raises serious questions about the impartiality of OHCHR, which filled the inquiry’s secretariat with a mixture of its own staffers and outside hires. Why has it refused to reveal the make-up of the secretariat, leaving the public in the dark except for a few names that have inadvertently leaked out?

There seems no question that Goldstone was duped. He never suspected that OHCHR, the UN agency in charge of providing him with professional staff support, had quietly embedded one of the world’s top anti-Israel lawfare strategists into the team. After all, only four years before, Goldstone had worked on another UN inquiry on the oil-for-food program. In that case, he was supported by a highly professional staff based in New York, with most if not all of them

lawyers and experts hired from the outside. Goldstone assumed the Gaza inquiry would be the same.

But it was not the same. The culture of the Geneva-based OHCHR secretariat is known to be far more anti-American, anti-colonial, and anti-Israel than the one in New York. In his naiveté, Goldstone was blind to the prejudice and political agenda of his own bureaucracy. Indeed, there is not the slightest indication that Goldstone had any knowledge of Baars' extremist activism. But OHCHR knew—and that is why they hired her.

On March 23, what for six months was the Schabas Commission, and now in its final and seventh month has become the McGowan Davis Commission, will present its report to the Human Rights Council. Do we have any reason to expect a fair, objective, and credible report?

Not if we consider the built-in prejudice of the commission's founding mandate, spelled out in resolution S-21/1 of July 23, 2014, which preemptively declares Israel guilty. It condemns the Jewish state "in the strongest terms," citing "widespread, systematic, and gross violations of international human rights," "the targeting of civilians and civilian properties" as a form of "collective punishment contrary to international law," "disproportionate and indiscriminate attacks," "grave violations of the human rights of the Palestinian civilian population," and "military aggressions." The resolution mentions Israel 18 times. Hamas is not mentioned once.

Not if we consider that Schabas, the activist chairman who says that he "devoted several months of work" to the project, is someone who performed undisclosed paid legal work for the PLO—on the subject of how to prosecute Israelis in international courts—and who famously declared barely three years ago that the leader he most wants to see in the dock at the International Criminal Court is Israeli Prime Minister Benjamin Netanyahu.

And—as the cautionary tale of lawfare general Grietje Baars as the key author of the original Goldstone Report makes clear—not if we consider the outsized role played by OHCHR in compiling the evidence, processing submissions, and picking the people to draft the report's chapters and conclusions. Everything we now know about how OHCHR engineered the travesty of the original Goldstone Report indicates that Goldstone II will suffer the same politically-motivated fate. In fact, the OHCHR's bias was manifest from day one in their agency chief's farcical selection of Schabas—of all the law professors in the world—to lead the inquiry. OHCHR knew that, a few months earlier, he had been rejected by a committee of five ambassadors for a similar UN mandate to investigate Israel—on the grounds that he lacked impartiality. Georgetown Law School professor Christine Cerna, herself a one-time UN candidate, has stated that Schabas was chosen specifically because of his well-known positions against Israel. Even

Aryeh Neier, a colleague of Schabas at Sciences Po in Paris, founder of Human Rights Watch, and an NGO icon known as a defender of the UN, said of Schabas, "Any judge who had previously called for the indictment of the defendant would recuse himself." The same OHCHR that recruited Grietje Baars to staff Goldstone I chose Schabas to head Goldstone II.

What do we know so far about the actual staff members of Goldstone II? As in 2009, OHCHR refuses to respect the principle of transparency by revealing who is on the staff, even though this is common practice elsewhere, such as in the UN's 2005 oil-for-food report.

I have seen this bias with my own eyes. When I met with the Schabas Commission on September 17, 2014 to personally hand them a written demand for Schabas' recusal, there were only two staff members in the room, both of them from OHCHR's Arab section, known as Middle East and North Africa: One was Frej Fenniche, a Tunisian who was a spokesman for the UN's notoriously anti-Semitic Durban conference on racism in 2001. The other was Sara Hammood, a former spokesperson for the UN's most anti-Israel committee. Hammood also worked as a "policy advisor on Israel and the occupied Palestinian territory" for Oxfam Novib, where she wrote one-sided reports and joined others in critical statements against Israel. This was the initial staff of OHCHR, who were presumably involved in hiring the others.

The current staff—Schabas has mentioned that it is composed of "a dozen specialists"—includes Karin Lucke, OHCHR's former coordinator of the Arab region team, and now listed as working for the UN in New York. Amnesty notes that the current team includes the OHCHR staff from "Geneva, Ramallah, and the Gaza Strip." According to Geneva sources familiar with the probe, a number of the staff members are from the Arab world.

In summary, there is every reason to suspect that OHCHR has manipulated the staffing for Goldstone II just as it did in 2009.

Will Judge Mary McGowan Davis, the new chair of the inquiry, fulfill her responsibility and exercise maximum due diligence to ensure the impartiality of her staff, double check and verify everything handed to her by OHCHR and its hires, all of the evidence, analysis, and findings of fact and law?

As the daughter of the late Judge Carl McGowan, the renowned former head of the US Court of Appeals for the District of Columbia Circuit—who in 1973 ordered President Nixon to turn over disputed White House tape recordings made after the Watergate break-in—McGowan Davis must have acquired a strong sense of justice and courage.

The report that she will produce in three weeks' time, and that now bears her name, will be the most famous and lasting moment of her professional life. This is her chance to live up to her father's legacy.

**Appendix 4:**  
**Letter to Ban Ki-Moon, Secretary General of the United Nations**

*by Prof Gerald Steinberg*

*23 February 2015*

The Honorable Mr. Ban Ki-Moon  
Secretary General, United Nations Headquarters  
New York

**D**ear Secretary General Ban,  
On 30 January 2015, the Permanent Representative of Israel submitted a letter to Ambassador Joachim Rucker, President of the UN Human Rights Council, on the failure of William Schabas to disclose a clear conflict of interest. Mr. Schabas then submitted his letter of resignation, stating: "On 2 February 2015, the Bureau of the Human Rights Council, which operates as its executive or standing committee between regular sessions, decided to examine the complaint and to request a legal opinion from United Nations Headquarters in New York."

Mr. Schabas's resignation comes at a very late stage in the work of his committee, making the issues raised by his lapse highly salient to the integrity of the investigation and report.

Therefore, we would appreciate your response to the following questions:

- 1) Has the UN legal opinion, as requested by the Bureau of the HRC, been provided? If yes, where can the text be found? If not yet available, is there a timeframe for completion of this process?
- 2) If the request for a legal opinion has been withdrawn, what is the basis for this withdrawal?
- 3) How does the revelation of Mr. Schabas' ethical lapse affect the status of the Commission, the planned presentation of its report, and the investigatory

activities prior to 2 February? How is it possible to use any of the materials of the Schabas Commission and at the same time meet the “highest standards of independence and impartiality” as pledged by Mary McGowan Davis in her letter to you of 3 February.

We look forward to your response,  
Sincerely,

Prof. Gerald M. Steinberg

President, the Amuta for NGO Responsibility  
Jerusalem, Israel  
cc: Ambassador Joachim Rucker  
President, Human Rights Council  
Permanent Mission of Germany  
and the heads of other delegations

## Contributors and Acknowledgements

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### Gerald Steinberg

Prof. Gerald Steinberg is president of NGO Monitor and professor of Political Studies at Bar Ilan University, where he founded the Program on Conflict Management and Negotiation. His research interests include international relations, Middle East diplomacy and security, the politics of human rights and non-governmental organizations (NGOs), Israeli politics and arms control. Steinberg is a member of Israel Council of Foreign Affairs; the Israel Higher-Education Council, Committee on Public Policy; advisory board of the Israel Law Review International, the research working group of the Norwegian Institute of International Affairs (NUPI), and participates in the Inter-parliamentary Coalition for Combating Antisemitism (ICCA). He also speaks at a variety of high-level government sessions and academic conferences worldwide. Publications include “NGOs, Human Rights, and Political Warfare in the Arab-Israel Conflict” (Israel Studies); “The UN, the ICJ and the Separation Barrier: War by Other Means” (Israel Law Review); and Best Practices for Human Rights and Humanitarian NGO Fact-Finding (co-author), Nijhoff, Leiden, 2012.

### Hillel Neuer

Hillel Neuer is the executive director of UN Watch, a human rights NGO in Geneva, Switzerland. Mr. Neuer appears regularly before the United Nations Human Rights Council, intervening for the victims of Darfur, the rights of women, political prisoners in China, Russia and Zimbabwe and the cause of Middle East peace.

Mr. Neuer has been quoted as an expert on U.N. and human rights issues by the New York Times, Die Welt, Le Figaro and Reuters, and has appeared on CNN, BBC, and Al Jazeera. U.S. Congressman Howard Berman, speaking as Ranking Member in the House Foreign Affairs Committee, described Mr. Neuer as “one of the strongest and most informed critics of the UN Human Rights Council.” *Maariv* newspaper recently named Neuer to its list of the Top 100 Most Influential Jewish People in the World.



Mr. Neuer taught international human rights at the Geneva School of Diplomacy, and in 2008 was elected Vice-President of the Conference of NGOs' Special Committee on Human Rights in Geneva, on which he served until 2011. Since 2009, Neuer has represented 25 human rights groups as chair of the annual Geneva Summit for Human Rights and Democracy. In a recent profile, Concordia University Magazine said Neuer is "helping to shape history."

Prior to joining UN Watch, Neuer practiced commercial and civil rights litigation at the international law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP, where he represented Oprah Winfrey and other high profile individuals and corporations. Active as a human rights defender, Neuer challenged the New York State prison system in *Reynolds v. Goord*, a precedent-setting First Amendment case for prisoners' rights and freedom of religion, published in the *AIDS Litigation Digest*. Neuer was cited for the high quality of his pro bono advocacy by the Federal Court of New York, as reported in the *New York Law Journal*. In *Hines v. Widnall*, Neuer took on the U.S. Air Force as an advocate for African-Americans claiming a pattern and practice of racial discrimination in hiring and promotions. As an international lawyer, Neuer helped five Bulgarian nurses win a major case in their torture complaint against Libya, *Nenova et al. v. Libya*, before the UN Human Rights Committee.

Originally from Montreal, Neuer served as a law clerk for Justice Itzhak Zamir at the Supreme Court of Israel. He holds a B.A. in Political Science and Western Society and Culture from Concordia University, a B.C.L. and LL.B. from the McGill University Faculty of Law, and a LL.M. in comparative constitutional law from the Hebrew University in Jerusalem. Neuer is a member of the New York Bar and the author of several legal publications.

Hillel Neuer's banned U.N. speech from 2007 became the most viewed and written-about NGO speech in the history of the United Nations. News reports described it as a "stunning rebuke of the U.N. Human Rights Council" and "a diplomatic moment to remember."

### **Anne Herzberg**

Anne Herzberg is the Legal Advisor of NGO Monitor. Her areas of expertise include international human rights and humanitarian law, NGOs and the UN system, and international criminal law. She is a graduate of Oberlin College and Columbia University Law School, where she was named a James Kent Scholar and a Harlan Fiske Stone Scholar. Prior to joining NGO Monitor, she worked as a litigation associate in New York. As part of her pro bono work as an associate, Anne assisted asylum seekers and performed work for the International Criminal Tribunal for Rwanda. Her publications have appeared in many major news outlets

including the Wall Street Journal-Europe, *Haaretz*, *Jerusalem Post*, YNetnews, and *Jewish Ideas Daily*. She has also published on the *International Criminal Tribunal* for Yugoslavia.

### **Abraham Bell**

Abraham Bell is a professor of law at Bar Ilan University and the University of San Diego. His scholarship focuses on property, international law, and economic analysis of the law. He has taught courses on each of these subjects, as well as copyright law, the laws of war, land use law, administrative law, torts, property tax, and legal aspects of the Arab-Israeli conflict. Among his notable recent publications are "Private Takings," 76 *University of Chicago Law Review* 517 (2009); "A Critique of the Goldstone Report and its Treatment of International Humanitarian Law," 104 *American Society of International Law Procedure* (2010); and "The Hidden Function of Takings Compensation," (with Gideon Parchomovsky), 96 *Virginia Law Review* 1673 (2010). Professor Bell clerked for Justice Mishael Cheshin of the Supreme Court of Israel, as well as in the High Court of Justice Department of Israel's State Attorney's office. He has served as a visiting professor at the University of Connecticut Law School and Fordham University Law School, and as a professor at Bar Ilan University Faculty of Law.

### **Richard Kemp**

Richard Kemp CBE (Commander of the Order of the British Empire) served in the Army for 29 years. During his final period of military duty, he was head of the international terrorism and Iraq team for the Joint Intelligence Committee from 2002-2006, and was also Chairman of the COBRA Intelligence Group. In both of these roles he handled all major global terrorist attacks, including those against British interests. He was made CBE for his work on the July 2005 London bombings.

Based in Kabul, he was Commander of British forces in Afghanistan in 2003. He fought in the first Gulf War in 1991 and spent much time in Baghdad, Mosul and Fallujah with US forces and the CIA in 2004-05. He commanded an armoured infantry company with the United Nations Protection Force in Bosnia in 1994, and was awarded the Queen's Commendation for Bravery. He was counter-terrorism adviser to the government of Macedonia in 2001-2002. He commanded his battalion in Londonderry from 1998-2000, the last of his eight tours of duty in Northern Ireland. He was made MBE (Member of the Order of the British Empire) for intelligence work in the province.

**Trevor Norwitz**

Trevor Norwitz is a partner at the law firm of Wachtell, Lipton, Rosen & Katz in New York and an adjunct lecturer at Columbia University Law School. His critique of the Goldstone Report, the first detailed critical analysis to be published, was originally written as an open personal appeal to Judge Goldstone, before going “viral” on the internet and being republished by Commentary Magazine. Writing and speaking on matters of international law and justice is an avocation for Mr. Norwitz, who specializes in corporate law and corporate governance, having advised on some of the largest global mergers and acquisitions transactions in recent years. Mr. Norwitz is also active on several Bar committees, is a director of a number of non-profit organizations, including the University of Cape Town Fund, Friends of the Mandela Rhodes Foundation, and Friends of Ikamva Labantu, and was an advisor to the South African government on its recent company law reform. He is a graduate of University of Cape Town in South Africa, Oxford University (where he was a Rhodes Scholar), and Columbia University Law School.

**Jonathan Schanzer**

Jonathan Schanzer is vice president of research for the Foundation for Defense of Democracies. Previously, Dr. Schanzer served as a counterterrorism analyst at the U.S. Department of the Treasury, where he took part in the designation of numerous terrorism financiers. Dr. Schanzer holds a bachelors degree from Emory University, a masters degree from the Hebrew University of Jerusalem, and a doctorate from Kings College London. He also studied Arabic at the American University in Cairo in 2001. A frequent news commentator, Dr. Schanzer has traveled widely throughout the Middle East.

**Uzi Rubin**

Uzi Rubin is the founder and first Director of the Israel Missile Defense Organization (IMOD) in the Israel Ministry of Defense (MOD), in which capacity he initiated and managed the Israel’s nation wide effort to develop, produce and deploy its first national missile defense shield, the Arrow missile defense system. He led the Arrow program from its inception in 1991 to the first delivery of operational missiles in 1999.

He received his ME in Aeronautical Engineering from Rensselaer Polytechnic Institute in 1969 and subsequently directed large missile programs in Israel

Aerospace Industries and the Israel MOD. In 1990 as a visiting scholar in the Stanford Center for International Security and Arms Control he directed a major study on missile proliferation. Between 1999 and 2001 he was the Senior Director for Proliferation and Technology in the Israel National Security Council. He was awarded the prestigious Israel Defense Prize in 1996 and than once more in 2003. In 2000 he was awarded the MDA David Israel Prize for achievements in missile defense.

Uzi Rubin has retired from Israel's MOD at the end of 2002 and has since been heading his own defense consultancy, Rubincon Ltd. providing consultation services in defense technologies to Israel's Ministry of Defense and Israel's leading defense contractors. He publishes frequently in the professional and international media on Israeli and Western defense topics, focusing on missile proliferation in the Middle East and its consequences. In 2013 he joined the Begin Sadat Center for Strategic Studies in Bar Ilan University where he is now an associate researcher.

## Endnotes:

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This report provides an independent, fully sourced, systematic, and detailed documentation on some of the key issues related to the outbreak of intense conflict between Hamas and Israel during July and August 2014, in parallel to the report of the UN Human Rights Council's Commission of Inquiry on Gaza initiated by William Schabas and completed by Mary McGowan Davis.

The need for investigations that are conducted independent of the United Nations structure results from a number of defects that have stained UN investigations of armed conflict, in general, and regarding Israel, in particular. As reflected in numerous such investigations, these defects include political bias in the mandate and the appointment of commissioners; the secrecy that surrounds the investigation, including information on the backgrounds and professional capabilities of the researchers; and reliance on unqualified and highly politicized sources. This history indicates a high probability of bias, unverifiable allegations, and selective omissions, producing documents that are exploited in political, academic, media, and legal frameworks, including submissions to the International Criminal Court.

Regarding the elements that we address and are not in the UNHRC report, our publication will provide details on central dimensions required to adequately understand the conflict. To the extent that the Schabas/McGowan Davis report does, in fact, examine the issues considered in our investigation, readers will have the opportunity to compare the two products, and perhaps find different angles and analyses, particularly regarding interpretations of international law.

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