

Neither facts nor law support Israel's self-defense claim regarding its 2014 assault on Gaza¹

by James Marc Leas

*Lawyer aphorism: If you have the facts on your side, pound the facts. If you have the law on your side, pound the law. If you don't have the facts or the law, pound the table.*²

Updated Submission to: Ms. Fatou Bensouda, Prosecutor of the International Criminal Court

On behalf of: The Palestine Subcommittee of the National Lawyers Guild

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Introduction

Almost immediately after the Prosecutor of the International Criminal Court (ICC) announced that she would open a "[preliminary examination of the situation in Palestine](#)"³ on January 16, 2015 Prime Minister Benjamin Netanyahu launched "[a public diplomacy campaign](#)"⁴ to discredit the court. Within days, other Israeli officials joined the campaign, threatening the funding of the court and shaking down the plaintiff.

Claim that Israel acted in self-defense: The Israeli government's campaign to discredit the ICC inquiry rests on purported self-defense against " Hamas, an extreme Islamic terror organization," especially in view of Hamas firing "thousands of rockets at the citizens of Israel,"⁵

¹ This updates a submission to Fatou Bensouda, Prosecutor of the International Criminal Court dated February 10, 2015 on behalf of the Palestine Subcommittee of the National Lawyers Guild. The present submission includes material showing that the 277 page Israeli government report, "[The 2014 Gaza Conflict: Factual and Legal Aspects](#)" (released June 14, 2015), that builds its case around self-defense, contradicts contemporaneous weekly reports issued by the Meir Amit Intelligence and Terrorism Information Center" (ITIC), Israeli daily newspapers, and the Palestinian Center for Human Rights (PCHR). The present submission also includes information relevant to Israel's self-defense claim that was included in reports issued by the UN Human Rights Council Commission of Inquiry (June 22, 2015); the Al Mezan Center for Human Rights, Lawyers for Palestinian for Human Rights (LPHR), and Medical Aid for Palestinians (MAP) (June 26, 2015); the UN Human Rights Council (December 26, 2014); Defense for Children International Palestine (April 2015); Physicians for Human Rights-Israel (PHR-Israel) (January 20, 2015); Al-Haq (August 19, 2014); the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) (September 4, 2014); Breaking the Silence (May 3, 2015); The Guardian (*May 4, 2015*); and The International Federation for Human Rights (FIDH) (March 27, 2015).

² See: https://en.wiktionary.org/wiki/pound_the_table

³ International Criminal Court, *The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine*, ICC Press Release (January 16, 2015), http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1083.aspx

⁴ Shlomo Cesana, *Israel launches campaign to discredit International Criminal Court inquiry*, Israel Hayom and JNS.org News Service (January 19, 2015), <http://www.jns.org/latest-articles/2015/1/19/israel-launches-campaign-to-discredit-international-criminal-court-inquiry#.VL7EGUfF-So=>

⁵ Action in self defense is authorized under Article 51 of the Charter of the United Nations, available at <http://www.yale.edu/lawweb/avalon/un/unchart.htm> and under Article 31(1)(c) the Rome Statute of the

as described in "[Netanyahu rejects ICC's 'preposterous' inquiry into possible war crimes](#),"⁶ in the daily Israeli newspaper, *Haaretz*, January 17, 2015:

Prime Minister Benjamin Netanyahu sharply criticized on Saturday the decision by the International Criminal Court to [launch an inquiry into possible war crimes](#) in the Palestinian territories, saying Israel "fully rejects the preposterous decision."

. . . Israel, he said, "protects its citizens from Hamas, an extreme Islamic terror organization whose charter calls to slaughter Jews wherever they are. This is the same Hamas who's in an alliance with the Palestinian Authority, and whose war criminals have fired thousands of rockets at the citizens of Israel last summer."

Netanyahu added that the ICC's decision runs contrary to the core reasons for which the international tribunal was created. "The court was founded to prevent a repeat of history's worst crimes, foremost among them the genocide of six million Jews," he said. "Now the Palestinians are cynically manipulating the ICC to deny the Jewish state the right to defend itself against the very war crimes and the very terror that the court was established to prevent. Indeed, there is no greater absurdity."

As reported by the "Jewish and Israel news service," *JNS.org* on January 19, 2015, in an article entitled "[Israel launches campaign to discredit International Criminal Court inquiry](#)."⁷ Israeli Prime Minister Benjamin Netanyahu said "the ICC's decision to launch the inquiry into Israeli actions is "the height of hypocrisy and the opposite of justice."⁸ Netanyahu said the inquiry "gives international legitimacy to international terrorism."⁹

Threaten to disregard the court: The next day, Netanyahu again invoked self-defense against terror, this time as grounds to disregard a possible adverse decision by the court:

Israel is adamant that it will have the right to defend itself against all those who wish to propagate terror and other attacks against its citizens, against its territory. We will not have our hands tied by anyone, including the ICC. We will do what is necessary to defend ourselves wherever we need to do so.¹⁰

International Criminal Court, available at http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf under conditions, as further described in this article.

⁶ Gili Cohen and Jonathan Lis, *Netanyahu rejects ICC's 'preposterous' inquiry into possible war crimes*, *Haaretz*, (May 29, 2015), <http://www.haaretz.com/news/diplomacy-defense/.premium-1.637635>

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Israeli Prime Minister Benjamin Netanyahu making statement at start of meeting with Japanese Prime Minister Shinzo Abe, *Bibi: Israel Will Not Have Its Hands Tied By Anyone*, video at 3:13 to 3:37, Washington Free Beacon (January 20, 2015)

Threaten the funding of the Court: As reported in the [Jerusalem Post](#)¹¹ on January 18, 2015, then Israeli Foreign Minister Avigdor Liberman indicated “one of the ways Israel would combat the ICC move, saying that if Israel does not see a ‘dramatic change’ in the ICC position, ‘we will ask all our friends to stop any funding of the ICC.’ ”

Shake down the plaintiff: As [Haaretz](#)¹² reported on January 16, “Israel retaliated to the Palestinian move to join the ICC by freezing the transfer of more than \$100 million a month in taxes it collects for the Palestinians.”

Members of the U.S. Congress joined, threatening to cut off the \$400 million per year the United States provides to the Palestinian Authority, as reported by [The Hill](#)¹³ on January 20.

Previous self-defense public relations campaign successfully eclipsed war crimes charges:

A public relations campaign initiated by Israeli Prime Minister Benjamin Netanyahu during Israel’s summer 2014 assault on Gaza that also rested on Israel’s right to defend itself against Hamas rocket fire had been successful.¹⁴ Though war-crimes allegations came from respected sources, including [Amnesty International](#),¹⁵ [Human Rights Watch](#),¹⁶ the [United Nations Human Rights Council](#),¹⁷ the [National Lawyers Guild](#),¹⁸ and the [United Nations High Commissioner for](#)

¹¹ Herb Keinon and Khaled Abu Toameh, *Netanyahu slams ICC; Steinitz compares court decision to Dreyfus Affair*, *The Jerusalem Post* (January 18, 2015), <http://www.jpost.com/Arab-Israeli-Conflict/Netanyahu-slams-ICC-Steinitz-compares-court-decision-to-Dreyfus-Affair-388108>

¹² Jonathan Lis and The Associated Press, *ICC opens initial probe into possible war crimes in Palestinian territories*, *Haaretz* (January 16, 2015), <http://www.haaretz.com/news/diplomacy-defense/1.637518>

¹³ Rebecca Shabad, *GOP senator threatens to cut off US aid to Palestinians over ICC*, *The Hill* (January 20, 2015), <http://thehill.com/policy/finance/230031-gop-senator-threatens-to-cut-off-us-aid-to-palestinians-over-icc-move>

¹⁴ CBS News, CBSDC, AP, *Netanyahu: Some In West Say They Support Israel’s Right To Defend Itself As Long As We ‘Don’t Exercise That Right’* (July 22, 2014), <http://washington.cbslocal.com/2014/07/22/netanyahu-some-in-west-say-they-support-israels-right-to-defend-itself-as-long-as-we-dont-exercise-that-right/>

¹⁵ Amnesty International, *Israel’s destruction of multistory buildings: extensive, wanton and unjustified* (December 9, 2014), <https://www.amnesty.org/en/articles/news/2014/12/israels-destruction-multistorey-buildings-extensive-wanton-and-unjustified/> and the Amnesty International report described and linked there, *Nothing is immune: Israel’s destruction of landmark buildings in Gaza*, (December 9, 2014), which is now available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB8QFjAA&url=https%3A%2F%2Fwww.amnesty.org%2Fdownload%2FDocuments%2FMDE1500292014ENGLISH.PDF&ei=v5EFVcKLIIMupgwTQj4SICA&usg=AFQjCNEGWPbJ3VKK_kSVjBg8KTGJfFV6Zg&sig2=quykS34gwZs3Yx9QqMPKLO, See also, “*Amnesty International’s written statement to the 28th session of the UN Human Rights Council: Accountability is the only way to prevent further war crimes in Israel and the Occupied Palestinian Territories*,” Amnesty International, MDE 15/1044/2015 (February 17, 2015), <https://www.amnesty.org/download/Documents/MDE1510442015ENGLISH.pdf>

¹⁶ Human Rights Watch, *Gaza: Israeli Soldiers Shoot and Kill Fleeing Civilians* (August 4, 2014), <http://www.hrw.org/news/2014/08/04/gaza-israeli-soldiers-shoot-and-kill-fleeing-civilians>

¹⁷ Ian Black, *UN human rights body to investigate claims of Israeli violations in Gaza, UN’s human rights chief says Israel has not done enough to protect civilians while also condemning attacks by Hamas*,” *The Guardian* (23 July 2014), <http://www.theguardian.com/global/2014/jul/23/un-high-commissioner-navi-pillay-war-crimes-israel>

¹⁸ Azadeh Shahshahani, President, National Lawyers Guild, et al., *Letter to the ICC Prosecutor: Possible War Crimes in Gaza* (August 22, 2104), available at: <https://www.nlg.org/resource/letters/letter-icc-prosecutor-possible-war-crimes-gaza>

[Human Rights](#),¹⁹ the central message that Israeli forces were protecting Israeli citizens from Hamas rockets was so ubiquitous in the Western news media as to eclipse criticisms that Israeli forces were committing war crimes by targeting civilians and civilian property in Gaza.^{20 21} The campaign received support from President Barack Obama,²² U.S. Secretary of State John Kerry,²³ and the United States Senate,²⁴ all of whom supported Israel's "right to defend itself" against Hamas rocket fire.²⁵

For example, on July 14, 2014, "Obama said the U.S. has been 'very clear that Israel has the right to defend itself' against an onslaught of rockets being launched indiscriminately by Hamas militants into Israel," according to an article in the *Huffington Post*, "[Obama: 'Israel Has The Right To Defend Itself](#).'"²⁶

On July 17, 2014, the [United States Senate unanimously adopted a resolution](#), "Expressing the sense of the Senate regarding United States support for the State of Israel as it defends itself against unprovoked rocket attacks from the Hamas terrorist organization."²⁷

In a BBC interview with Secretary of State John Kerry, "[Gaza conflict: Kerry urges broader Israel-Palestinian talks](#)," on August 6, 2014, "Mr. Kerry ... said the U.S. fully supported Israel's right to defend itself against militant rocket attacks. 'No country can live with that condition and the United States stands squarely behind Israel's right to defend itself in those circumstances. Period.'"²⁸

Unusual legal strategy: The Israeli public campaign to discredit the court, accusing the court of hypocrisy, linking the court to terrorism, threatening to continue military practices no matter what the court may decide about the legality of those practices, threatening the court with loss

¹⁹ "UN: Israel may be guilty of war crimes," Radio New Zealand News (23 July 2014),

<http://www.radionz.co.nz/news/world/250473/un-israel-may-be-guilty-of-war-crimes>

²⁰ Ashley Fantz, *Why are so many civilians dying in Hamas-Israel war?* CNN (August 6, 2014). The war crimes charge by U.N. Commissioner for Human Rights Navi Pillay is mentioned at the very end of the article.

²¹ Adam Taylor, *The lopsided death tolls in Israel-Palestinian conflicts*, The Washington Post (July 11, 2014). War crimes charges are not mentioned.

²² Josh Lederman, *Obama: 'Israel Has The Right To Defend Itself'*, Huffington Post (July 14, 2014),

http://www.huffingtonpost.com/2014/07/15/obama-israel-ceasefire_n_5586229.html

²³ *Gaza conflict: Kerry urges broader Israel-Palestinian talks*, BBC News (August 6, 2014),

<http://www.bbc.com/news/world-middle-east-28669031>

²⁴ U.S. Government Printing Office, *A resolution expressing the sense of the Senate regarding United States support for the State of Israel as it defends itself against unprovoked rocket attacks from the Hamas terrorist organization* (July 16, 2014), <http://www.gpo.gov/fdsys/pkg/BILLS-113sres498rs/html/BILLS-113sres498rs.htm>

²⁵ The assertions of support from prominent US leaders for Israeli's right to defend itself against a supposedly unprovoked onslaught of rockets also obfuscated the actual origins of the war and the actual purpose of the war.

²⁶ Josh Lederman, *Obama: 'Israel Has The Right To Defend Itself'*, Huffington Post (July 14, 2014),

http://www.huffingtonpost.com/2014/07/15/obama-israel-ceasefire_n_5586229.html

²⁷ U.S. Government Printing Office, *A resolution expressing the sense of the Senate regarding United States support for the State of Israel as it defends itself against unprovoked rocket attacks from the Hamas terrorist organization* (July 16, 2014), <http://www.gpo.gov/fdsys/pkg/BILLS-113sres498rs/html/BILLS-113sres498rs.htm>

²⁸ *Gaza conflict: Kerry urges broader Israel-Palestinian talks*, BBC News (August 6, 2014),

<http://www.bbc.com/news/world-middle-east-28669031>

of funding, and retaliating with heavy financial sanctions against the plaintiff, are all founded upon, but go substantially further than, the previous successful public relations success regarding Israel's right to defend itself. However, such attacks on court and plaintiff demonstrate a distinct departure from the traditional method of respectfully presenting evidence and persuasive arguments to the court.²⁹

ICC Prosecutor has authority to prosecute: Currently the ICC has authority to prosecute war crimes, crimes against humanity, and genocide.³⁰ In the January 16, 2015 announcement, the Prosecutor's office provided this background to its decision to open a preliminary examination:³¹

The Prosecutor's decision follows the Government of Palestine's accession to the Rome Statute on 2 January 2015 and its declaration of 1 January 2015, lodged under article 12(3) of the Rome Statute – the Court's founding treaty – accepting the jurisdiction of the ICC over alleged crimes committed "in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014."

. . . A preliminary examination is not an investigation but a process of examining the information available in order to reach a fully informed determination on whether there is a reasonable basis to proceed with an investigation pursuant to the criteria established by the Rome Statute. Specifically, under article 53(1) of the Rome Statute, the Prosecutor must consider issues of jurisdiction, admissibility and the interests of justice in making this determination.

June 13, 2014 was the date that Israeli forces launched a large-scale military assault on the West Bank that it code named, "Operation Brother's Keeper." A 51 day air and ground assault on the Gaza strip followed from July 7 to August 26, 2014, code named "Operation Protective Edge."

Once the preliminary examination phase of her work is completed, the prosecutor of the ICC has authority to conduct an independent investigation and return a carefully reasoned opinion regarding whether the facts support the Israeli claim that they acted in self defense when they launched their attacks, whether, under the law covering self-defense, Israeli forces may maintain a claim that they acted in self-defense while acting as occupying power in occupied territory, whether the action taken in self-defense remained within the requirements

²⁹ Retaliating against the court and retaliating against the plaintiff would each be forms of obstruction of justice under US federal law.

³⁰ As described later in this article, the court's jurisdiction over the crime of aggression may be activated after January 1, 2017 if 30 countries ratify or accept amendments to the Rome Statute agreed to at a review conference in Kampala in 2010 and 2/3 of the states parties activate jurisdiction.

³¹ International Criminal Court press release, *The Prosecutor of the International Criminal Court, Fatou Bensouda, opens a preliminary examination of the situation in Palestine* (January 16, 2015)

http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/pages/pr1083.aspx

established in international law for a self-defense claim, whether Israeli forces violated any of the provisions of the Rome Statute regarding war crimes, crimes against humanity, or genocide, and whether self-defense, if available, can be used to exempt Israeli political leaders and military personnel from criminal responsibility for any such acts in violation of the Rome statute.

Israeli Government issues 277 page report: Notwithstanding its multi-pronged attack on the court earlier in the year, on June 14, 2015 the Israeli government released a 277 page report, *The 2014 Gaza Conflict: Factual and Legal Aspects*,³² that purports to provide facts and legal arguments demonstrating the lawfulness of Israel's 2014 assault on Gaza.

The presentation of facts in the Israeli government report seeks to show that Israeli forces were acting in self-defense against Hamas rocket fire and that Hamas "forced" the Government of Israel to launch its assault to protect Israeli citizens from rockets.

As we will see later in this article, to its credit the Israeli government report does acknowledge an Israeli aerial strike on a tunnel in Gaza before the date and time authoritative Israeli and Palestinian sources said Hamas ended its longstanding ceasefire and launched a barrage of rockets at Israel. But the Israeli government report omits mention of the lethal effect of that Israeli aerial strike on at least six Hamas members. And the Israeli government fails to address whether its self-defense claim could survive the fact that Israeli forces struck first.

The authoritative Israeli and Palestinian sources that track and contemporaneously describe the attacks by one or both sides, and their lethal effects, gave details of the Israeli aerial strike, and others by Israeli forces that were omitted from the Israeli government report and that were also inconsistent with Israel's self-defense claim. These sources include the Meir Amit Intelligence and Terrorism Information Center (ITIC), the Palestine Center for Human Rights (PCHR), and Israeli newspapers, including *Haaretz*, *The Jerusalem Post*, *The Times of Israel*, and *Ynet News*.

The Israeli government report also finds itself in conflict with information about when Hamas ended its ceasefire, and started firing rockets at Israel, that was contemporaneously provided and discussed by the ITIC and by the Israeli newspapers. Nor does the Israeli government report mention or explain its deviation from the information contemporaneously provided by these authoritative Israeli sources.

In its presentation of the legal basis for its assault, the Israeli government report omits mention of relevant legal findings, including the 2004 International Court of Justice (ICJ) advisory opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian*

³² State of Israel, *The 2014 Gaza Conflict: Factual and Legal Aspects* (released June 14, 2015), <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>

Territory.³³ That ICJ advisory opinion rejected an Israeli government claim of self-defense for its wall crossing within Palestinian Occupied Territory. As we will see later in this article, the Israeli government report does not explain how the tens of thousands of missiles, bombs and shells Israeli forces rained down on Gaza, and how its soldiers raiding hundreds of homes in the West Bank and blasting and bulldozing their way through residential neighborhoods in Gaza, could meet the legal requirements for a self-defense claim if a passive structure, such as the wall crossing through the West Bank, failed to meet the legal requirements for a self-defense claim.

The Facts do not Support the Israeli Claim of Self-Defense

When did Hamas start firing rockets? The “Meir Amit Intelligence and Terrorism Information Center” (ITIC), a private Israeli think tank that the *Washington Post* says “[has close ties with the country's military leadership](#),”³⁴ issues a weekly report, “News of Terrorism and the Israeli-Palestinian Conflict.” The [July 8, 2014 ITIC weekly report](#) for the period July 2 – 8, 2014,” states, “for the first time since Operation Pillar of Defense [November 2012], Hamas participated in and claimed responsibility for rocket fire”³⁵ on July 7, 2014.

Was the first Hamas rocket fire July 7 or did Hamas actually fire rockets one week earlier?

Although confirming that Hamas had been observing a ceasefire for over 19 months, uncertainty about exactly when Hamas fired its first rocket since 2012 is indicated in the [July 1 ITIC weekly report](#):

On June 30, 2014, 12 rocket hits were identified. Some of them may have been fired by operatives of Hamas' military-terrorist wing. If Hamas was in fact responsible for rocket fire, it was the first time since Operation Pillar of Defense (November 2012).³⁶ (emphasis in original)

A June 30 article in *The Times of Israel*, “[Hamas fires rockets for first time since 2012, Israeli officials say](#),”³⁷ explains the speculation about Hamas firing rockets on June 30:

At least 16 rockets were fired at Israel Monday morning [June 30], most of them hitting open areas in the Eshkol region, the army said.

³³ International Court of Justice advisory opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=5a&case=131&code=mwp&p3=4>

³⁴ Amy Teibel, *Hezbollah Accused of Using Human Shields*, *The Washington Post* (December 5, 2006), http://www.washingtonpost.com/wp-dyn/content/article/2006/12/05/AR2006120500446_pf.html

³⁵ Meir Amit Intelligence and Terrorism Information Center (ITIC) *News of Terrorism and the Israeli-Palestinian Conflict* (July 2 – 8, 2014) http://www.terrorism-info.org.il/Data/articles/Art_20665/E_105_14_1399932700.pdf

³⁶ Meir Amit Intelligence and Terrorism Information Center (ITIC) *News of Terrorism and the Israeli-Palestinian Conflict* (June 25 – July 1, 2014), <http://www.terrorism-info.org.il/en/article/20663>

³⁷ Avi Issacharoff and Times of Israel staff, *Hamas fires rockets for first time since 2012, Israeli officials say*, *Times of Israel* (June 30, 2014), <http://www.timesofisrael.com/hamas-fired-rockets-for-first-time-since-2012-israeli-officials-say/>

The security sources, who spoke on condition of anonymity, assessed that Hamas had probably launched the barrage in revenge for an Israeli airstrike several hours earlier which killed one person and injured three more.

A member of Hamas's militant wing was killed in the attack, Gaza health official Ashraf al-Kidra said.

While Israel has maintained it holds Hamas responsible for all rocket attacks, officials have said that smaller groups, such as Islamic Jihad, are usually behind the rocket attacks, while Hamas squads generally attempt to thwart the rocket fire.

Hamas hasn't fired rockets into Israel since Operation Pillar of Defense ended in November 2012, and has yet to take responsibility for this latest barrage.

Thus, both the ITIC and the *Times of Israel* reported that Hamas had not fired any rockets into Israel from November 21, 2012 at least until June 30, 2014, and possibly not for yet an additional week, until July 7, 2014.

Hamas had been policing non-Hamas groups in Gaza to prevent rocket fire: Consistent with the report in the *Times of Israel* that Hamas squads thwarted rocket fire from other groups, not only did the cease-fire put in place at the end of the Israeli government's previous massive assault on Gaza in November 2012 put a complete stop to Hamas' own rocket fire, a May 2013 article in the *Jerusalem Post*, "[IDF source: Hamas working to stop Gaza rockets](#)," reported that the IDF General who commands the army's Gaza Division said that "Hamas was working to thwart rocket attacks from the strip. 'Today Hamas and other actors in Gaza are acting to stop the rocket fire. They don't always succeed, and where they fail, the IDF acts,' the general said." The article further reported that "the Hamas government arrested Salafi jihadists who claimed responsibility for rocket fire at Israel."^{38 39}

Israeli government report conflicts with contemporaneous Israeli reports: The June 14, 2015 Israeli government report includes an assertion about Hamas rocket fire that conflicts with information contemporaneously provided in the June 25-July 1 and the July 2-8, 2014 weekly reports issued by the the Meir Amit Intelligence and Terrorism Information Center" (ITIC)⁴⁰ and with the contemporaneous reports in the May 3, 2013 *Jerusalem Post*, "[IDF source: Hamas working to stop Gaza rockets](#),"⁴¹ and in the June 30, 2014 *Times of Israel*, "[Hamas fires rockets](#)

³⁸ Jerusalem Post Staff, *IDF source: Hamas working to stop Gaza rockets*, *Jerusalem Post* (May 3, 2013), <http://www.jpost.com/Middle-East/IDF-source-Hamas-working-to-stop-rockets-from-Gaza-311977>

³⁹ However, Hamas ability to police other groups may have been degraded once Israeli forces committed their extrajudicial execution in Gaza on June 11 and once Israeli forces launched their massive military assault on Hamas members in the West Bank on June 13, 2014 and their aerial attack on Gaza, also on June 13.

⁴⁰ See notes 34 and 35.

⁴¹ See note 37.

[for first time since 2012, Israeli officials say](#).”⁴² Those authoritative Israeli sources repeatedly stated that that Hamas observed the ceasefire from November 2012, when the previous massive assault on Gaza ended, at least until June 30, 2014 and that Hamas had been policing other groups to prevent them from firing rockets. The ITIC report says that Hamas observed the ceasefire possibly for another week, until July 7, 2014 when Hamas first participated in and claimed responsibility for rocket fire.

By contrast, without citing any supporting evidence, and without explaining the discrepancy with the contemporaneous ITIC, *Jersusalem Post*, and *Times of Israel* reports, the June 2015 Israeli government report asserts that “the lull in violence after the November 2012 ceasefire was short-lived,”⁴³ that “the 2014 Gaza Conflict was “simply the latest in a series of armed confrontations precipitated by the continuing attacks perpetrated by Hamas and other terrorist organizations against Israel,”⁴⁴ and that “Hamas’s attacks leading up to the 2014 Gaza Conflict were thus part of a larger ongoing armed conflict.”^{45 46}

However, implicitly acknowledging the lack of support for these assertions, the Israeli government report then goes on to argue, “but even if one were not to consider the 2014 Gaza Conflict part of a continuous armed conflict justifying Israel’s use of force both previously and during this time, Hamas’s armed attacks against Israel in 2014 would independently qualify as an armed attack triggering Israel’s inherent right of self-defence.”⁴⁷

Thus, although omitting the precise dates of the supposed “Hamas’ armed attacks against Israel in 2014,” the Israeli government report argues generally that they cumulatively qualify Israel’s June and July 2014 armed attacks as self-defense. As we will see, the facts reported contemporaneously by authoritative Israeli and Palestinian sources do not support this assertion either.

When did Israeli forces launch their attacks? Weeks *before* the ITIC and Israeli news media say Hamas launched its first rockets since November 2012 Israeli forces launched attacks on both the West Bank and Gaza:

1. Thousands of troops invade West Bank: Israeli and world news media widely reported that Israel forces sent thousands of troops into West Bank Palestinian Occupied Territory on June 13, purportedly to find and bring back three Israeli teenagers who were kidnapped on June 12.

⁴² Avi Issacharoff and Times of Israel staff, *Hamas fires rockets for first time since 2012, Israeli officials say*, Times of Israel (June 30, 2014), <http://www.timesofisrael.com/hamas-fired-rockets-for-first-time-since-2012-israeli-officials-say/>

⁴³ State of Israel, *The 2014 Gaza Conflict: Factual and Legal Aspects* (released June 14, 2015), paragraph 52 <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>

⁴⁴ *Id.* Paragraph 66

⁴⁵ *Id.* Paragraph 67

⁴⁶ However, this “larger ongoing armed conflict” argument in the Israeli government report contradicts ITIC and Israeli newspaper reports that Hamas continued to observe the cease-fire with Israel that began on November 21, 2012 through the entire period of the lead up to July 7, 2014.

⁴⁷ *Id.* Paragraph 67.

According to an article, "[Infantry battalion deployed to Hebron, IDF calls in reservists](#)," in the Israeli daily newspaper, *Yediot Aharonot*,⁴⁸ on June 15, 2014:

Following the IDF's situation evaluation, the military has decided to deploy an additional infantry battalion to the Hebron area, and has simultaneously started a limited recruitment of reserve soldiers. IDF's operation to return the three missing teenagers has been named "Operation Bring Back Our Brothers" [also called "Operation Brother's Keeper."]

. . . Hundreds of fighters from the Shimshon Battalion of the Kfir Brigade have already stopped their training session in the Golan Heights, and are making their way to the Judea region. The fighters are expected to impose closures on various cities, towns and villages in the West Bank. Altogether, the forces that have been deployed to the area of Hebron amount to more than 2,500 soldiers.

IDF forces, including fighters from the Kfir, Paratroopers and Nahal brigades, continued with both regular and clandestine operations in Palestinian areas Sunday, mostly in villages located northwest of Hebron, including Tarqumiyah, Halhul and Beit Kahil.

. . . Prime Minister Benjamin Netanyahu said Sunday that " Hamas people " are those who carried out the kidnapping of the three Israeli teens on Thursday evening. "This has severe repercussions," Netanyahu clarified.

"This morning I can say what I was unable to say yesterday, before the extensive wave of arrests of Hamas members in Judea and Samaria," Netanyahu said at a special cabinet meeting. "Those who perpetrated the abduction of our youths were members of Hamas – the same Hamas that Abu Mazen (Palestinian President Mahmoud Abbas) made a unity government with; this has severe repercussions."

Thus, Israeli Prime Minister Netanyahu admitted that Israeli forces were engaged in a military operation in the West Bank to capture Hamas members ([some of whom the Israeli government had previously released in a prisoner exchange](#)), some of whom were Parliamentarians in the new Palestinian unity government,⁴⁹ create severe repercussions, and punish the Palestinian

⁴⁸ Yoav Zitun, *Infantry battalion deployed to Hebron, IDF calls in reservists*, *Yediot Aharonot* (June 15, 2014), <http://www.ynetnews.com/articles/0,7340,L-4530549,00.html>

⁴⁹ Jill Reilly, Israel re-arrests Palestinians freed in 2011 Gilad Shalit prisoner-swap deal in furious search for three 'kidnapped' Jewish teenagers, *Daily Mail* (June 18, 2014), <http://www.dailymail.co.uk/news/article-2661116/Israeli-police-arrest-51-Palestinian-prisoners-released-2011-furious-search-three-kidnapped-Jewish-teenagers.html>.

Authority and Hamas for forming a unity government.⁵⁰ Importantly, although he accused “Hamas people” of carrying out the kidnapping, Netanyahu made no mention of stopping rocket fire.⁵¹



Operation Brother's Keeper.⁵² (Photo: EPA) [photo and caption from ynetnews.com, “[A trying year for Israel's defense establishment](#),” December 31, 2014]

In a video and in an article, “[West Bank Hamas leadership in Israeli custody](#)” on June 16, the *Jerusalem Post* reported the names of some of the Hamas members captured and reported that Hamas denied involvement in the kidnapping.⁵³

As the intensive search for the kidnapped Israeli boys continues, Israeli security forces arrested nearly all Hamas leaders in the West Bank. There have been reports that some of the Hamas members arrested will be deported as well.

Hamas' parliamentary speaker in the West Bank Abdel Aziz Dweck was among 50 people arrested by security forces Sunday night and Monday morning. Hamas leaders Bassem al-Za'arir, Azzam Salhab, Samir al-Qadi and Maher al-Kharraz were also among those taken into custody.

⁵⁰ The unity government was formed on June 2, 2014, just 11 days before Israeli forces launched their massive assault on the West Bank followed by their massive assault on Gaza.

⁵¹ The non-mention of rocket fire by Netanyahu at this time is consistent with the ITIC report of no rocket fire.

⁵² Photo: EPA, caption: Operation Brother's Keeper. photo and caption from John-Michael Kibrick, *A trying year for Israel's defense establishment*, Ynetnews.com (December 31, 2014).

⁵³ Khaled Abu Toameh, Yaakov Lappin, *Watch: West Bank Hamas leadership in Israeli custody*, The Jerusalem Post (June 16, 2014), <http://www.jpost.com/Pillar-of-Defense/Entire-Hamas-leadership-in-West-Bank-in-Israeli-custody-some-may-be-deported-359462>

The arrests come on the heels of Prime Minister Binyamin Netanyahu's announcement that Hamas was responsible for the kidnapping of three Israeli teenagers, Eyal Yifrach, Gil-Ad Shaer, and Naftali Fraenkel, on Thursday.

On Sunday, Hamas spokesman Sami Abu Zuhri denied charges of the terror organization's involvement in the kidnappings, calling the accusations “stupid.”

Since the waves of arrests began on Friday [June 13], some 150 Palestinians have been arrested by security forces, most of them Hamas members.

The teenagers were kidnapped late Thursday night [June 12] while hitchhiking near Hebron.

Netanyahu was right about “severe repercussions”: Three [weekly reports issued by the Palestine Center for Human Rights \(PCHR\)](#) covering the period June 12 to July 2, during “Operation Bring Back Our Brothers,” described the effects of the violence inflicted on Palestinians during the intensive ground operation into West Bank towns that Israeli forces initiated on the night of June 13: Israeli soldiers and settlers killed 11 Palestinians and wounded 51 during 369 incursions into the West Bank between June 13 and July 2. Israeli forces raided hundreds of houses on the West Bank each week. Israeli forces also attacked 60 targets in Gaza and engaged in one ground incursion there, altogether wounding 27 people in Gaza between June 12 and July 2.⁵⁴ PCHR is a legal organization with offices located in Gaza that has field representatives on the West Bank and in Gaza who collect data for its weekly reports. PCHR has filed cases in Israel on behalf of Palestinian victims of Israeli attacks.

[Human Rights Watch \(HRW\) reported](#) on July 3:

Israel's military operations in the West Bank following the abduction and killing of three Israeli teenagers have amounted to collective punishment. The military operations included unlawful use of force, arbitrary arrests, and illegal home demolitions.⁵⁵

The HRW report also states that:

⁵⁴ Palestinian Center for Human Rights (PCHR), Weekly Reports for June 12-18, 2014, June 19-25, 2014, and June 26 – July 2, 2014 available at: http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=category&id=84&Itemid=219&limitstart=30. Although the date range and the numbers killed and wounded by Israeli soldiers and settlers in the West Bank and by Israeli air strikes on Gaza are different, the Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, *Human rights situation in Palestine and other occupied Arab territories*, also demonstrates a large number of lethal attacks on Palestinians during this general time period. See paragraphs 6 and 23, <http://www.ohchr.org/Documents/Countries/PS/A.HRC.28.80.Add.1.doc>.

⁵⁵ Human Rights Watch, *Israel: Serious Violations in West Bank Operations, Death, Destruction, and Massive Arrests* (July 3, 2014) <http://www.hrw.org/news/2014/07/03/israel-serious-violations-west-bank-operations>

Israeli forces have arrested about 700 Palestinians since June 12, 2014, and are currently detaining at least 450, some during the large-scale military incursions and others who are known supporters or leaders of the Hamas Reform and Change Party, which won Palestinian elections in 2006, according to Addameer, a Palestinian prisoner's rights group.⁵⁶

2. Israeli forces attack Gaza on June 11, 2014: Given little attention in news accounts was the fact that Israeli forces had launched a lethal drone attack on Gaza on June 11 – the day *before* the kidnapping of the three Israeli teens. [The PCHR weekly report for June 5-11 states:](#)

In a new crime of extra-judicial executions, on Wednesday, 11 June 2014, Israeli forces killed a member of a Palestinian armed group and wounded three civilians, including his brother. The victim, who was riding his motorbike on the coastal road, southwest of Beit Lahia in the northern Gaza Strip, was killed when an Israeli drone launched two missiles at him. Following the execution, Israeli forces admitted committing it as the spokesman of Israeli forces claimed that the man was targeted as he was recently involved in firing rockets at Israeli towns.⁵⁷ His brother, 'Ali Abdel Latif Ahmed al-'Awour (10 years old), was also wounded by shrapnel throughout his body causing him bleeding in the brain and entering into a coma. Another two civilians were wounded as well by shrapnel.⁵⁸

The [June 11-17 ITIC weekly report](#) describes the same killing:

On June 11, 2014, a Salafist-jihadi terrorist operative named Muhammad Ahmed al-'Awar was killed in a joint Israeli security force action. He had been involved in firing rockets into Israeli territory. In recent months his network planned to carry out other terrorist attacks, including shooting down Israeli helicopters. In addition to membership and activity in a Salafist-jihadi network, he was also an officer in the Hamas police force (IDF Spokesman, June 12, 2014).⁵⁹

⁵⁶ *Id.*

⁵⁷ However, the ITIC weekly report for June 3-10 states, “this past week no rocket or mortar shell hits were identified in Israel's south,” Meir Amit Intelligence and Terrorism Information Center (ITIC), *News of Terrorism and the Israeli-Palestinian Conflict* (June 3-10, 2014), page 3, http://www.terrorism-info.org.il/Data/articles/Art_20655/E_089_14_98811292.pdf. Similarly, the ITIC weekly report for June 11-17 reports no rocket fire until June 14. This was three days *after* Israeli forces conducted the June 11 extra-judicial execution in Gaza. It was the day after Israeli forces launched Operation Brothers Keeper in the West Bank on June 13. It was also the day after the Israeli Air Force launched an attack on “a terrorist facility and a weapons storehouse in the southern Gaza Strip” on June 13.

⁵⁸ Palestinian Center for Human Rights (PCHR), Weekly Report for June 5-11, 2014, http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10395:weekly-report-on-israeli-human-rights-viol

⁵⁹ Meir Amit Intelligence and Terrorism Information Center” (ITIC) *News of Terrorism and the Israeli-Palestinian Conflict* (June 11-17, 2014), http://www.terrorism-info.org.il/Data/articles/Art_20659/E_093_14_1673915112.pdf

3. Israeli forces attack Gaza on June 13, 2014: Also given little attention in news accounts was the fact that the ITIC reported that “on June 13, 2014 a terrorist facility and a weapons storehouse in the southern Gaza Strip were struck”⁶⁰ by the Israeli Air Force.

4. Israeli forces repeatedly attacked the West Bank, June 5-11, 2014: In addition [the PCHR weekly report](#) for the period immediately *before the kidnapping*, June 5-11,⁶¹ states that:

In the West Bank, Israeli forces wounded nine Palestinian civilians, including a child. Eight of them were wounded during the peaceful demonstrations and the ninth one was wounded when Israeli forces moved into Al-'Arroub refugee camp, north of Hebron.

During the [seven-day] reporting period, Israeli forces conducted at least 76 military incursions into Palestinian communities in the West Bank. During these incursions, Israeli forces arrested at least 28 Palestinians, including four children and a woman.

Thus, “severe repercussions” were in progress at least the week *before* the three teenagers were kidnapped.

5. Israeli forces shot teenage demonstrators on the West Bank on May 15, 2014: Also little reported was the fact that on May 15, Israeli forces shot Palestinian teenagers while they were participating in Nakba day commemorations. Two were killed. Israeli forces denied that live fire had been used by their forces. But an autopsy report published on June 9 – just three days before the three Israeli teens were kidnapped – showed that one of the Palestinians had in fact been killed by live fire and not rubber bullets. [PCHR's weekly report for May 15-21](#)⁶² states:

In excessive use of force, on Thursday, 15 May 2014, Israeli forces killed two Palestinian children and wounded eight civilians, including a child who was in a serious condition, near Ofer Prison, west of Ramallah. The two children were killed while participating in a demonstration organized in commemoration of the 66th anniversary of the Palestinian Nakba (the uprooting of the Palestinian people from their lands in 1948) in front of the aforementioned prison.

. . . The two children who were killed were identified as:

1. Nadim Ahmed Nowarah (17 years old), a student at the Evangelical School in Ramallah, from South Mazra'a village, northwest of Ramallah, hit by a bullet to the chest; he was transferred by the medical crews to Palestine Governmental

⁶⁰ *Id.* Page 8

⁶¹ Palestinian Center for Human Rights, Weekly Report for June 5-11, 2014, http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10395:weekly-report-on-israeli-human-rights-viol

⁶² Palestinian Center for Human Rights, Weekly Report for May 15-21, 2014, http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10331:weekly-report-on-israeli-human-rights-viol

Medical Complex in the city, where he underwent surgery, but doctors' efforts failed to save his life.

2. Mohammed Mahmoud 'Odah Abu Thaher (17 years old), a student from Abu Shkhaidem village, northwest of Ramallah, hit by a bullet to the heart. The killed was a student at the village school.

Thus, authoritative Israeli and Palestinian sources acknowledged that Israeli forces had been striking both the West Bank and Gaza, *before* the three Israeli teens were kidnapped and for weeks before any Hamas rockets were fired from Gaza since November 2012.⁶³

6. The 277 page Israeli government report admits to preemptive strikes: “during 2013 and 2014, Israel responded with targeted efforts to prevent future attacks.”⁶⁴ However, the Israeli government report fails to offer facts, legal basis, or explanation as to how it can claim self-defense in view the Israeli government’s admission of its own strikes during 2013 and 2014.

However, results of those strikes are available from PCHR:

7. Cease-fire or not, Israeli forces continued military operations from November 2012 onward

Although under the terms of the November 2012 cease-fire agreement, Israeli forces had agreed to completely hold their fire as well, Israeli land, sea, and air forces actually continued military operations against Gaza non-stop, regardless of the cease-fire. “[PCHR Annual Report 2013](#)”⁶⁵ summarizes PCHR's findings for the year 2013, part of the 19 month period during which zero Hamas rockets were being fired at Israel:

The number of Palestinians who were killed by Israeli forces was 46 victims in circumstances where no threats were posed to the lives of Israeli soldiers. Five of these victims died of wounds they had sustained in previous years. Of the total number of victims, there were 41 civilians, 33 of whom were in the West Bank and eight in the Gaza Strip, including six children, two women; and five non-civilians, including one in the West Bank and the other four in the Gaza Strip. In 2013, 496 Palestinians sustained various wounds, 430 of them in the West Bank and 66 in the Gaza Strip, including 142 children and 10 women.⁶⁶

Thus, Palestinians were suffering “severe repercussions” in 2013, long before the three teens were kidnapped.

⁶³ Meir Amit Intelligence and Terrorism Information Center” (ITIC) *News of Terrorism and the Israeli-Palestinian Conflict* (June 11-17, 2014), Page 8 http://www.terrorism-info.org.il/Data/articles/Art_20659/E_093_14_1673915112.pdf

⁶⁴ State of Israel, *The 2014 Gaza Conflict: Factual and Legal Aspects* (released June 14, 2015), paragraph 53 <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>

⁶⁵ Palestinian Center for Human Rights, *PCHR Annual Report 2013*, <http://www.pchrgaza.org/files/2014/annual%20English%202013.pdf>

⁶⁶ *Id.*

Israeli attacks escalate during first 3 months of 2014: An escalation of Israeli attacks in early 2014 compared to the Israeli attack rate for the entire year 2013 is evident from PCHR's "[Report on the Human Rights Situation in the Occupied Palestinian Territories, 1st Quarter of 2014](#)."⁶⁷ Among the violations presented in the report, 20 Palestinians were killed by Israeli forces during the first three months of 2014, including 11 civilians of whom two were children; 259 were wounded, of whom 255 were civilians, including 53 children. "The majority of these Palestinians, 198, were wounded during peaceful protests and clashes with Israeli forces."⁶⁸

Notwithstanding the Palestinian casualties accumulating since the end of the 2012 war - and the increasing rate of Israeli attacks counted during the first three months of 2014 – the *ITIC and Israeli newspapers confirmed that Hamas launched no rockets during that period.*

Notwithstanding the unsupported Israeli government assertion that it was engaged in "targeted efforts to prevent future attacks," each Palestinian farmer, fisher, or child injured or killed during the 19-month period between the major Gaza assaults was a casualty of *Israeli forces violating the 2012 cease-fire agreement.*

In view of Hamas maintaining its cease-fire from November 2012 until June 30 or July 7, Israeli forces could not have been acting in self-defense against Hamas rocket fire:

- when Israeli forces killed 46 people and wounded 496 in Gaza and the West Bank during 2013.
- when Israeli forces killed 20 people and wounded 259 in Gaza and the West Bank during the first three months of 2014.
- when Israeli forces shot 9 teenagers demonstrating on the West Bank on May 15, killing two.
- when Israeli forces wounded nine Palestinian civilians, including a child during the week of June 5 to June 11.
- when Israeli forces launched an extrajudicial execution on June 11 in Gaza that killed one and wounded three.
- when Israeli forces massively escalated, launching their June 13 to June 30 military offensive on the West Bank, Operation Brothers Keeper, killing 11 Palestinians and wounding 51.
- when Israeli forces launched an attack on a "terrorist facility and a weapons storehouse in the southern Gaza Strip" on June 13.

Non-Hamas rocket fire: Only the day *after* Israeli political and military leaders escalated their lethal assault on Palestinian communities on the West Bank on the night of June 13 – supposedly to search for and return alive the three missing teens – and the day after the Israeli

⁶⁷ Palestinian Center for Human Rights, *Report on the Human Rights Situation in the Occupied Palestinian Territories, 1st Quarter of 2014*, <http://www.pchrgaza.org/files/2014/Quarter%20-english-2014.pdf>

⁶⁸ *Id.*

Air Force attacked the “terrorist facility and a weapons storehouse” in the southern Gaza Strip, also on June 13, did ITIC report the firing of two rockets from Gaza by non-Hamas groups, as described in the [June 11-17 ITIC weekly report](#),

Early in the morning on June 14, 2014, two rocket hits were identified in the western Negev. The remains of one rocket were found near the border security fence. In the afternoon a rocket hit was identified in the yard of a village near the southern coastal city of Ashqelon. There were no casualties and no damage was reported.⁶⁹

Israeli forces could not have been acting in self-defense against non-Hamas rocket fire, which had not occurred for 10 days and was close to zero for more than a month when Israeli forces attacked on June 11 and escalated on June 13. As the [ITIC July 2-8 weekly report](#) describes the history, “[Rocket fire from the Gaza Strip] *began* in the second half of June *during* Operation Brothers' Keeper, conducted to find the three abducted Israeli youths”⁷⁰ (emphasis added).

Consistently, the [ITIC June 3-10 weekly report](#) states, “This past week no rocket or mortar shell hits were identified in Israel's south.”⁷¹ The [ITIC June 11-17 weekly report](#) shows that no rockets were fired at Israel by Hamas or non-Hamas groups in Gaza during the period from June 2 until after Israeli forces launched their military attack on the West Bank during the night of June 13.⁷²

The Israeli government report mentions no rocket fire in April or May 2014. Nor does the Israeli government report give any date in early June that rockets were fired. Nevertheless, flatly contradicting the ITIC report of no increased rocket fire in early June, the Israeli government report states:

Starting in early June 2014, terrorist organisations in the Gaza Strip increased their rocket attacks on Israel, in continued breach of the mutual understandings reached in November 2012. Israel responded with aerial precision-guided munitions against rocket

⁶⁹ Meir Amit Intelligence and Terrorism Information Center” (ITIC) *News of Terrorism and the Israeli-Palestinian Conflict* (June 11-17, 2014), http://www.terrorism-info.org.il/Data/articles/Art_20659/E_093_14_1673915112.pdf

⁷⁰ Meir Amit Intelligence and Terrorism Information Center” (ITIC) *News of Terrorism and the Israeli-Palestinian Conflict* (July 2-8, 2014), <http://www.terrorism-info.org.il/en/article/20665>

⁷¹ Meir Amit Intelligence and Terrorism Information Center” (ITIC) *News of Terrorism and the Israeli-Palestinian Conflict* (June 3-10, 2014), http://www.terrorism-info.org.il/Data/articles/Art_20655/E_089_14_98811292.pdf

⁷² Meir Amit Intelligence and Terrorism Information Center” (ITIC) *News of Terrorism and the Israeli-Palestinian Conflict* (June 11-17, 2014), see page 6 which lists six rockets during this week, the earliest of them fired during the early morning on June 14, the day after the Israeli attack on the West Bank had begun. The previous week’s report (see previous footnote) stated that “no rocket or mortar shell hits were identified in Israel's south” during that entire week. The June 11-17 ITIC report on page 8 also states that “on June 13, 2014 a terrorist facility and a weapons storehouse in the southern Gaza Strip were struck” by the Israeli Air Force. Thus, the ITIC acknowledges that Israeli forces had been striking Gaza *before* any rockets were fired from Gaza. http://www.terrorism-info.org.il/Data/articles/Art_20659/E_093_14_1673915112.pdf

launchers positioned in open spaces within the Gaza Strip, while working to de-escalate the conflict through diplomatic means.⁷³

The Israeli government report's claim of increased rocket attacks from Gaza in early June lacks credibility because the report gives no details and the report contradicts information supplied by the ITIC. However, the Israeli government's admission that Israeli forces attacked Gaza with aerial precision-guided munitions is fully credible and is consistent with PCHR reports of an increased rate of lethal Israeli attacks during early 2014.

Thus, when Israeli forces launched their attack on Gaza on June 13 and their massive military assault on the West Bank on the night of June 13, following their lethal military attack in Gaza on June 11, their dozens of military assaults in the West Bank earlier in that week, their shooting the Palestinian youths demonstrating on May 15, and their increasing rate of killing and wounding Palestinians during the first three months of 2014, they could not accurately say they were acting in self-defense against Hamas or non-Hamas rocket fire. Nor could their lethal attack on Gaza on June 11 and their lethal attacks on the West Bank and Gaza during the first three months of 2014 have had anything to do with the kidnapping of the three teens near Hebron on the West Bank on June 12 (except possibly to anger and provoke the kidnapers).

Jewish Daily forward: Israeli officials deceived the Israeli public – the supposed search for kidnapped teens was mere pretext to attack: As *Jewish Daily Forward* editor at large J.J. Goldberg wrote in a column in the *Forward* on July 10, "[How Politics and Lies Triggered an Unintended War in Gaza:](#)"

Only on July 1, after the boys' bodies were found, did the truth come out: The government had known almost from the beginning that the boys were dead. It maintained the fiction that it hoped to find them alive as a pretext to dismantle Hamas' West Bank operations.⁷⁴

The truth actually began coming out the day before, when part of the recording of the emergency call from one of the Israeli teens was widely circulated on WhatsApp and social media on June 30. The Israeli government then lifted [a gag order](#)⁷⁵ on part of the recording. A July 1, 2014 report, "[Recording of teen's emergency call released](#),"⁷⁶ in *The Times of Israel*, includes a partial transcript and [The Jerusalem Post](#) posted part of the recording in which one

⁷³ State of Israel, *The 2014 Gaza Conflict: Factual and Legal Aspects* (released June 14, 2015), paragraph 57, <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>

⁷⁴ J.J. Goldberg, *How Politics and Lies Triggered an Unintended War in Gaza*, Forward.com (July 10, 2014), <http://forward.com/opinion/israel/201764/how-politics-and-lies-triggered-an-unintended-war/>

⁷⁵ Adam Horowitz, Scott Roth and Philip Weiss, *Israel maintains gag order in missing teens case, leading to charge of media 'manipulation'*, Mondoweiss (June 23, 2014), <http://mondoweiss.net/2014/06/maintains-missing-manipulation>

⁷⁶ Lazar Berman, *Recording of teen's emergency call released: 'They've kidnapped me'*, The Times of Israel (July 1, 2014), <http://www.timesofisrael.com/recording-of-teens-emergency-call-released-theyve-kidnapped-me/>

can hear the gunshots.⁷⁷ Putting that together with the blood stains and bullet shells found in a burned out car, Israeli authorities must have known that the three teens were dead. Israeli officials suppressed that information when they launched their military campaign on June 13 “to bring the three Israeli teenagers home safely and as soon as possible” [as described by IDF spokesman Brig. Gen. Moti Almoz](#).⁷⁸

[The frenzy whipped up by Israeli political and military leaders](#)⁷⁹ based on the fiction that Israeli forces were seeking to rescue the three teens led to what [Netanyahu himself decried on July 4 as “murder, riots, incitement, vigilantism”](#),⁸⁰ including the kidnapping and gruesome murder of 16-year-old Palestinian Mohammad Abu Khdeir on July 2. Police injured 170 Palestinian demonstrators in East Jerusalem protesting that murder.⁸¹ An autopsy revealed that Abu Khdeir was burned alive.⁸²

Consistent with the *Jewish Daily Forward* report, the June 14, 2015 Israeli government report admits that the three Israeli youths were “kidnapped and killed” on June 12.⁸³ However, the Israeli government report fails to explain its statement that the youths “were presumed alive at the time”⁸⁴ in view of the evidence then available and subjected to a gag order by the Israeli government.

Prime Minister Netanyahu admits purposes other than rockets: After describing the Israeli operations that caused Hamas to pay a “heavy price” on the West Bank, [Netanyahu acknowledged in his speech at the US Ambassador’s residence in Tel Aviv on July 4](#), that “in Gaza we hit dozens of Hamas activists and destroyed outposts and facilities that served Hamas terrorists.”⁸⁵ Thus Netanyahu himself acknowledged military and political purposes of the Israeli military operations in Gaza, purposes that had nothing to do with rescuing the three

⁷⁷ Ben Hartman, JPost.com Staff, Lahav Harkov, Yaakov Lappin, *Listen: Recording of kidnapped teen's distress call to police released*, Jerusalem Post (July 1, 2014), <http://www.timesofisrael.com/recording-of-teens-emergency-call-released-theyve-kidnapped-me/>

⁷⁸ Israeli Defense Forces, *Hamas Terrorists Behind Abduction of Israeli Teens* (June 13, 2014), <https://www.idfblog.com/blog/2014/06/13/three-israeli-teenagers-missing/>

⁷⁹ Max Blumenthal, *Netanyahu government knew teens were dead as it whipped up racist frenzy*, The Electronic Intifada (July 8, 2014), <http://electronicintifada.net/content/netanyahu-government-knew-teens-were-dead-it-whipped-racist-frenzy/13533>

⁸⁰ Herb Keinon, *Netanyahu: If quiet not restored to South, troops amassed near Gaza will act with power*, The Jerusalem Post (July 3, 2014), <http://www.jpost.com/Diplomacy-and-Politics/Netanyahu-If-quiet-not-restored-to-South-troops-amassed-near-Gaza-will-act-with-power-361492>

⁸¹ Ma'an News Agency *170 Palestinians injured in East Jerusalem clashes* (July 2, 2014), <http://www.maannews.com/Content.aspx?id=709498>

⁸² Kate, *Autopsy report shows Mohammed Abu Khdeir was burned to death; reports spread of other possible abductions*, Mondoweiss (July 5, 2014), <http://mondoweiss.net/2014/07/mohammed-possible-abductions>

⁸³ State of Israel, *The 2014 Gaza Conflict: Factual and Legal Aspects* (released June 14, 2015), paragraph 58, <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>

⁸⁴ *Id.* paragraph 58

⁸⁵ Herb Keinon, *Netanyahu: If quiet not restored to South, troops amassed near Gaza will act with power*, The Jerusalem Post (July 3, 2014), The video of Netanyahu's speech at 1:34 to 2:05 has the quoted text <http://www.jpost.com/Diplomacy-and-Politics/Netanyahu-If-quiet-not-restored-to-South-troops-amassed-near-Gaza-will-act-with-power-361492>

teens who had been kidnapped on the West Bank and nothing to do with stopping Hamas rocket fire – there had been no confirmed Hamas rocket fire since November 2012. The Israeli military operations in Gaza touted by Netanyahu on July 4 were ignored by the U.S. Senate resolution and U.S. Secretary of State John Kerry.

How to stop rocket fire: Nevertheless, Israeli government officials had shown how they could very successfully defend and protect Israeli citizens. What worked time and time again for calm on the Israeli side of the border was a cease-fire agreement. In this regard, notwithstanding the unsupported statements otherwise in the Israeli government report, the November 2012 cease-fire agreement was wildly successful: Hamas rocket fire was zero and Hamas was policing the non-Hamas groups notwithstanding the egregious violations of the agreement by Israeli forces, as reported by the ITIC and Israeli newspapers.

How to start rocket fire: When Israeli forces attacked during 2013 and early 2014, on May 15 and on June 11, and when Israeli forces massively escalated on June 13, with their assault on the West Bank, they put this effective cease-fire at risk. We will see that their gambles at first paid off handsomely – even after Israeli forces escalated military attacks on Palestinians in the West Bank on June 13, quickly arresting the entire Hamas leadership on the West Bank, *Hamas still maintained its side of the November 2012 cease-fire.*

The facts show that Israeli forces had to work quite hard to get Hamas to end its side of this cease-fire agreement. Even the Israeli forces and settlers going wild on the West Bank from June 13 to June 30, killing 11 Palestinians and wounding 51 during 369 incursions into West Bank communities, and even the attacks on 60 targets in Gaza, wounding 27 people, as reported by PCHR, were not enough to shake Hamas into launching a single rocket.⁸⁶

While the attacks by Israeli forces in the West Bank and Gaza predictably provoked rocket fire from other armed groups in Gaza during June, to provoke Hamas itself to fire rockets Israeli forces had to go further. And they did.

Israeli forces finally provoke Hamas by killing Hamas members: The [July 8, 2014 ITIC weekly report](#) divulged why on the night of July 7 Hamas launched and claimed its first rocket fire at Israel in over 19 months: During the night before, Sunday, July 6, and during the early morning hours of Monday, July 7, Israeli forces had bombed and killed Hamas members in Gaza.⁸⁷ The ITIC report includes a picture of six slain Hamas members.

The Israeli newspaper, [Haaretz reported on July 8:](#)

⁸⁶ Palestinian Center for Human Rights, Weekly Reports for June 12-18, 2014, June 19-25, 2014, and June 26 – July 2, 2014 available at: http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=category&id=84&Itemid=219&limitstart=30

⁸⁷ Meir Amit Intelligence and Terrorism Information Center” (ITIC) *News of Terrorism and the Israeli-Palestinian Conflict* (July 2 – 8, 2014) http://www.terrorism-info.org.il/Data/articles/Art_20665/E_105_14_1399932700.pdf

Israel launched air strikes across the Gaza Strip overnight Sunday [July 6, 2014]. Nine Palestinian militants were killed over the course of the night, but Israel claims at least six of them died when a tunnel collapsed.⁸⁸

The [July 10 PCHR weekly report](#) gives details of the attack that immediately preceded the July 7 Hamas rocket launchings. PCHR reports for July 7 describe what caused the tunnel to collapse:

Between 01:00 and 16:00, the bodies of five members of the 'Izziddin al-Qassam Brigades (the armed wing of Hamas) were recovered from a tunnel dug near Gaza International Airport in the southeast of the southern Gaza Strip town of Rafah. They were identified as: Ibrahim Dawod al-Bal'awi, 24; 'Abdul Rahman Kamal al-Zamli, 22; Jum'a 'Atiya Shallouf, 26; and Khaled 'Abdul Hadi Abu Mur, 21, and his twin brother, Mustafa. Three other members were recovered alive, but one was in serious condition. It should be noted that the tunnel was repeatedly bombarded by Israeli warplanes and tanks. According to medical sources, the deceased inhaled toxic gases. The 'Izziddin al-Qassam Brigades declared in an online statement that five of its members were killed as a result of airstrikes that targeted places of resistance activities.⁸⁹

In addition to those attacks on the tunnel, with its warplanes and tanks, on the night of July 6 and early morning on July 7, 2014, Israeli forces attacked approximately 50 more “terrorist targets” in the Gaza Strip ([ITIC weekly report, July 2-8](#)).⁹⁰

A July 7 timeline in the Israeli newspaper *Haaretz*, “[Live updates, July 7, 2014: Rockets bombard south, Hamas claims responsibility](#),” states:⁹¹

At 2:24 a.m.:

Hamas reports an additional four militants died in a second Israeli air strike in Gaza, bringing Sunday night's death total to six. This is the biggest single Israeli hit against Hamas since 2012's Operation Pillar of Defense.

At 3:29 a.m.:

⁸⁸ Haaretz, *Live updates, July 7, 2014: Rockets bombard south, Hamas claims responsibility* (July 8, 2014), <http://www.haaretz.com/news/diplomacy-defense/1.603472>

⁸⁹ Palestinian Center for Human Rights, Weekly Report for July 3 - 9, 2014, http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=10489:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory-03-09-july-2014&catid=84:weekly-2009&Itemid=183

⁹⁰ Meir Amit Intelligence and Terrorism Information Center” (ITIC) *News of Terrorism and the Israeli-Palestinian Conflict* (July 2 – 8, 2014) http://www.terrorism-info.org.il/Data/articles/Art_20665/E_105_14_1399932700.pdf

⁹¹ Haaretz, *Live updates, July 7, 2014: Rockets bombard south, Hamas claims responsibility* (July 8, 2014), <http://www.haaretz.com/news/diplomacy-defense/1.603472>

Seven Hamas militants and two Islamic Jihad members confirmed dead, three confirmed wounded following IAF air strikes in Gaza. Six of the casualties occurred in a single strike in the southern town of Rafah.

At 9:26 a.m.:

The seven Hamas members killed overnight died in a tunnel collapse, and it is still unclear whether the collapse was the deliberate result of the Israeli attack. Two weeks ago Hamas also lost five members after a mysterious explosion in a Gaza tunnel, but did not respond with rocket fire. The high death toll overnight may paint a different picture, however. It remains to be seen if last night's airstrikes will prove to be a turning point, leading to an escalation in the rocket fire to Israel's south.

At 10:47 a.m.:

Hamas' armed wing confirms six of its members were killed in Israeli air strikes at a "resistance location" in the southern town of Rafah, at the Egyptian border early on Monday, a possible reference to a smuggling tunnel. It said aircraft also attacked in northern Gaza, killing one Hamas fighter. Hamas spokesman Sami Abu Zuhri accused Israel of committing a "grave escalation" in violence and threatened to retaliate, saying Israel would "pay the price."

Eleven hours later Hamas claimed responsibility for rocket fire for the first time, at 9:37 p.m. on July 7:

Hamas claims responsibility for the rockets fired at Ashdod, Ofakim, Ashkelon and Netivot. Some 20 rockets exploded in open areas in the last hour.

Thus, Hamas launched its first rockets since November 2012 some 20 hours *after* Israeli forces launched its "biggest single Israeli hit against Hamas since 2012's Operation Pillar of Defense."

As the ITIC, the Israeli think tank with close ties to the Israeli military leadership, notes in its [July 2-8 ITIC weekly report](#):

For the first time since Operation Pillar of Defense, Hamas participated in and claimed responsibility for rocket fire. Other terrorist organizations claiming responsibility were the DFLP, the Popular Front for the Liberation of Palestine (PFLP), Fatah's Al-Aqsa Martyrs Brigades and others.⁹²

⁹² Meir Amit Intelligence and Terrorism Information Center" (ITIC) *News of Terrorism and the Israeli-Palestinian Conflict* (July 2 – 8, 2014) http://www.terrorism-info.org.il/Data/articles/Art_20665/E_105_14_1399932700.pdf

Israeli government report admits that the IDF attacked Gaza before Hamas launched its rockets: With its mention of an Israeli attack on Gaza on July 5, 2014,⁹³ the June 14, 2015 Israeli government report admits that the IDF attacked Gaza *before* Hamas launched its rockets on the night of July 7. The Israeli government report states:

On July 5, the Israel Defense Forces (the “IDF”) conducted an aerial strike against a crossborder assault tunnel near the Kerem Shalom crossing, in order to prevent a planned infiltration by Hamas into Israel through the tunnel.^{94 95}

Omitted from the Israeli government report is the fact that this attack killed six Hamas members in the tunnel, as contemporaneously reported by *Haaretz*, the ITIC, and PCHR.⁹⁶

The Israeli government report then states:

On July 7, 2014, after more than 60 rockets and mortars were fired into Israel from the Gaza Strip on a single day, the Government of Israel was left with no choice but to initiate a concerted aerial operation against Hamas and other terrorist organisations in order adequately to defend Israel’s civilian population.⁹⁷

Thus, the Israeli government report claims that the government was acting to defend Israel’s civilian population notwithstanding the fact that the report had just admitted that the government’s own attack (that killed six Hamas members) *preceded* the Hamas rocket fire and this “biggest single Israeli hit against Hamas since 2012’s Operation Pillar of Defense” finally provoked the Hamas rocket fire.

The Israeli government report couches the more than 60 rockets Hamas and other groups launched on July 7 as giving the government of Israel no choice but to escalate aerial operations. But the report fails to mention that Israel actually had a choice as to whether to launch its own lethal attack the day before. Israeli forces had used that choice to attack and kill the Hamas members, provoking the foreseeable increase in rocket fire.

⁹³ Contemporaneous reports by the ITIC, Haaretz and PCHR give the night of July 6 and early morning hours of July 7, 2014 as the date of this Israeli attack.

⁹⁴ State of Israel, *The 2014 Gaza Conflict: Factual and Legal Aspects*, released June 14, 2015, paragraph 5, <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>

⁹⁵ *Id.* paragraphs 5, 61, and 119. The report states, “In early 2014, Israeli intelligence sources learned that Hamas was planning to execute a cross-border tunnel attack through a tunnel that opened near the Israeli residential community of Kerem Shalom” [paragraph 119]. Thus the Israeli government report acknowledges that Israeli forces knew of that tunnel months before its attack. The report also acknowledges that Israeli forces were not responding to an actual attack. Continuing to use the word “planned” in its description of the July 5 aerial strike, the report does not assert that an attack through the tunnel was imminent when Israeli forces launched their July 6-July 7 attack.

⁹⁶ See notes 86, 87 and 88.

⁹⁷ State of Israel, *The 2014 Gaza Conflict: Factual and Legal Aspects* (released June 14, 2015), paragraph 5, <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>

That's chutzpah: attack first, kill first, and claim self-defense: Thus, reports from authoritative Israeli sources described the multiple provocations that the U.S. Senate resolution denied existed. Regardless of whether it was June 30 or the night of July 7, Hamas launched rocket fire only *after* Israeli forces had engaged in weeks of intensive and escalating military operations in the West Bank and in Gaza, in violation of both the Fourth Geneva Convention and the November 2012 cease-fire agreement. Even then, Hamas launched its rockets only after Israeli forces had directly attacked Hamas, killing a Hamas member in Gaza on June 30 or killing at least 6 Hamas members in Gaza during the night of July 6 and early morning hours of July 7. The Israeli government report does not dispute these facts; it merely omits mentioning some of them and glosses over others.

Media collaboration: Facilitating the Israeli and U.S. government campaign to pin responsibility on Hamas and support a self-defense claim, certain western news media, including the [New York Times, published an incorrect timeline](#).⁹⁸ The timeline published by the New York Times dated the start of the war to July 8, the first full day of Hamas rocket barrages, and more than a day *after* Israeli forces had escalated their aerial attack on Gaza killing the six Hamas members.⁹⁹ The *Times* timeline simply omits mention of the lethal Israeli attacks on the night of July 6 and early morning hours on July 7 that preceded the Hamas barrage of rockets on the night of July 7! The *New York Times* timeline also omits mention of the 24 days of Operation Bring Back Our Brothers, the June 11 extra-judicial execution of a Hamas member in Gaza, the June 13 attack on the “terrorist facility and a weapons storehouse in the southern Gaza Strip,” and the killing of the two Palestinian teenagers who were demonstrating on May 15. The *New York Times* timeline also omits mention of the lethal Israeli attacks in 2013 and the escalation of those attacks in early 2014 that the Israeli government report admitted under the euphemism “targeted efforts to prevent future attacks.”

To their credit, certain Israeli news media recognize the successful cease fire that had been in place before the Israeli government attacked. For example, an article summarizing the year's events on *Ynetnews.com* on December 31, 2014 reports “[rockets from Gaza were few and far in between](#)” as the year 2014 began.¹⁰⁰ However, while the very same article reports “Operation Protective Edge was announced on July 7 following a dramatic increase in rocket fire from Hamas in Gaza reaching up to 70 rockets fired on the same day,” the article omits mention of the Israeli attacks on the night of July 6 and early morning hours on July 7 that killed the six Hamas members before that Hamas barrage of rockets began late on the night of July 7 that were described in ITIC and PCHR reports.¹⁰¹

Did it work? Did the Israeli air and ground attacks actually stop rocket fire from Gaza?

⁹⁸ Karen Yourish and Josh Keller, *The Toll in Gaza and Israel, Day by Day*, The New York Times (August 8, 2014), http://www.nytimes.com/interactive/2014/07/15/world/middleeast/toll-israel-gaza-conflict.html?_r=1

⁹⁹ *Id.*

¹⁰⁰ John-Michael Kibrick, *A trying year for Israel's defense establishment*, YnetNews.com (December 31, 2014), <http://www.ynetnews.com/articles/0,7340,L-4609978,00.html>

¹⁰¹ *Id.*

Israeli Prime Minister Netanyahu said on July 13 he would use “[any means necessary](#)” to stop the Islamic militant group Hamas from bombing civilians.¹⁰²

Did the means he chose, a massive Israeli military assault on Gaza, stop rocket fire?

The answer is categorically no. Actually, *the means Netanyahu chose did just the opposite.*

According to the [Israeli government's website](#) on August 26, 2014, the day the final cease-fire went into effect: “Since the start of Operation Protective Edge [July 6 to August 26], 4,562 rockets were fired at Israel from Gaza.”¹⁰³ The [ITIC weekly report for August 26 to September 2](#) states that 3,852 of these hit Israeli territory.¹⁰⁴

Giving somewhat higher figures, the Independent Commission of Inquiry established by the UN Human Rights Council reports “between 7 July and 26 August 2014, Palestinian armed groups fired 4,881 rockets and 1,753 mortars towards Israel, killing six civilians and injuring as many as 1,600 people, including 270 children.”¹⁰⁵

The Israeli government’s June 14, 2015 report admits that its assault on Gaza failed to stop or diminish Hamas rocket fire: Essential to the legal argument in the Israeli government’s June 14, 2015 report is that Israeli forces were acting in self-defense against Hamas rocket fire, and Israel was forced to act to protect Israeli citizens from rockets. However, the Israeli government report repeatedly makes admission that Israel’s air and ground assault on Gaza “had not neutralized the threat posed by Hamas and other terrorist organizations.”¹⁰⁶ Thus, the Israeli government report admits that the Israeli assault on Gaza failed to protect Israeli citizens from rocket fire. On the contrary: the report admits that once Israel’s air war began in earnest on the night of July 6 and early morning hours of July 7, *rocket fire vastly increased*, and neither the continuing bombing attacks that the report says hit “thousands of military targets throughout the Gaza Strip,”¹⁰⁷ nor the ground invasion that began July 17, nor the continuing air, artillery,

¹⁰² Fox News, *Netanyahu vows 'any means necessary' to stop Hamas* (July 13, 2014),

<http://www.foxnews.com/politics/2014/07/13/netanyahu-vows-any-means-necessary-to-stop-hamas-mum-on-ground-offensive-into/>

¹⁰³ Israeli Ministry of Foreign Affairs, *Operation Protective Edge: Israel under fire, IDF responds* (August 26, 2014), <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Pages/Rise-in-rocket-fire-from-Gaza-3-Jul-2014.aspx>

¹⁰⁴ Meir Amit Intelligence and Terrorism Information Center” (ITIC) *News of Terrorism and the Israeli-Palestinian Conflict* (August 26 – September 2, 2014), page 2, http://www.terrorism-info.org.il/Data/articles/Art_20709/E_154_14_403606512.pdf

¹⁰⁵ Human Rights Council, *Report of the Independent Commission of Inquiry established pursuant to Human Rights Council resolution S-21/1* (June 15, 2015), paragraph 27, http://www.ohchr.org/Documents/HRBodies/HRCouncil/ColGaza/A-HRC-29-52_en.doc

¹⁰⁶ See paragraphs 83, 86, 99, and 102 of the June 14, 2015 Israeli government report, State of Israel, *The 2014 Gaza Conflict: Factual and Legal Aspects* (released June 14, 2015), <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>.

¹⁰⁷ *Id.* paragraph 103

and naval ship attacks on Gaza before, during, and after the withdrawal of ground troops on August 5, stopped or even diminished that intense level of Hamas rocket fire.¹⁰⁸

The Israeli government report also acknowledges that the previous massive Israeli assault on Gaza from November 14 to November 21, 2012, was equally ineffective at stopping or diminishing rocket fire.

During the eight-day operation, as the IDF sought to reduce the arsenals and military capabilities of Hamas and other terrorist organisations operating from the Gaza Strip, these groups continued their constant attacks, firing approximately 1,500 rockets and mortars at Israel, killing five Israeli civilians and injuring 240.¹⁰⁹

The fact that the Israeli government acknowledges that *rocket fire vastly increased* during the 2012 operation – as it had during each of the previous Israeli assaults – undermines the self-defense claim on which the entire Israeli government report rests: By the time of the 2014 assault, Israeli officials knew or should have known that escalating to a massive military assault on Gaza would provoke a very high level of rocket fire and that this rocket fire would be sustained for the duration of the Israeli assault. Thus, a massive Israeli military assault on Gaza would not only not protect Israeli citizens, it would put Israeli citizens at far greater risk. Because ITIC graphs shows that none of the six major Israeli assaults on Gaza between 2006 and 2014 was effective at stopping rocket fire, and because the previously existing cease-fires had already stopped rocket fire, the necessity of any of those assaults, including the July 6-August 26, 2014 assault, to stop rocket fire cannot be shown.¹¹⁰

As the Israeli government report acknowledges, “The Gaza Operation 2012 ended on November 21, 2012, in a ceasefire and understandings brokered by the United States and Egypt.”¹¹¹ A cease-fire has consistently been the one method that has reliably worked to stop rocket fire; and a cease-fire was what finally worked to stop rocket fire on August 26, 2014. Of course, Israel already had a successful cease-fire in place before it attacked on June 11, escalated its

¹⁰⁸ *Id.* paragraph 102: “Between August 20 and the end of active hostilities on August 26, Hamas and other terrorist organisations continued to fire at Israel, directing mortars mainly towards the Israeli residential communities of southern Israel. During this period, an average of 146 rockets and mortars were fired at Israel per day, killing three Israeli civilians, including a 4-year-old boy in his home.” Thus, even toward the last few days of the 51 day Israeli assault on Gaza, Hamas and other groups maintained rocket and mortar fire at a high rate, and Israeli citizens were not protected or defended by the continuing Israeli assault on Gaza. What finally protected and defended Israeli citizens was the new ceasefire that began on August 26. But the report omits mention that an equally successful ceasefire had been in place when Israeli forces launched their lethal attacks on Palestine on June 11 and escalated on June 13, 2014 and further escalated on July 6. As the contemporaneous reports from authoritative Israeli sources reported, until Israeli forces escalated their attacks on Gaza on June 30 and the night of July 6, Hamas was still solidly maintaining its side of that ceasefire and had done so since November 21, 2012.

¹⁰⁹ *Id.* paragraph 51

¹¹⁰ As will be discussed later in this article, for a self-defense claim to be valid the one claiming self-defense must show that its violent response was necessary.

¹¹¹ *Id.* paragraph 51

attacks on June 13, and further escalated on July 6. By not embarking on these attacks, Israel could have maintained that cease-fire and protected all its citizens and soldiers.

Israeli assaults dialed up rocket fire in 2008, 2012, and 2014: Numbers from an [Israeli government website](#)¹¹² and from the [ITIC weekly reports for August 26 to September 2, 2014](#)¹¹³ tell the story for several of the Israeli government's assaults on Gaza in 2008, 2012, and 2014.¹¹⁴

Operation Cast Lead 2008-2009 dialed up rocket fire: According to the ITIC data on the Israeli Government website, an average of 42 rockets a day struck Israel during its 22 day Operation Cast Lead attack from December 27, 2008 to January 18, 2009 (925 rockets hit Israel total).¹¹⁵ By contrast, only one rocket had struck Israel during the entire month before Israeli forces launched an attack that killed six Hamas members in Gaza on U.S. election day,¹¹⁶ November 4, 2008.¹¹⁷ The Israeli government's lethal violation of that extremely effective cease-fire ended it and dialed up the rocket fire from Gaza.

¹¹² Israeli Ministry of Foreign Affairs, *Rocket fire from Gaza and Palestinian ceasefire violations after Operation Cast Lead (Jan 2009)*, May 14, 2015, http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Pages/Palestinian_ceasefire_violations_since_end_of_Operation_Cast_Lead.aspx

¹¹³ Meir Amit Intelligence and Terrorism Information Center (ITIC) *News of Terrorism and the Israeli-Palestinian Conflict* (August 26 – September 2, 2014), see the bar chart on page 9 that shows rocket hits year by year from 2006 to 2014 with extra bars for the 2008-2009, the 2012, and the 2014 assaults on Gaza, http://www.terrorism-info.org.il/Data/articles/Art_20709/E_154_14_403606512.pdf

¹¹⁴ Israeli forces launched 6 massive attacks on Gaza in the 8 years between 2006 and 2014, including Operation Summer Rains (June-September 2006), Operation Autumn Clouds (November 2006), Operation Warm Winter (February-March 2008), Operation Cast Lead (December 2008 to January 2009), Operation Pillar of Defense (November 2012), and Operation Protective Edge (July-August 2014). In addition, Israel launched the Second Lebanon War (July-August, 2006) during its Operation Summer Rains assault on Gaza.

¹¹⁵ Israeli Ministry of Foreign Affairs, *Rocket fire from Gaza and Palestinian ceasefire violations after Operation Cast Lead (Jan 2009)*, May 14, 2015, http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Pages/Palestinian_ceasefire_violations_since_end_of_Operation_Cast_Lead.aspx

¹¹⁶ Isabel Kershner, *Israeli Strike is First in Gaza Since Start of Cease Fire*, New York Times (November 4, 2008), http://www.nytimes.com/2008/11/05/world/middleeast/05mideast.html?_r=2&

¹¹⁷ Meir Amit Intelligence and Terrorism Information Center (ITIC), *Summary of rocket fire and mortar shelling in 2008*. A chart on page 6 shows rocket fire averaging nearly 200 rockets per month – from January through the end of May 2008, a period of continuous lethal Israeli attacks on Gaza described in PCHR weekly reports, including a massive assault code named “Operation Warm Winter” from February 27 to March 3, 2008. http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=category&id=80&Itemid=236&limitstart=40. The ITIC chart shows drastically reduced rocket fire during the June 19 to November 4 ceasefire, falling to 1 rocket in September and 1 in October. Finally, the chart shows a resumption of heavy rocket fire in November and December. The charts of daily rocket fire on pages 8 and 9 of the ITIC report show a heavy barrage of rocket fire on November 5, the day after the Israeli lethal military attack on November 4, 2008, during which Israeli forces killed 6 Hamas members, and additional barrages of rocket fire in days generally following the 8 additional Israeli military incursions into Gaza and identified in PCHR’s weekly reports during the period from November 4 to December 23, 2008. http://www.terrorism-info.org.il/data/pdf/PDF_19045_2.pdf

Admission – Operation Cast Lead: During the lead-up to Operation Cast Lead, then Israeli Defense Minister Ehud Barak said “the recent waves of rocket attacks are a result of our operations, which have resulted in the killing of 20 Hamas gunmen” ([Ynet-News.com November 20, 2008](http://www.ynetnews.com/Articles/0,7340,L-3626260,00.html)).¹¹⁸

With that, Defense Minister Barak admitted that Israeli forces were not acting in self-defense against rockets, and that waves of rocket attacks were an expected result of the Israeli lethal operations in Gaza. In other words, Israeli forces were acting offensively. As rocket fire had been effectively stopped by the cease-fire in place since June 19, 2008 the purpose of the operations Barak directed starting on November 4, 2008 could not have been to stop rocket fire, and, to his credit, he enlisted no such pretext. Mention of Barak’s admission, and the non-self-defense purpose it described, was omitted from the June 14, 2015 Israeli government report.

Weekly reports issued by the [Palestine Center for Human Rights](http://www.pchrgaza.org)¹¹⁹ describe the operations launched by Israeli Defense Minister Ehud Barak: nine incursions by Israeli soldiers into Gaza during the seven weeks from November 4 to December 26, 2008. That averages to one incursion per week during the lead up. Israeli forces then massively escalated their air attack on December 27, 2008.¹²⁰ In letters to the UN on that day, the Israeli Ambassador to the UN blamed “ongoing rocket attacks for many days” for this escalation¹²¹ (but, of course, the letters omitted mention of Defense Minister Barak’s November 20 admission that the rocket fire had been “the result of our operations”), and said “that after a long period of utmost restraint, the Government of Israel has decided to exercise, as of this morning, its right to self-defence.” Thus, the letter brazenly claimed self-defense although the Israeli Defense Minister had already admitted the opposite. The rocket fire stopped on January 18, 2009 when Israeli government officials and Hamas agreed to a new cease-fire.

Operation Pillar of Defense 2012 dialed up rocket fire: The next major onslaught on Gaza was the November 14-21, 2012 Operation Pillar of Defense. According to the ITIC data on the Israeli Government website,¹²² an average of 105 rockets a day struck Israel during the Israeli government's eight day attack (845 rockets hit Israel total). The cease-fire that followed was

¹¹⁸ Shmulik Hadad, *Qassam lands in western Negev, no injuries*, YNetNews.com (November 20, 2008), <http://www.ynetnews.com/articles/0,7340,L-3626260,00.html>

¹¹⁹ Palestinian Center for Human Rights, see the 7 weekly reports beginning with the one dated October 30 - November 5, 2008 through the one dated December 23, 2008 to see the reports of the 9 Israeli incursions http://www.pchrgaza.org/portal/en/index.php?option=com_blog_calendar&year=2008&modid=136&limitstart=7

¹²⁰ Palestinian Center for Human Rights, weekly report dated December 31, 2008

http://www.pchrgaza.org/portal/en/index.php?option=com_blog_calendar&year=2008&modid=136

¹²¹ United Nations Security Council, *Identical letters dated 27 December 2008 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General and to the President of the Security Council*, <http://unispal.un.org/UNISPAL.NSF/0/9241B2B089764BA88525752F0059DFF7>

¹²² Israeli Ministry of Foreign Affairs, *Rocket fire from Gaza and Palestinian ceasefire violations after Operation Cast Lead (Jan 2009)* May 14, 2015, http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Pages/Palestinian_ceasefire_violations_since_end_of_Operation_Cast_Lead.aspx

again superbly effective. The number of rockets went to zero and stayed low for months after the cease-fire went into effect¹²³ – despite the continued killing and wounding of Palestinian civilians by Israeli forces documented in the PCHR annual report for 2013.¹²⁴

Operation Protective Edge 2014 dialed up rocket fire: According to the [ITIC weekly report for August 26 to September 2](#),¹²⁵ with 3852 rocket hits, an average of 94 rockets a day hit Israel during the 41 days of combat (the 51-day July 6 to August 26, 2014 assault on Gaza, Operation Protective Edge, included 10 days of temporary cease-fire). By contrast, that ITIC report also includes a graph showing that just two rockets hit Israel during the entire month of May 2014.¹²⁶ That nearly rocket-free month was before Israeli forces launched their three weeks of intensive raids on the West Bank starting on June 13 and before the Israeli government's massive escalation of the air war on Gaza on the night of July 6.

The vast increase in rocket fire during each of the Israeli assaults on Gaza, Operation Cast Lead, Operation Pillar of Defense, and Operation Protective Edge documented by the ITIC and by the Israeli Government's own web site demonstrates that the Israeli government's assaults on Gaza in no way stopped rocket fire. In fact, they very sharply increased it.

Israeli government has a strong hand on rocket dial: Facts show that the Israeli government has a strong hand on the dial that controls the rocket fire. But it does not work as Israeli spokesmen advertise. The facts show that the Israeli government *dials up* rocket fire by attacking Hamas members in the West Bank and Gaza and by bombing Gaza. The Israeli government has shown that it can also *dial down* rocket fire: by agreeing to a cease-fire, by avoiding extrajudicial executions of Hamas members in Gaza and massive attacks on Gaza, and by at least partially observing the cease-fire. Thus, the bombardment of Gaza did nothing to protect Israeli citizens from rockets. Quite the reverse.

A strategy that was completely ineffective at stopping rockets, and actually promoted a vast increase in rocket fire, could not have been a strategy necessary to protect Israeli citizens. If Israeli Prime Minister Benjamin Netanyahu meant what he said about using “any means necessary” to stop Hamas rocket fire, he would have done from the start what he knew would work: avoid assaulting the West Bank and Gaza and continued to observe the previously existing cease-fire.

¹²³ Meir Amit Intelligence and Terrorism Information Center” (ITIC) *News of Terrorism and the Israeli-Palestinian Conflict* (October 30 – November 5, 2013) see page 4 for chart monthly rocketed hits on Israeli territory from January 1, 2012 through October 30, 2013, http://www.terrorism-info.org.il/Data/articles/Art_20592/E_186_13_987894142.pdf

¹²⁴ Palestinian Center for Human Rights, *PCHR Annual Report 2013*, <http://www.pchrgaza.org/files/2014/annual%20English%202013.pdf>

¹²⁵ Meir Amit Intelligence and Terrorism Information Center” (ITIC) *News of Terrorism and the Israeli-Palestinian Conflict* (August 26 – September 2, 2014), page 2, http://www.terrorism-info.org.il/Data/articles/Art_20709/E_154_14_403606512.pdf

¹²⁶ *Id.* page 8

The fact that none of Israel's major military onslaughts worked to stop rocket fire poses a credibility problem for Israeli officials. The additional fact that Israeli government attacks *preceded* the rocket fire adds to the credibility problem. Together these facts mean that the onslaughts actually have nothing to do with self-defense. The facts point to *rocket fire being used as a mere pretext for escalating Israeli attacks after earlier Israeli attacks provoked that rocket fire.*¹²⁷

Admission: Israeli forces are periodically "cutting the grass": An article in the *New York Times*, "[As Battlefield Changes, Israel Takes Tougher Approach](#)," published on November 16, 2012 during the 2012 assault, states, "The operative metaphor" among Israelis "is often described as 'cutting the grass,' meaning a task that must be performed regularly and has no end. . . . That is why this week's operation in Gaza is widely viewed as having been inevitable, another painful but necessary maintenance operation that, officials here say, will doubtless not be the last."¹²⁸

An article on Truthout, "[Likening Palestinians to Blades of Grass](#),"¹²⁹ by Elizabeth Murray, former deputy national intelligence officer for the Near East in the U.S. government's National Intelligence Council, published on November 17, 2012, states:

In early 2010, one of Washington D.C.'s most prestigious think tanks was holding a seminar on the Middle East which included a discussion of Israel's December 2008-January 2009 assault on Gaza which killed about 1,300 Palestinians. When the death toll was mentioned, one expert on the panel smiled enigmatically and intoned: "It's unfortunate, but every once in a while you have to mow the lawn."

The remark, which likened killing hundreds of men, women and children – many of them noncombatants – with trimming the grass, was greeted with a light tittering around the room, which was filled with some of Washington's most elite, highly educated and well-paid Middle East experts. Not a single one objected to the panelist's black humor.

...

¹²⁷ Nor is the statement in the Israeli government report that "the IDF sought to reduce the arsenals and military capabilities of Hamas and other terrorist organisations operating from the Gaza Strip" (paragraph 51) consistent with the facts about increasing arsenal given in that very Israeli government report. Even if that was truthfully the objective, the numbers given in the Israeli government report show that the assaults produced just the opposite: the report states that in 2008 the arsenal in Gaza included 1,000 rockets and mortars. By 2012 the arsenal had increased to 7,000, and by 2014 it was up to 10,000 rockets and mortars. See paragraphs 51 and 54 of the June 14, 2015 Israeli government report, State of Israel, *The 2014 Gaza Conflict: Factual and Legal Aspects* (released June 14, 2015), <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>. Furthermore, an attack for the purpose of reducing the arsenal of the enemy flatly contradicts the law of self-defense, as seen later in this article.

¹²⁸ Ethan Bronner, *As Battlefield Changes, Israel Takes Tougher Approach*, *New York Times* (November 15, 2012), <http://www.nytimes.com/2012/11/17/world/middleeast/israel-sticks-to-tough-approach-in-conflict-with-hamas.html?ref=middleeast&>

¹²⁹ Elizabeth Murray, *Likening Palestinians to Blades of Grass*, *Truthout.org* (November 17, 2012), <http://www.truth-out.org/news/item/12801-likening-palestinians-to-blades-of-grass>

Instead of a serious effort to reach a peace acceptable to both sides, Israel seems to prefer a state of endless conflict with the Palestinians. After all, the prospect of peace might require the Israeli government to treat their neighbors as equals and withdraw from territory occupied since 1967.

So, rather than making meaningful concessions, some Israeli hardliners simply promote the idea of periodically “mowing the grass,” i.e. killing the latest generation of Palestinian militants who sprout up from the injustice all around them.

In an article in the *Jerusalem Post*, “[Mowing the grass in Gaza](#),” on July 22, 2014, during this summer's attack, two Israeli military strategists described the purpose of the attack: “Against an implacable, well-entrenched, non-state enemy like the Hamas, Israel simply needs to 'mow the grass' once in a while to degrade the enemy's capabilities.”¹³⁰

Periodically launching military attacks on Gaza – cutting the grass – is consistent with the purpose admitted by then-Israeli Defense Minister Ehud Barak on November 20, 2008: “the recent waves of rocket attacks are a result of our operations, which have resulted in the killing of 20 Hamas gunmen” ([Ynet-News.com November 20, 2008](#)).¹³¹

Those Israeli operations, including the nine incursions into Gaza between November 4 and December 26, 2008 that ended the effective cease-fire in place between June 19 and November 4, 2008 and precipitated salvos of rocket fire from Gaza, demonstrated that Israeli military action and Israeli policy are undeterred by the prospect of rocket fire that may follow such Israeli lethal operations, as also implied, by Barak's remark.

The rocket fire those nine November-December 2008 operations provoked also served the useful purpose of providing pretext for the massive mowing the lawn escalation of attack on Gaza from December 27, 2008 to January 18, 2009.

Similarly, the goals actually accomplished or threatened by Prime Minister Benjamin Netanyahu in his remarks on June 15, 2014:¹³² to abduct West Bank Hamas members, including Hamas parliamentarians and those released in the prisoner exchange, create severe repercussions, and punish the Palestinian authority for agreeing to the unity government with Hamas, were also predictably effective at provoking at least non-Hamas rocket fire that could then be used, and was used, as pretext for massive escalation on July 6 and July 7 and for launching Operation Protective Edge.

¹³⁰ Efraim Inbar and Eitan Shamir, *Mowing the grass in Gaza*, The Jerusalem Post (July 22, 2014), <http://www.jpost.com/Opinion/Columnists/Mowing-the-grass-in-Gaza-368516>

¹³¹ Shmulik Hadad, *Qassam lands in western Negev, no injuries*, YNetNews.com (November 20, 2008), <http://www.ynetnews.com/articles/0,7340,L-3626260,00.html>

¹³² Yoav Zitun, *Infantry battalion deployed to Hebron, IDF calls in reservists*, *Yediot Aharonot* (June 15, 2014), <http://www.ynetnews.com/articles/0,7340,L-4530549,00.html>

Netanyahu's speech to the July 4 celebration at the American Embassy ¹³³ described goals and accomplishments very similar to those described by former Minister of Defense Ehud Barak on November 20, 2008. This speech equally served notice that Israeli forces were in no way acting to prevent rocket fire. Rather the Israeli government was again risking a vast increase in rocket fire for the sake of accomplishing its military and political objectives.

The periodic military attacks are also consistent with the strategic goal of maintaining the struggle against Palestinian self-determination on a military plain, where Israel is by far the strongest, rather than allowing it to proceed on a diplomatic, political, or legal plain, where Israel does not always have the upper hand.

As described by the authoritative Israeli think tank, the Reut Institute, the Israeli "use-of-force doctrine" is to "aim toward high-intensity direct confrontations, which favor size and firepower" whereas supporters of Palestinian self-determination, what the Reut Institute calls the "resistance network," has a very different doctrine: "Aim toward protracted low intensity conflict, while avoiding direct confrontation." As for what the Reut Institute calls the "decisive arena," for Israel "the struggle will be determined through military confrontation on the battlefield," whereas for the resistance network, "the struggle will be determined in the international arena (through delegitimization and overstretch), and in Israel's home front."¹³⁴

As pointed out by Elizabeth Murray, former deputy national intelligence officer for the Near East in the U.S. government's National Intelligence Council, the periodic massive military assaults are also consistent with the goal of periodically repressing the otherwise unquenchable Palestinian thirst for self-determination, equal rights, return of refugees, an end to occupation, and an end to blockade.

However, none of the objectives announced by Netanyahu or associated with "mowing the lawn" are consistent with what is required for Israel to successfully prove that its operations were in self-defense under international law.

The Law Does Not Support the Israeli Claim of Self-Defense

No claim of self-defense under the UN Charter is valid for an occupying power: The International Court of Justice (ICJ) is the principal judicial organ of the UN system. It makes binding decisions in contentious cases between states and gives advisory opinions to UN

¹³³ "In Gaza we hit dozens of Hamas activists and destroyed outposts and facilities that served Hamas terrorists." Herb Keinon, *Netanyahu: If quiet not restored to South, troops amassed near Gaza will act with power*, The Jerusalem Post (July 3, 2014), The video of Netanyahu's speech at 1:34 to 2:05 has the quoted text <http://www.jpost.com/Diplomacy-and-Politics/Netanyahu-If-quiet-not-restored-to-South-troops-amassed-near-Gaza-will-act-with-power-361492>

¹³⁴ The Reut Institute, *Building a Political Firewall Against Israel's Delegitimization Conceptual Framework*, Version A, Submitted to the 10th Herzliya Conference (Adar 5770 March 2010), pages 39-40, <http://reut-institute.org/data/uploads/PDFVer/20100310%20Delegitimacy%20Eng.pdf>

organs.¹³⁵ Because the ICJ applies the law to concrete facts, its decisions are particularly helpful in understanding the law regarding self-defense.¹³⁶

In its advisory opinion on the “[Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territories](#)” the International Court of Justice held that Israel's claim of an inherent right of self-defense against Palestinians living under Israeli rule is not legitimate under the UN Charter because Article 51,¹³⁷ having to do with self-defense, applies only

in the case of armed attack by one State against another State. However, Israel does not claim that the attacks against it are imputable to a foreign State.¹³⁸ The Court also notes that Israel exercises control in the Occupied Palestinian Territory and that, as Israel itself states, the threat which it regards as justifying the construction of the wall originates within, and not outside, that territory. . . . Consequently, the Court concludes that Article 51 of the Charter has no relevance in this case.^{139 140}

If Israeli occupying forces could not legally justify a relatively passive structure like the wall, where it extends through occupied territory, with self-defense under Article 51, certainly still less could the Israeli government legally justify schemes against those living under its control – including the bombs, bullets, and missiles Israeli forces repeatedly rain down on the people in Gaza – as self-defense under Article 51.

¹³⁵ International Court of Justice, <http://www.icj-cij.org/court/index.php?p1=1>

¹³⁶ Although the Israeli government report cited a law review article that discussed an International Court of Justice (ICJ) decision regarding the self-defense concept of proportionality, the report failed to even cite, much less present argument showing why it regards the 2004 International Court of Justice advisory opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, as irrelevant. The advisory opinion in that case rejected the Israeli government's claim of self-defense regarding its wall crossing Palestinian territory. <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=5a&case=131&code=mwp&p3=4> Although other ICJ cases, including Nicaragua's successful case against the United States, International Court of Justice, *Case Concerning the Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)* (June 27, 1986), <http://www.icj-cij.org/docket/?sum=367&p1=3&p2=3&case=70&p3=5>, are relevant to self-defense, the Israeli government report failed to cite that case or any other ICJ decision.

¹³⁷ United Nations, *Charter of the United Nations* (June 26, 1945), <http://www.yale.edu/lawweb/avalon/un/unchart.htm>

¹³⁸ State of Israel, *The 2014 Gaza Conflict: Factual and Legal Aspects* (released June 14, 2015), Israel continues to assert that “no state currently exists in the Gaza Strip” (see page 29 of the report, footnote 97), <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>

¹³⁹ On November 29, 2012 by a vote of 138 in favor to 9 against with 41 abstentions — the General Assembly accorded Palestine “Non-Member Observer State” status in the United Nations. (Israel and the U.S. were among the 9 who voted against). <http://www.un.org/press/en/2012/ga11317.doc.htm>. This vote sufficiently established recognition of Palestine as a state, enabling it to accept the jurisdiction of the ICC over alleged crimes committed “in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014” and enabling it to accede to the Rome Statute by depositing its instrument with the Secretary General. However, the vote did not change the fact that Israel exercises control in Occupied Palestine, including Gaza. Thus, article 51 continues to have “no relevance.”

¹⁴⁰ International Court of Justice, *Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territories*, Advisory Opinion of 9 July 2004, <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&case=131&p3=4>

Therefore, even if Israel could show that armed groups in Gaza had initiated the armed conflict, rather than Israeli forces, Israeli officials would still have no legally acceptable self-defense claim because the Israeli government is an occupying power and the Israeli government exercises control over Gaza.^{141 142}

In addition, as do all people living under colonialism, Palestinians have a right to resist an illegal military occupation. As described in [UN General Assembly Resolution 37/43](#), adopted December 3, 1982, which, among other provisions:

Reaffirms the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial and foreign domination and foreign occupation by all available means, including armed struggle and

¹⁴¹ Gaza has been under Israeli military occupation since 1967. Although Israel maintains that it ended its occupation of Gaza in 2005 when it evacuated its troops and approximately 8000 Jewish settlers, Israel retains such effective control over Gaza that it has the ability to enter Gaza at will.

Article 42 of the Hague Convention states that a “territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.” Hague Convention Respecting the Laws and Customs of War on Land and its annex art. 42, Oct. 18, 1907, 36 Stat. 2277 (1908), U.S.T.S. 539, 1 Bevans 631, available at

<http://www.icrc.org/ihl.nsf/FULL/195?OpenDocument>. The test for applying the legal regime of occupation is not whether the occupying power fails to exercise effective control over the territory but whether it has the ability to exercise such power, a principle affirmed by the United States Military Tribunal at Nuremberg. U.S.A. v. Wilhelm List (the *Hostage Case*), Nuremberg Military Tribunal, 1948, available at: <http://www.ess.uwe.ac.uk/WCC/List1.htm>.

Israel exercises territorial dominance and imposes restrictions on the movement and lives of the Strip’s residents. It controls Gaza’s air space, territorial waters, all border crossings with Israel, and indirectly monitors passage through the Rafah crossing between Gaza and Egypt. Palestinians in Gaza require Israel’s consent to travel to and from Gaza, to take their goods to Palestinian and foreign markets, to acquire food and medicine, and to access fuel, water and electricity. Without Israel’s permission, the Palestinian Authority (PA) cannot perform basic governmental functions such as providing social, health, security, and utility services, developing the Palestinian economy, and allocating resources. In addition, Israel still maintains control of Gaza’s population registry. Thus, Gaza effectively remains under Israeli military occupation, a position that is widely recognized under international law.

See also “Israel remains an occupying power in the Gaza Strip even though it withdrew its military forces and illegal civilian settlers in August and September 2005.” Human Rights Watch, *Israel: Threatened Sanctions on Gaza Violate Laws of War*, Sep. 20, 2007, available at <http://hrw.org/english/docs/2007/09/20/isrlpa16920.htm>;

“Statements by the Government of Israel that the withdrawal ended the occupation of Gaza are grossly inaccurate. . . In effect, following Israel’s withdrawal, Gaza became a sealed off, imprisoned, and occupied territory.” John Dugard, Special Rapporteur, Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, U.N. Doc. A/HRC/4/17 (Jan. 2007) available at

<http://domino.un.org/UNISPAL.NSF/22f431edb91c6f548525678a0051be1d/b59fe224d4a4587d8525728b00697daa!OpenDocument>. See also Gisha, *Disengaged Occupiers: The Legal Status of Gaza*, Jan. 2007, available at <http://www.gisha.org/index.php?intLanguage=2&intSiteSN=119>. This entire footnote from National Lawyers Guild, *Onslaught: Israel’s Attack on Gaza and the Rule of Law*, Report of the NLG Delegation to Gaza, February 2009, <https://www.nlg.org/sites/default/files/1270587395GP65-3finaldigital.pdf>

¹⁴² Human Rights Council, *Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1* (June 22, 2015), Paragraphs 24-31, http://www.ohchr.org/Documents/HRBodies/HRCouncil/ColGaza/A_HRC_CRP_4.doc

Reaffirms the inalienable right of the Namibian people, the Palestinian people and all peoples under foreign and colonial domination to self-determination, national independence, territorial integrity, national unity and sovereignty without outside interference.¹⁴³

Even if Article 51 permitted an occupying power to rely on self-defense for its operations in occupied territory, self-defense would still not apply: But let us assume for the moment that Article 51 of the UN Charter and the ICJ advisory opinion allowed an occupying power to claim self-defense in the territory it occupies. A review of self-defense in international law, "[The Right of Self-Defense](#),"¹⁴⁴ by Mary Ellen O'Connell ("the O'Connell article"), confirms that:

The right of self-defense was codified in the [Charter of the United Nations](#). With most states in the world as parties, the Charter became the authoritative document on self-defense.

. . . UN Charter Article 2(4) is a general prohibition on the resort to force, with only two exceptions: one allows UN Security Council authorization of force, the other is the right of self-defense found in Article 51. Article 51 refers to an "inherent" right of self-defense but also notes that self-defense arises "if an armed attack occurs."

In full, Article 51 states:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence **if an armed attack occurs** against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.¹⁴⁵

In a leading case, the ICJ held that the UN Charter and Article 51 are both part of customary international law and that the United States failed to comply when it used force against Nicaragua, where its evidence for self-defense showed only low-level shipments of weapons from Nicaragua to rebels fighting in El Salvador. The court found, "Whether self-defence be individual or collective, it can only be exercised in response to an "armed attack." The court

¹⁴³ United Nations General Assembly Resolution 37/43, *Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights* (December 3, 1982), <http://unispal.un.org/UNISPAL.NSF/O/BAC85A78081380FB852560D90050DC5F>

¹⁴⁴ Mary Ellen O'Connell, *The Right of Self-Defense*, Oxford Bibliographies Online (March 23, 2012), <http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0028.xml>

¹⁴⁵ United Nations, *Charter of the United Nations* (June 26, 1945), <http://www.yale.edu/lawweb/avalon/un/unchart.htm>

found that the weapons shipments, together with other factors, did not suffice to trigger self-defense: "The Court does not believe that the concept of "armed attack" includes assistance to rebels in the form of the provision of weapons or logistical or other support." In addition, the court found "whether the response to an attack is lawful depends on the observance of the criteria of the necessity and the proportionality of the measures taken in self-defence." In its decision, "the Court cannot find that the activities in question were undertaken in the light of necessity, and finds that some of them cannot be regarded as satisfying the criterion of proportionality."¹⁴⁶

As described in the O'Connell article,¹⁴⁷ ICJ opinions have generally required an actual armed attack to have occurred before self-defense under Article 51 applies. In addition, as with the case of Nicaragua, the ICJ has required adherence to necessity and proportionality to preserve the lawfulness of a response to an attack as self-defense.

Notwithstanding ICJ judicial opinions, the O'Connell article describes "scholarship and government policies that advocate expanding the right to use force beyond Article 51's provisions."¹⁴⁸ A paper, "[Principles Relevant to the Scope of a State's Right of Self-defense Against an Imminent or Actual Armed Attack by Nonstate Actors](#),"¹⁴⁹ by Sir Daniel Bethlehem QC, the principal Legal Adviser of the UK Foreign & Commonwealth Office from May 2006 to May 2011, argues that article 51 also includes the right to self-defense if an armed attack is "imminent." But there is a limit to even the expansion of Article 51 under this interpretation: "It is therefore the [UK] Government's view that international law permits the use of force in self-defence against an imminent attack but does not authorise the use of force to mount a pre-emptive strike against a threat that is more remote."¹⁵⁰ In addition, the Daniel Bethlehem article says,

two further conditions apply where force is to be used in self-defence in anticipation of an imminent armed attack. First, military action should be used only as a last resort. It must be necessary to use force to deal with the particular threat that is faced. Secondly, the force used must be proportionate to the threat faced and must be limited to what is necessary to deal with the threat."¹⁵¹

¹⁴⁶ International Court of Justice, *Case Concerning the Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)* (June 27, 1986), <http://www.icj-cij.org/docket/?sum=367&p1=3&p2=3&case=70&p3=5>

¹⁴⁷ Mary Ellen O'Connell, *The Right of Self-Defense*, Oxford Bibliographies Online (March 23, 2012), <http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0028.xml>

¹⁴⁸ *Id.*

¹⁴⁹ Daniel Bethlehem, *Principles Relevant to the Scope of a State's Right of Self-defense Against an Imminent or Actual Armed Attack by Nonstate Actors*, Sir Daniel Bethlehem QC, *The American Journal of International Law* [Vol. 106:000] (2012), <http://www.un.org/law/counsel/Bethlehem%20-%20Self-Defense%20Article.pdf>

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

Bethlehem also notes that the ordinary rules of war apply when acting in self defense: “Any use of force in self-defense would be subject to applicable *jus in bello* [rules of war that protect civilians] principles governing the conduct of military operations.”¹⁵²

The UK Government view is consistent with the Caroline Doctrine, articulated by then U.S. Secretary of State Daniel Webster in an attachment to a letter he sent to Lord Ashburton in 1841, which became established in international law as the specific criteria that must be in place for self-defense against an imminent attack to be legitimate. Members of the British Royal Navy had entered U.S. territory at night to attack the *SS Caroline*, a steam boat then moored on the New York side of the river that had been used by Canadian forces rebelling against British rule across the border in Canada. The British force seized the boat, set it on fire, and sent it adrift in the current so it floated over Niagara Falls to its destruction. The British argued that the attack was in self-defense. The [key paragraph from the letter attached by Secretary of State Daniel Webster](#) to his letter to Lord Ashburton stated:

... it will be for Her Majesty's Government to show, upon what state of facts, and what rules of national law, the destruction of the "*Caroline*" is to be defended. It will be for that Government **to show a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation.** It will be for it to show, also, that the local authorities of Canada, even supposing the necessity of the moment authorized them to enter the territories of the United States at all, **did nothing unreasonable or excessive;** since the **act justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it.** It must be shown that admonition or remonstrance to the persons on board the "*Caroline*" was impracticable, or would have been unavailing; it must be shown that daylight could not be waited for; that there could be no attempt at discrimination, between the innocent and the guilty; that it would not have been enough to seize and detain the vessel; but that there was a necessity, present and inevitable, for attacking her, in the darkness of the night, while moored to the shore, and while unarmed men were asleep on board, killing some, and wounding others, and then drawing her into the current, above the cataract, setting her on fire, and, careless to know whether there might not be in her the innocent with the guilty, or the living with the dead, committing her to a fate, which fills the imagination with horror. A necessity for this the Government of the United States cannot believe to have existed.¹⁵³

Let us assume for the moment that the most expansive extension of article 51 considered by the UK or provided in the Caroline Doctrine applies. However, as shown above, Hamas rocket fire was neither actually occurring nor imminent when Israeli forces launched a non-judicial execution in Gaza, killing a Hamas member and severely wounding three civilians on June 11,

¹⁵² *Id.*

¹⁵³ *British-American Diplomacy, The Caroline Case*, quoted from the extract of the April 24, 1841 letter to Mr. Fox, the British Minister at Washington, enclosed by Secretary of State Daniel Webster with his July 27, 1842 letter to Lord Ashburton, http://avalon.law.yale.edu/19th_century/br-1842d.asp#web1

2014. Nor when Israeli forces launched their massive assault on the West Bank and the additional attack on Gaza two days later on June 13, 2014. Nor during 2013 and during the first three months of 2014 when Hamas was maintaining its cease-fire and policing other groups although Israeli forces were continuing to launch lethal attacks. Just the opposite: As shown in the ITIC weekly reports cited herein, Israeli forces were able to continue and to escalate the assaults for several weeks beyond its June 11 attack on the West Bank and Gaza while Hamas maintained its side of the cease fire that it had been observing for more than 19 continuous months. Only after Israeli forces further escalated, launching a massive attack on 50 targets in Gaza on the night of July 6 and in the early morning hours of July 7, 2014, including the attack that killed the 6 Hamas members in a tunnel, did Hamas participate in and claim responsibility for rocket fire, ending its side of the cease-fire late on the night of July 7.

Nor were the Israeli attacks necessary to deal with Hamas and non-Hamas rocket fire: simply maintaining its side of the cease fire would have been far more effective. Nor were the Israeli attacks proportionate to the scale of the threat, even if Hamas rocket fire had been imminent, which it was not: The fact that Hamas only fired and claimed responsibility for rocket fire after weeks of Israeli attacks on the West Bank and Gaza, and then only after Israel targeted and killed Hamas members in Gaza, is inconsistent with either an actual attack or an imminent attack. Thus, even under the most liberal interpretation, Israeli forces cannot expect that international law provides any basis whatsoever for its claim of self-defense.

Nor would self-defense be legitimate in regard to the June 12 kidnapping and murder of the three Israeli teens. Even if the massive assaults on occupied Palestinian territory that began on June 13 were actually in response to the kidnapping, rather than the kidnapping being mere pretext for the political and military purposes described by Prime Minister Netanyahu in his July 4 speech and described in the article in *The Forward* by J.J. Goldberg,¹⁵⁴ the assaults would still have been illegal under the Fourth Geneva Convention, both as reprisal and as collective punishment. Furthermore, the assaults on the West Bank and Gaza were unreasonable and excessive, as locating the offenders required at most police investigation and police action, and not a massive military assault. The fact that the military attacks on the West Bank and Gaza were justified at the time only by hiding the recording of the emergency call that showed that the three teens had already been killed, and by creating hysteria about returning the boys alive, as described by J.J. Goldberg, means that the kidnapping was used as mere pretext for other objectives, rather than that Israel was acting in self-defense.¹⁵⁵

Israeli forces violated the rules of war: Even if Israel were not the occupying power, and even if this were an ordinary war against another country, rather than an attack on territory and people living under Israeli military control and occupation, and even if Israeli political and military leaders were actually responding to an armed attack, rather than initiating armed attack themselves, Israeli political and military leaders and military personnel would be subject

¹⁵⁴ J.J. Goldberg, *How Politics and Lies Triggered an Unintended War in Gaza*, Forward.com (July 10, 2014), <http://forward.com/opinion/israel/201764/how-politics-and-lies-triggered-an-unintended-war/>

¹⁵⁵ *Id.*

to prosecution if they violated the ordinary rules of war. Who started the war and why, whether or not national self-defense can be invoked, and whether or not illegal acts were committed by the other side are all irrelevant: the laws of war apply in any case.

Observing rules of war is essential to maintaining self-defense claim

In addition, as described above, adherence to the principles of distinction and proportionality are essential to a claim of self-defense. Thus, even if Israeli forces had not been first to launch attack, their claim to self-defense would have been invalidated by attacks targeting civilians and civilian property or attacks that were disproportionate compared to the military advantage from the attack.

Regarding the magnitude of Israel's assault on Gaza, the annual report of the United Nations High Commissioner for Human Rights states:

On the night of 7 July 2014, Israel announced the launch of the military operation in Gaza. Between 7 July and 26 August, according to the United Nations Department of Safety and Security, the IDF carried out 4,028 air raids, firing 5,830 missiles, as well as 16,507 artillery and tank projectiles and 3,494 naval shells. According to data compiled by the Protection Cluster, which is still being verified, a total of 2,256 Palestinians, including 1,572 civilians were killed during the summer's escalation in hostilities. Among these, 306 were women and 538 were children. According to the Palestinian Ministry of Health, 11,231 Palestinians (including 3,540 women and 3,436 children) were injured during the same period.¹⁵⁶

. . . During the escalation, 18,080 units, housing approximately 108,500 persons, were totally destroyed or severely damaged in the Gaza Strip and had become uninhabitable.¹⁵⁷

Regarding the 2168 people the Al Mazan Center for Human Rights' investigations reported killed in Gaza during Operation Protective Edge from July 7 to August 26, 2014, Al Mazan reports that "at least 999 people, including 329 children and 212 women, were killed inside their houses and two people with disability were killed in an attack on a rehabilitation center. Another 233 people were killed in the vicinity of their houses; many of these people were fleeing their homes as a result of IOF attacks."¹⁵⁸ Thus, more than half of those killed during the Israeli assault on Gaza were in or near their homes at the time they were killed. In addition, the

¹⁵⁶ UN Human Rights Council, *Human rights situation in Palestine and other occupied Arab territories*, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General (December 26, 2014), paragraph 24, <http://www.ohchr.org/Documents/Countries/PS/A.HRC.28.80.Add.1.doc>.

¹⁵⁷ *Id.* Paragraph 26

¹⁵⁸ Al Mezan Center for Human Rights, *Al Mezan Calls for Accountability for War Crimes and an End to Israel's Occupation of the Occupied Palestinian Territory*, press release (August 27, 2014), <http://www.mezan.org/en/post/19514>

Al Mazan numbers mean that more than half of those killed in their homes were women or children.

The Independent Commission of Inquiry established by the UN Human Rights Council released the report of its investigation on June 22, 2015.¹⁵⁹ The Independent Commission reported that the Israeli magazine, *Bayabasha* – what the *Jerusalem Post* calls the Israeli Ground Force Command’s magazine¹⁶⁰ – said that actually 14,500 tank shells and approximately 35,000 artillery shells had been fired at Gaza,¹⁶¹ triple the number reported by the UN High Commissioner for Human Rights.

The Israeli government report does not explain how the Israeli assault on Gaza, with a total of 50,000 wide-area explosive artillery and tank shells admitted by the Israeli Ground Force Command magazine, plus the 6000 wide-area bombs the Israeli government report says were delivered by airstrikes,¹⁶² plus the untold number of bullets and other projectiles fired by ground troops, plus the massive destruction implemented by bulldozers operated by Israeli ground troops, are consistent with the proportionality required to sustain a self-defense claim.

Regarding the explosive weapons, the Independent UN Commission report states:¹⁶³

Many explosive weapons, in particular artillery and mortars, have a wide-area effect, meaning that anyone or anything within a given area is likely to be killed, injured or damaged, owing to the scale of their blast and their imprecise nature. While not illegal as such, the use of these weapons in densely populated areas poses a high risk to the civilian population.

According to official Israeli sources, artillery was used in urban areas only on an exceptional basis, when these areas were known to have been largely evacuated. The incidents examined by the commission, however, demonstrate that artillery and other heavy weapons were widely used in residential neighbourhoods, resulting in a large number of casualties and extensive destruction. For instance, in Shuja’iya, the sheer number of 155 mm shells fired, the reported dropping of 120 one-ton bombs in a short amount of time in a densely populated area, and the use of a creeping artillery barrage

¹⁵⁹ Human Rights Council, *Report of the Independent Commission of Inquiry established pursuant to Human Rights Council resolution S-21/1* (June 15, 2015), http://www.ohchr.org/Documents/HRBodies/HRCouncil/ColGaza/A-HRC-29-52_en.doc

¹⁶⁰ Yaakov Katz, *Security and Defense: A new burden for the next chief*, *Jerusalem Post*, January 28, 2011, <http://www.jpost.com/Features/Front-Lines/Security-and-Defense-A-new-burden-for-the-next-chief>

¹⁶¹ *16 Facts about Operation Cast Lead*, *Bayabasha*, Ground Forces Magazine, No. 29 (October 2014) (available at <http://mazi.idf.il/6216-he/IGF.aspx>), p. 47 (in Hebrew).

¹⁶² State of Israel, *The 2014 Gaza Conflict: Factual and Legal Aspects* (released June 14, 2015), paragraph 21, <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>

¹⁶³ Human Rights Council, *Report of the Independent Commission of Inquiry established pursuant to Human Rights Council resolution S-21/1* (June 15, 2015), paragraphs 48 to 51, http://www.ohchr.org/Documents/HRBodies/HRCouncil/ColGaza/A-HRC-29-52_en.doc

raise questions with regard to the respect by the Israel Defense Forces of the rules of distinction, precaution and proportionality.

The extensive use by the Israel Defense Forces of explosive weapons with wide-area effects, and their probable indiscriminate effects in the built-up neighbourhoods of Gaza, are highly likely to constitute a violation of the prohibition of indiscriminate attacks.¹⁶⁴ Such use may, depending on the circumstances, qualify as a direct attack against civilians,¹⁶⁵ and may therefore amount to a war crime.¹⁶⁶

In addition, the fact that the Israel Defense Forces did not modify the manner in which they conducted their operations after initial episodes of shelling resulted in a large number of civilian deaths indicates that their policies governing the use of artillery in densely populated areas may not be in conformity with international humanitarian law.

War crimes defined by the [Rome Statute of the International Criminal Court](#)¹⁶⁷ include:

Extensive destruction of property not justified by military necessity

Willful killing of civilians

Even if the attack is justified by military necessity and even if the target is a military target, any attack that causes incidental loss of life to civilians or damage to civilian property or damage to the natural environment that would clearly be excessive in relation to the concrete and direct overall military advantage anticipated from the attack.

The Occupying Power transferring parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory

Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives

¹⁶⁴ Protocol I, art. 51, para. 4.

¹⁶⁵ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Galic*, case No. IT-98-29-T, judgment, (5 December 2003), para. 57.

¹⁶⁶ Rome Statute, art. 8.

¹⁶⁷ Rome Statute of the International Criminal Court, available at http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

The [Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War](#)¹⁶⁸ of August 12, 1949, which was ratified by Israel in 1951, protects civilians and civilian property in occupied territory, including by making reprisals and collective punishment illegal. Grave Breaches of the Geneva Conventions are included in the Rome Statute as war crimes.

Reports by independent human rights organizations indicate that Israeli forces:

- [Intentionally targeted civilians](#)^{169 170}
- [Deliberately targeted and destroyed civilian buildings and property on a large scale carried out without military necessity](#)¹⁷¹
- [Used weapons, such as artillery, that inherently could not be used in a way that distinguished civilian and military targets in the densely populated Gaza strip](#)^{172 173}
- [Used weapons that caused great suffering](#)¹⁷⁴
- [Interfered with ambulance workers seeking to care for the wounded](#)¹⁷⁵
- [Destroyed farms](#)¹⁷⁶

¹⁶⁸ International Committee of the Red Cross Treaties and States Parties to Such Treaties, *Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (August 12, 1949), <https://www.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>

¹⁶⁹ Human Rights Watch, *Gaza: Israeli Soldiers Shoot and Kill Fleeing Civilians, Fighting in Khuza'a Shows Grave Dangers to Families Seeking Safety* (August 4, 2014), <http://www.hrw.org/news/2014/08/04/gaza-israeli-soldiers-shoot-and-kill-fleeing-civilians>

¹⁷⁰ Defense for Children International Palestine, *Operation Protective Edge, A War Waged on Gaza's Children* (April 2015), <http://issuu.com/dcips/docs/ope.awarwagedonchildren.160415/1?e=0>

¹⁷¹ Amnesty International, *Families Under the Rubble - Israeli Attacks on Inhabited Homes* (November 5, 2014), <http://www.amnestyusa.org/research/reports/families-under-the-rubble-israeli-attacks-on-inhabited-homes-0>, Amnesty International, *Israel's destruction of multistory buildings: extensive, wanton and unjustified* (December 9, 2014), <https://www.amnesty.org/en/articles/news/2014/12/israels-destruction-multistorey-buildings-extensive-wanton-and-unjustified/>

¹⁷² Robert Perkins, *Under Fire, Israel's artillery policies scrutinized*, Action on Armed Violence (AOAV) (December 2014), <https://aoav.org.uk/wp-content/uploads/2015/03/AOAV-Under-Fire-Israels-artillery-policies-scrutinised.pdf>,

¹⁷³ Jutta Bachmann et al., *Gaza, 2014 Findings of an independent medical fact-finding mission*, Physicians for Human Rights-Israel (PHR-Israel), http://reliefweb.int/sites/reliefweb.int/files/resources/gazareport_eng.pdf

¹⁷⁴ Middle East Monitor, *Military Expert: Israel is using three internationally banned weapons in Gaza* (August 4, 2014), <https://www.middleeastmonitor.com/news/middle-east/13218-military-expert-israel-is-using-3-internationally-banned-weapons-in-gaza>

¹⁷⁵ Al-Haq Briefing Note VI: *Unlawful Attacks against Paramedics and Ambulances and Delays in the Delivery of Aid* (August 19, 2014), <http://www.alhaq.org/advocacy/topics/gaza/844-briefing-note-vi-unlawful-attacks-against-paramedics-and-ambulances-and-delays-in-the-delivery-of-aid>

¹⁷⁶ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), *Occupied Palestinian Territory: Gaza Emergency* (September 4, 2014), http://www.ochaopt.org/documents/ocha_opt_sitrep_04_09_2014.pdf, Ma'an

- [Targeted civilian facilities, including hospitals, schools, mosques, UN facilities, and government buildings serving civilian needs](#)^{177 178 179}
- [Engaged in reprisals against and collectively punished the entire civilian population of Gaza for acts they did not personally commit](#)¹⁸⁰

Detailed descriptions of such acts, personally observed, and provided in 111 testimonies by 60 Israeli officers and soldiers who participated in Operation Protective Edge in Gaza in 2014, including members of ground, naval, air force, headquarters, and command center units, and including both video¹⁸¹ and written¹⁸² testimonies, were posted by Breaking the Silence,¹⁸³ an organization of Israeli combat veterans. The June 14, 2015 Israeli government report omits mention of the testimony of these Israeli combat participants in the 2014 assault on Gaza and of the issues raised by these soldiers, and fails to address any of their first hand reports.¹⁸⁴

The Guardian posted a video of the testimony of an Israeli sergeant who served in a tank battalion regarding attacks on civilians and civilian property:

The night before the entrance [into Gaza] the commander took us all and started

News Agency, *Gaza poultry farming industry suffers \$10 million in losses* (September 5, 2014),

<http://www.maannews.com/Content.aspx?id=725623>

¹⁷⁷ Jutta Bachmann et al., *Gaza, 2014 Findings of an independent medical fact-finding mission*, Physicians for Human Rights-Israel (PHR-Israel), (January 20, 2015)

http://reliefweb.int/sites/reliefweb.int/files/resources/gazareport_eng.pdf

¹⁷⁸ Amnesty International, *Israel/Gaza: Attacks on medical facilities and civilians add to war crime allegations* (July 21, 2014), <https://www.amnesty.org/en/articles/news/2014/07/israelgaza-attacks-medical-facilities-and-civilians-add-war-crime-allegations/>

¹⁷⁹ Sudarsan Raghavan, William Booth and Ruth Eglash, *U.N. says Israel violated international law after shells hit school in Gaza*, Washington Post (July 30, 2014), http://www.washingtonpost.com/world/israel-presses-attack-16-killed-at-un-school/2014/07/30/4a643588-17a5-11e4-85b6-c1451e622637_story.html

¹⁸⁰ Marjorie Cohn, *Israel Inflicts Illegal Collective Punishment on Gaza*, Truthout, (July 14, 2014), <http://www.truthout.org/news/item/24953-israel-inflicts-illegal-collective-punishment-on-gaza>,

Rashid Khalidi, *Collective Punishment in Gaza*, The New Yorker (July 29, 2014), <http://www.newyorker.com/news/news-desk/collective-punishment-gaza>,

Palestinian BDS National Committee, *Israel must be held accountable for its collective punishment of Palestinians* (July 3, 2014),

<http://www.bdsmovement.net/2014/israel-must-be-held-accountable-for-its-collective-punishment-of-palestinians-12181>

¹⁸¹ Breaking the Silence, *Recent video testimonies from former soldiers*,

<http://www.breakingthesilence.org.il/testimonies/videos/?tzuk=1>

¹⁸² Breaking the Silence, *This is How We Fought in Gaza, Soldiers testimonies and photographs from Operation "Protective Edge"* (2014) (May 3, 2015) includes 111 written testimonies of over 60 soldiers who took part in Operation Protective Edge, including ground, naval, and air force members,

<http://www.breakingthesilence.org.il/pdf/ProtectiveEdge.pdf>

¹⁸³ "Breaking the Silence is an organization of veteran combatants who have served in the Israeli military since the start of the Second Intifada and have taken it upon themselves to expose the Israeli public to the reality of everyday life in the Occupied Territories." <http://www.breakingthesilence.org.il/about/organization>

¹⁸⁴ State of Israel, *The 2014 Gaza Conflict: Factual and Legal Aspects*, released June 14, 2015,

<http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>

briefing us about where we are going to go, what we are going to do, what the risks are, what's the danger, what we need to avoid, and the rules of engagement, too. The rules were, if we can see civilians, if we can see something 200 meters or closer to us, it's not a civilian at all. It's maybe a watcher for Hamas forces or a suicide bomber or just a terrorist. So we had no brief about civilians because if it is too close to us we can shoot to kill it."¹⁸⁵

The sergeant further testified:

One morning the commander took 6 tanks. We stood in a row in front of a ridge. He told us over the radio "good morning on the ridge. 3-2-1 fire." And the tanks fired on random buildings, on random targets. Most of our shooting was random. We did not think about civilian casualties and morals. Some people thought it's like a shooting range. Some people thought it's fun. Some did not think about it at all. I just thought it's really really bad to shoot on random targets.¹⁸⁶

Regarding destruction of civilian property, the Israeli government report asserts that IDF airborne and ground forces faced "residential homes converted to military command centers."¹⁸⁷ The report also asserts that "Israel *did not* intentionally target civilians or civilian objects."¹⁸⁸ However, the Israeli government report does not adequately describe the military advantage Israel obtained from the destruction of the 18,080 residential housing units that the United Nations High Commissioner for Human Rights and Secretary-General reported that Israeli forces had destroyed in Gaza during Operation Protective Edge.¹⁸⁹

The Breaking the Silence book includes several testimonies of Israeli soldiers describing the systematic destruction of residential housing and entire residential neighborhoods with D9 bulldozers that these soldiers witnessed or participated in:

An Israeli sergeant first class with a mechanized unit testified:

We knew that when we leave the neighborhood, it was clear to us that that the neighborhood was going to be flattened, because of its geographic location. We knew that we were entering a house and that we could be good kids, on our best behavior,

¹⁸⁵ The Guardian, *Israeli soldier testimony: 'Most of our shooting was random... we didn't think about civilian casualties' – video (May 4, 2015)*, <http://www.theguardian.com/world/video/2015/may/04/israel-breaking-the-silence-gaza-soldiers-testimony-video>

¹⁸⁶ *Id.*

¹⁸⁷ State of Israel, *The 2014 Gaza Conflict: Factual and Legal Aspects* (released June 14, 2015), paragraphs 6, 11, 27, 151, 153, 155, <http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/2014-Gaza-Conflict-Factual-and-Legal-Aspects.aspx>

¹⁸⁸ *Id.* paragraph 44

¹⁸⁹ Human Rights Council, *Human rights situation in Palestine and other occupied Arab territories*, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General (December 26, 2014), paragraph 24, <http://www.ohchr.org/Documents/Countries/PS/A.HRC.28.80.Add.1.doc>.

but even then a D9 (armored bulldozer) would show up and flatten the house. We figured out pretty quick that every house we leave, a D9 shows up and razes it. The neighborhood we were in, what characterized it operationally was that it commanded a view of the entire area of the [Israel-Gaza barrier] and also of some of the [Israeli] border towns. In the southern and some of the eastern parts of Juhar al-Dik, we understood pretty quickly that the houses would not be left standing. At no point until the end of the operation, until the unit commander debriefed us, did anyone explain to us the value of razing houses. During the talk the unit commander explained that it wasn't an act of revenge. That the houses situated on a high axis on this side of the ridge dominated the entire area between [the separation fence with] Israel and the neighborhood, and that is why they couldn't be left standing. They also overlook the Israeli towns and allow for them to be shelled with mortars. At a certain point we understood it was a pattern: you leave a house and the house is gone – after two or three houses you figure out that there's a pattern. The D9 comes and flattens it.¹⁹⁰

An Israeli first sergeant with a mechanized unit testified:

Before we entered we saw orchards on a slope, a low fence beyond them and then Juhar al-Dik up on this little hill. You've got the barrier [between Israel and the Gaza Strip] and then Juhar al-Dik is on some high ground that overlooks it, and it's very green. When we left after the operation, it was just a barren stretch of desert. Incredible. Of all the houses that were there, I think I saw maybe four or five still intact, or relatively intact. It was crazy. We spoke about it a lot amongst ourselves, the guys from the company, how crazy the amount of damage we did there was. I quote: "Listen man, it's crazy what went on in there," "Listen man, we really messed them up," "Fuck, check it out, there's nothing at all left of Juhar al-Dik, it's nothing but desert now, that's crazy."

What caused all the destruction?

Most of it was D9s (armored bulldozers). They just took down all the orchards. Not a single tree left. They worked on it for three weeks. When they didn't have a specific job like leading our way or opening up a specific route for us or some other mission, they just went and flattened things. I don't know what their specific order was, but they were on a deliberate mission to leave the area razed, flattened.

Houses, too?

Lots of houses. The D9s destroyed lots of houses.¹⁹¹

An Israeli first sergeant with an infantry unit testified:

We fired ridiculous amounts of fire, lots of it, and relatively speaking our fire was nothing. We had spike missiles (guided anti-tank missiles) and artillery, and there were

¹⁹⁰ *Id.* Testimony 09, pages 38-39.

¹⁹¹ *Id.* Testimony 18, pages 56-57.

three tanks with us at all times – and another two D9s (armored bulldozers). I don't know how they pulled it off, the D9 operators didn't rest for a second. Nonstop, as if they were playing in a sandbox. Driving back and forth, back and forth, razing another house, another street. And at some point there was no trace left of that street. It was hard to imagine there even used to be a street there at all. It was like a sandbox, everything turned upside down. And they didn't stop moving. Day and night, 24/7, they went back and forth, gathering up mounds, making embankments, flattening house after house. From time to time they would tell us about terrorists who had been killed.

Did you see any bodies?

No. But they told me lots of Hamas militants were killed, and I trust them.

What's left after two to three days of three to four barrages per day? What's left to shoot at?

You keep shooting at the same houses, at the same windows. When you shoot at a house it doesn't totally collapse. They stay standing. I was surprised by how long it takes until they fall. You can take down three walls and somehow they remain standing despite the fact that they're all blown to bits, it's all ruined. It's like "Call of Duty" (a first-person shooter video game). Ninety-nine percent of the time I was inside a house, not moving around – but during the few times we passed from place to place I remember that the level of destruction looked insane to me. It looked like a movie set, it didn't look real. Houses with crumbled balconies, animals everywhere, lots of dead chickens and lots of other dead animals. Every house had a hole in the wall or a balcony spilling off of it, no trace left of any streets at all. I knew there used to be a street there once, but there was no trace of it left to see. Everything was sand, sand, sand, piles of sand, piles of construction debris. You go into a house by walking up a sand dune and entering it through a hole in the second floor, and then you leave it through some hole in its basement. It's a maze of holes and concrete. It doesn't look like a street anymore. I really remember how every day we would get new aerial photos and every day a few more houses were missing from the map, and there would be these sandboxes instead.¹⁹²

These and other acts made certain Israeli political and military leaders, and those officers and soldiers who carried out the illegal acts, liable for violation of Articles 3, 16, 18, 20, 23, 27, 31-34, 53, 55, 56, 59, 60, 63, of the Fourth Geneva Convention, and for many of the grave breaches of that convention specified in Article 147. These acts also made them liable for violation of Articles 10, 12, 14, 15, 21, 35, 41, 48, 51-55, 57, 59, 75, of [Additional Protocol I of the Fourth Geneva Convention](#).¹⁹³ These acts also made them liable for violations of Articles 6, 7, and 8 of the Rome Statute.

¹⁹² *Id.* Testimony 21, pages 62-64.

¹⁹³ International Committee of the Red Cross Treaties and States Parties to Such Treaties, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)* (June 8, 1977), <https://www.icrc.org/ihl/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079>

In its June 22, 2015 report, the Independent Commission of Inquiry established by the UN Human Rights Council found possible violations of the rules of war, particularly by senior officials who set military policy.¹⁹⁴

The commission is concerned that impunity prevails across the board for violations of international humanitarian law and international human rights law allegedly committed by Israeli forces, whether it be in the context of active hostilities in Gaza or killings, torture and ill-treatment in the West Bank. Israel must break with its recent lamentable track record in holding wrongdoers accountable, not only as a means to secure justice for victims but also to ensure the necessary guarantees for non-repetition.

Questions arise regarding the role of senior officials who set military policy in several areas examined by the commission, such as in the attacks of the Israel Defense Forces on residential buildings, the use of artillery and other explosive weapons with wide-area effects in densely populated areas, the destruction of entire neighbourhoods in Gaza, and the regular resort to live ammunition by the Israel Defense Forces, notably in crowd-control situations, in the West Bank. In many cases, individual soldiers may have been following agreed military policy, but it may be that the policy itself violates the laws of war.

The commission's investigations also raise the issue of why the Israeli authorities failed to revise their policies in Gaza and the West Bank during the period under review by the commission. Indeed, the fact that the political and military leadership did not change its course of action, despite considerable information regarding the massive degree of death and destruction in Gaza, raises questions about potential violations of international humanitarian law by these officials, which may amount to war crimes. Current accountability mechanisms may not be adequate to address this issue.

Self-defense in the Rome Statute of the International Criminal Court: The Rome Statute recognizes self-defense against an imminent and unlawful use of force, provided the action taken in self-defense is reasonable and proportionate to the degree of danger. Article 31(1) of the statute states:

In addition to other grounds for excluding criminal responsibility provided for in this Statute, a person shall not be criminally responsible if, at the time of that person's conduct:

¹⁹⁴ Human Rights Council, *Report of the Independent Commission of Inquiry established pursuant to Human Rights Council resolution S-21/ (June 15, 2015)*, paragraphs 76-78, http://www.ohchr.org/Documents/HRBodies/HRCouncil/ColGaza/A-HRC-29-52_en.doc

. . . (c) The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility.¹⁹⁵

Thus, according to the second sentence of Article 31(1)(c) of the Rome Statute, participating in a defensive operation does not immunize those involved from responsibility if they engaged in criminal acts. Even if the facts showed that Israel was responding to a rocket attack rather than attacking before any rockets were launched against Israel, and even if the law established by the International Court of Justice allowed the Israeli occupying authority to claim self-defense under Article 51 of the UN Charter for actions within occupied territory, and even if the Israeli response was necessary, and even if the Israeli response was otherwise proportionate to the degree of danger, nothing in the Rome Statute would automatically exempt Israeli political leaders and military personnel from criminal responsibility for ordering or carrying out such defensive operations if the defensive operations, as conducted by some or all of its forces, included violations of the Rome Statute, such as by targeting civilians or civilian property, using weapons in heavily populated areas that are inherently incapable of being targeted to distinguish civilian from military objectives, and going forward with attacks in which the foreseeable damage to civilians or civilian property is disproportionate to the anticipated military advantage.

Illustrating this point, in the *Kordic & Cerkez* case,¹⁹⁶ the International Criminal Tribunal for Yugoslavia Trial Chamber adopted the principle of self-defense enshrined in Article 31(1)(c) of the Rome Statute as “reflects provisions found in most national criminal codes and may be regarded as constituting a rule of customary international law.” In response to the argument that Bosnian Croats “fought a war of self-defence,”¹⁹⁷ the court held:

452. Of particular relevance to this case is the last sentence of the above provision to the effect that the involvement of a person in a “defensive operation” does not “in itself” constitute a ground for excluding criminal responsibility. It is therefore clear that any argument raising self-defence must be assessed on its own facts and in the specific circumstances relating to each charge. The Trial Chamber will have regard to this condition when deciding whether the defence of self-defence applies to any of the charges. The Trial Chamber, however, would emphasise that military operations in self-

¹⁹⁵ Rome Statute of the International Criminal Court, available at http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

¹⁹⁶ International Criminal Tribunal for the Former Yugoslavia (ICTY), *Kordic and Cerkez* Trial Judgment (February 26, 2001), http://www.icty.org/x/cases/kordic_cerkez/tjug/en/kor-tj010226e.pdf

¹⁹⁷ *Id.*

defence do not provide a justification for serious violations of international humanitarian law.¹⁹⁸

The blockade is collective punishment and an act of aggression: In addition, the blockade Israel implemented against Gaza, denying food, medicine, fuel, water purification equipment, and other necessities, constitutes collective punishment, another violation of Article 33 of the Fourth Geneva Convention. In addition, Article 3 of UN General Assembly Resolution 3314 states that “the blockade of the ports or coasts of a State by the armed forces of another State” qualifies “as an act of aggression.”¹⁹⁹ While Palestine may not yet be a fully developed state, an occupying power, such as Israel, owes the territories it occupies, such as Gaza, a greater duty than it owes to other states. Under Article 55 of the Fourth Geneva Convention:

To the fullest extent of the means available to it the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.²⁰⁰

Because of its greater duty as occupying power over the territory of another state, the Israeli government blockade of Gaza qualifies as a more egregious violation than were it merely engaging in a normal form of aggression by blockading another state. Thus, even were there no other attacks by Israeli forces, the blockade alone would disqualify Israeli political and military leaders from a self-defense claim.

Conference of High Contracting Parties: A Conference of High Contracting Parties to the Fourth Geneva Convention held in Geneva, Switzerland on December 17, 2014 [issued a declaration](#) that among other things states:

The participating High Contracting Parties reiterate the need to fully respect the fundamental principles of international humanitarian law, according to which all parties to the conflict, and as such also non-State actors, must respect, at all times, inter alia, (1) the obligation to distinguish between civilians and combatants and between civilian objects and military objectives, (2) the principle of proportionality, and (3) the obligation to take all feasible precautions to protect civilians and civilian objects.²⁰¹

¹⁹⁸ *Id.*

¹⁹⁹ United Nations General Assembly, Resolution 3314, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf?OpenElement>

²⁰⁰ International Committee of the Red Cross Treaties and States Parties to Such Treaties, *Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (August 12, 1949), <https://www.icrc.org/ihl/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>

²⁰¹ Conference of High Contracting Parties to the Fourth Geneva Convention Declaration (17 December 2014), <http://www.news.admin.ch/NSBSubscriber/message/attachments/37764.pdf>

War Crimes, Genocide, and Crimes against Humanity: An article, "[US Leaders Aid and Abet Israeli War Crimes, Genocide & Crimes against Humanity](#),"²⁰² by Marjorie Cohn, published on August 8, 2014, and [a letter to the prosecutor of the International Criminal Court](#),²⁰³ dated August 22, 2014 from Azadeh Shahshahani, president of the National Lawyers Guild, and several co-signers, more fully describe violations of the Rome Statute and Fourth Geneva Convention by Israeli political leaders and military personnel, and U.S. complicity in these violations.

A report, "[Operation Protective Edge, a War Waged on Gaza's Children](#)," by Defense for Children International Palestine, further describes violations.²⁰⁴

A report issued by UN Secretary General Ban Ki-Moon, "[Children and Armed Conflict, Report of the Secretary General](#),"²⁰⁵ submitted pursuant to a UN Security Council resolution, cites "devastating impacts for children" in Palestine, and states,

In Gaza, in a period of 50 days between 8 July and 26 August, at least 540 Palestinian children were killed (340 boys; 200 girls; aged between one week and 17 years, with almost 70 per cent of these younger than 12 years).

The Secretary General's report further states:

The Israeli bombardments resulted in residential properties, schools and hospitals destroyed or severely damaged, causing civilian deaths and injuries. This is in addition to reports of Palestinian civilians and civilian objects being directly hit in circumstances where there was allegedly no rocket fire or armed group activity in the vicinity. This raises serious concern over the observance of the rules of international humanitarian law concerning the conduct of hostilities, including the principles of distinction, precaution and proportionality.

It also reports, "At least 2,955 Palestinian children were injured in Gaza. Preliminary estimates indicate that up to 1,000 of the children will be permanently disabled."

The Secretary General's report provided information on specific instances, including:

²⁰² Marjorie Cohn, *US Leaders Aid and Abet Israeli War Crimes, Genocide & Crimes against Humanity*, JURIST - Forum (August 8, 2014), <http://jurist.org/forum/2014/08/marjorie-cohn-israel-crimes.php>.

²⁰³ Azadeh Shahshahani, President, National Lawyers Guild, et al., *Letter to the Right Honorable Ms. Fatou Bensouda, Prosecutor of the International Criminal Court* (August 22, 2014), <https://www.nlg.org/sites/default/files/Letter%20to%20ICC%20Prosecutor%20Gaza%20FINAL.pdf>

²⁰⁴ *Operation Protective Edge, A War Waged on Gaza's Children*, Defense for Children International (April 2015), <https://d3n8a8pro7vnm.cloudfront.net/dcipalestine/pages/530/attachments/original/1430692429/operationprotectiveedge.awarwagedonchildren.160415.pdf?1430692429>

²⁰⁵ United Nations Secretary General, *Children and Armed Conflict, Report of the Secretary General*, A/69/926-S/2015/409 (June 5, 2015), http://www.un.org/ga/search/view_doc.asp?symbol=A/69/926&Lang=E&Area=UNDOC

On 16 July, four children, aged nine to 11, were killed on a beach in Gaza City. According to eye witnesses and video footage, one child hid in an empty building, and was killed by an air strike. The other three children were hit by a shell fired from the sea, killing them and injuring two others. No military targets could be identified in the apparently calm area and no rockets were fired towards Israel from that location at that time.

On 20 July, an Israeli air strike hit a residential building in Bani Suhaila, killing 25 family members, including 19 children and three pregnant women. Surviving members testified that they had received no prior warning from the ISF [Israeli Security Forces]. The Military Advocate General (MAG) opened a criminal investigation.

Palestinian children also were killed in drone strikes. On 10 July, a five-year-old boy was hit by a missile fired by a drone in Deir Al Balah. On 23 July, a drone killed a nine-year-old boy seeking shelter in Beit Lahiya. At the time of the attacks, there were no reports of military activity near the homes.

. . . On 23 July, a 17-year-old Palestinian boy was taken by the ISF from his home near Khan Younis and forced at gunpoint to search for tunnels. The boy reported being interrogated, abused, and used to extract information about Hamas members.

. . . The United Nations obtained affidavits of 122 Palestinian children from the West Bank detained by the ISF who stated they were subjected to ill-treatment, such as beating, hitting with sticks, blindfolding, kicking, verbal abuse and threats of sexual violence. At least 700 children were arrested in East Jerusalem, 70 of whom were under the age of 13. The United Nations received 18 affidavits from Palestinian children reporting ill-treatment by the Israeli Police and the Border Police.

. . . In Gaza, between 8 July and 26 August, at least 262 schools were damaged in Israeli airstrikes. Three public schools were completely destroyed, and at least 23 were severely damaged. In addition, 274 kindergartens were damaged.

Of the 83 United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) school buildings that were damaged due to Israeli airstrikes and shelling nearby, seven schools being used as shelters were either directly hit or struck by airstrikes or shelling, resulting in at least 42 persons killed, including 16 children, and about 230 persons injured. In May, the United Nations shared a list of its facilities with the Government of Israel, which was further discussed with government entities in July. During hostilities in July and August, UNRWA provided the Israeli authorities with real-time information identifying those installations that were being used as Designated Emergency Shelter and Places of Temporary Refuge. Despite such information, on 24 July, the UNRWA Beit Hanoun Elementary Co-ed A and D school sheltering some 450 IDPs [internally displaced person] at the time, was hit by IDF mortar fire, resulting in the killing of at least 12 people, including six children, and injuring over 90 others. The location of the school was provided to Israeli authorities by United Nations staff on 12

separate occasions over the seven days leading up to the incident, including the day of the incident itself. Intense military activity was reported in the vicinity of the school prior to, but not at the time of, the incident. The IDF launched a criminal investigation.

On 30 July, artillery projectiles struck UNRWA's Jabalia Elementary Girls A and B School, killing at least 17 persons, including one United Nations staff, and injuring 99 persons sheltering inside. The school's coordinates had been formally conveyed to the Israeli authorities on at least 28 occasions over a fourteen-day span, including the night before the incident.

On 25 August, two Government schools were attacked and destroyed by airstrikes. In addition to the July and August incidents, seven instances of attacks on schools were reported throughout the rest of the year.

. . . Between 8 July and 26 August, 17 of the 32 hospitals in Gaza were damaged by Israeli airstrikes or shelling. One hospital and 58 primary health clinics were destroyed. For instance, on 21 July, Al-Aqsa Martyrs Hospital was directly hit numerous times, killing three people and injuring 40. Reportedly, no warning of the attack was given. The ISF claimed that the target was a cache of missiles in the hospital's immediate vicinity. This attack raises concerns about observance of the special protection accorded to hospitals under international law.

. . . *Israel has repeatedly claimed that its military operation in Gaza was in response to rocket fire into Israel* and that it was conducted in full compliance with its international obligations. However, I am deeply alarmed at the extent of grave violations suffered by children as a result of Israeli military operations in 2014. The unprecedented and unacceptable scale of the impact on children in 2014 raises grave concerns about Israel's compliance with international humanitarian law, notably the principles of distinction, proportionality and precaution in attack, and respect for international human rights law, particularly in relation to excessive use of force. It is of particular concern that "Operation Protective Edge" was the third major Israeli military operation in Gaza within six years. The cumulative impact on children and the civilian population in general of these military operations, and the ongoing military occupation in the State of Palestine, is devastating. As this report sets out, the number of Palestinian children killed (557) is the third highest in 2014 after the number of children killed in (I) Afghanistan (710) and (II) Iraq (679), and before (IV) Syria (368) and (V) Darfur (197). The number of schools damaged or destroyed in the State of Palestine (at least 543) was the highest recorded number of all situations in 2014. [emphasis added]

The U.S. State Department's *Country Reports on Terrorism 2014* released June 2015, states, regarding Operation Protective Edge (OPE) during the July 7 to August 26 Gaza conflict:

The Government of Israel reported that during OPE it conducted over 5,240 airstrikes in Gaza and carried out a 20-day military ground operation within Gaza. According to

publicly available data, the conflict led to the deaths of 2,205 Palestinians and 74 persons in Israel, among them 67 soldiers, six Israeli civilians, and one Thai civilian. The Israeli government estimated that half of those killed in Gaza were civilians and half were combatants, while the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) recorded 1,483 civilian Palestinian deaths – more than two-thirds of those killed – including 521 children and 283 women.²⁰⁶

A 28 page report, “[No More Impunity: Gaza’s Health Sector under Attack](#)”²⁰⁷ issued by the Al Mezan Center for Human Rights, Lawyers for Palestinian for Human Rights (LPHR), and Medical Aid for Palestinians (MAP) provides first hand descriptions of some of the attacks by Israeli forces that damaged or destroyed 17 hospitals and 56 primary health care clinics and 45 ambulances in Gaza during its 2014 assault. One hospital – the Al-Wafa Rehabilitation hospital – and five primary health clinics were totally destroyed. Israeli forces killed 16 and injured 83 health workers in these attacks. The report presents specific cases and findings, including:

- An attack in the Msabbeh neighbourhood of Gaza on August 1, 2014, in which Israeli forces engaged in a “double tap:” firing additional munitions from a drone as health care workers rushed to the scene of an earlier attack. Israeli forces thereby killed 3 ambulance and medical personnel and a 23 year old mother and her three children and an unidentified person. A video in which a paramedic who arrived in a second ambulance and describes the results of the attack on the first ambulance to arrive is available at <https://www.youtube.com/watch?v=fyPXZZgAbUA>.²⁰⁸ The double tap illustrates a technique repeatedly used by Israeli forces that the report says foreseeably increased the number of civilians, including ambulance crews and medical workers, killed and wounded. In several situations, including the attack on Al Aqsa hospital, an initial strike was subsequently followed up by additional missiles nearby, causing many more casualties as people rushed to help the wounded from the first strike. In some of these double taps, staircases or entrances in multistory buildings would be hit several times whilst evacuations were taking place, leading to further casualties.
- Israeli forces obstructed access by an ICRC ambulance to a severely wounded 7 year old boy in the Khuza’a neighborhood on July 24. Then, after nearly 4 hours of delay, when finally allowed through to reach the boy and load him aboard, Israeli forces further delayed that ambulance for another ½ hour at a checkpoint, a few minutes after which

²⁰⁶ The U.S. State Department *Country Reports on Terrorism 2014*, United States Department of State Publication, Bureau of Counterterrorism, released June 2015, <http://www.state.gov/documents/organization/239631.pdf>

²⁰⁷ Al Mezan Center for Human Rights, Lawyers for Palestinian for Human Rights (LPHR), and Medical Aid for Palestinians (MAP), *No More Impunity: Gaza’s Health Sector under Attack* (June 26, 2015), <http://lphr.org.uk/wp-content/uploads/2015/06/No-More-Impunity-Gazas-Health-Sector-Under-Attack.pdf>, a news release with contact information for spokespeople from the three organizations is available at <http://lphr.org.uk/latest-news/new-report-highlights-attacks-on-gazas-hospitals-and-medics-in-2014-military-offensive-2/>

²⁰⁸ Medical Aid for Palestinians (MAP), video: *No More Impunity: Gaza’s ambulances under attack* (June 25, 2015), <https://www.youtube.com/watch?v=fyPXZZgAbUA>

time he died. The case illustrated one example of the experience the 511 Palestinians who died (among the 2,117 killed and 10,670 wounded) without medical assistance due to Israeli forces delaying access by the ambulance and then obstructing transit of the ambulance and its wounded passenger.

- Israeli forces fired directly on ambulances and medical workers, as illustrated by the shooting of an ambulance driver in the chest and foot while responding to a call to rescue a wounded man – despite the ambulance previously receiving permission for that mission from the Israeli Defense Force, as coordinated through the ICRC. Following further coordination and approval by the IDF, two more ambulances arrived to save the original victim and the wounded ambulance driver. Israeli forces shot at those ambulances, and during the delay the ambulance driver bled to death.
- Illustrating attacks on medical facilities, using artillery, Israeli forces shelled Al Aqsa Hospital in the town of Deir Al Balah on July 21, 2014, killing two people, including one child, and wounding tens of others, including five medical personnel. Also using artillery, Israeli forces shelled the Al-Wafa Rehabilitation Hospital in the eastern part of the Shujaiyya neighbourhood, 1.5km from the border with Israel, starting on July 11. Israeli forces resumed shelling Al-Wafa hospital on July 17 which led to power cuts and fires on three floors, and patients were evacuated. On July 23 the hospital was totally destroyed after an attack by Israeli airplanes. Israeli forces also directly attacked and destroyed the Mebarret Al Rahma Centre for People with Disabilities, killing two disabled women and severely wounding three disabled residents and a care worker on July 12. The Israeli military had been repeatedly given coordinates of all hospitals and medical facilities in advance of the fighting.

The Al Mazan-LPHR-MAP report calls for an international response to put an end to impunity for attacks on civilians, medical facilities and medical personnel in order to deter recurrence of these attacks in the future.

On June 14, 2015, the Israeli Military Advocate General (MAG) published its decision to close, without any prosecutions, three claims relating to Operation Protective Edge.²⁰⁹ One of the closed cases was described in the report by the UN Secretary General, the killing of the four children, aged nine to 11, on a beach in Gaza City on 16 July, 2014.

As reported by *The Boston Globe* on June 13, 2015:

The Israeli military has decided not to pursue criminal charges against soldiers involved in missile strikes in the Gaza Strip last summer that killed four children playing on a

²⁰⁹ Palestinian Center for Human Rights, *Israeli MAG Again Orders Closing Three Claims Relating to War Crimes*, PCHR press release (June 15, 2015), http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=11105:-israeli-mag-again-orders-closing-three-claims-relating-to-war-crimes&catid=36:pchrpressreleases&Itemid=194

beach. The Military Advocate General Corps investigated the incident, which took place on July 16 in view of the hotels where international journalists were staying, and concluded that there was no criminal wrongdoing.²¹⁰

The Globe notes, “If crimes were committed but if Israel is pursuing the matter in an open judicial manner, the ICC prosecutors may conclude that there is no reason to become involved.”

However, PCHR said the evidence points otherwise:

The justifications presented by MAG, the claim that what happened complied with the international law and the statement made by the Israeli Prime Minister Benjamin Netanyahu during the Cabinet meeting yesterday, 14 June 2015, that the acts carried out by the Israeli army during the war on Gaza were based on the international law are all against reason and logic and definitely confirm the inherent flaws in the Israeli investigation system, which offers a legal cover for war crimes.

The International Federation for Human Rights (FIDH)²¹¹ issued a 76 page report, “[Trapped and Punished: The Gaza Civilian Population under Operation Protective Edge](#),”²¹² in March 2015 based on an FIDH fact-finding mission to Gaza in October 2014 that was followed by an FIDH mission to Israel and the West Bank. The report provides detailed evidence of the following:

The widespread killing of civilians (murder) has been amply documented throughout this report. The same can be said for the destruction of life-sustaining infrastructure, the denial of retrieve and rescue missions, bombing campaigns and preemptive warnings causing a massive flux of civilians to flee residences and neighbourhoods, the development of a policy and practice of issuing threats, and imposing harsh living conditions, fear, distress and humiliation on the entire population of Gaza. These acts fall within the elements of the definition of crime against humanity

The crime of extermination is understood as killing of a collective nature, either directly or indirectly, including by “*the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population*”.²¹³ The directed destruction within a mere 50 days of infrastructure providing electricity, healthcare, water and sewage treatment, among others, within the context of documented mass killings, presents elements consistent with the crime of extermination.

²¹⁰ William Booth, *Israel rules out charges in deaths of four children in Gaza missile strike*, Boston Globe (June 13, 2015), <https://www.bostonglobe.com/news/world/2015/06/12/israel-rules-out-charges-deaths-four-children-gaza-missile-strike/tWHR9C7sIBPe4iWazHBtLI/story.html>

²¹¹ FIDH represents 178 human rights organizations on 5 continents.

²¹² The International Federation for Human Rights (FIDH), *Trapped and Punished: The Gaza Civilian Population under Operation Protective Edge* (March 27, 2015), https://www.fidh.org/IMG/pdf/report_gaza_fidh_march_2015.pdf

²¹³ Article 7(1)(b) of the Rome Statute

The crime of deportation or forcible transfer of population is, according to the ICC's Elements of Crimes, synonymous with the term "*forcibly displaced*". Expulsion or other "*coercive acts*" are not restricted to the use of physical force, and may also be carried out through the threat of force or coercion, through the use of, *inter alia*, fear of violence and duress. The displacement of approximately 30 per cent of the population of the Gaza Strip during Operation Protective Edge through military offensives and the use of an unreliable, ineffective and inconsistent warning system is consistent with the implementation of such coercive acts.

The crime of persecution under Article 7(1)(h) adds a discriminatory element to other crimes against humanity, and must be linked to one or more of the other acts characterized as crimes under Article 7, based on "*political, racial, national, ethnic, cultural, religious, gender [...] or other grounds [...]*". The evidence presented suggests that other crimes against humanity, such as murder, were not only committed against civilians, but rather civilians were targeted specifically for being Palestinians, as a form of collective punishment, which is impermissible under international law.

. . . Evidence presented shows that Israel engaged in both indiscriminate attacks disproportionately affecting civilians and civilian objects as well as direct attacks against civilians and civilian objects, notably houses, schools and additional civilian infrastructure, all of which are war crimes under international humanitarian law and the aforementioned provisions of the Rome Statute. Evidence also suggests that Israel directly targeted ambulances, paramedics and healthcare facilities, killing or injuring emergency and healthcare workers and destroying medical property afforded special protection under international humanitarian law.

In a report, "[Divide and Conquer - A Legal Analysis of Israel's 2014 offensive against the Gaza Strip](#)," the Palestinian legal organization Al Haq suggests an underlying motivation for Israel's assaults on Gaza and the West Bank quite different from self-defense:

The timing of the military operations in the Gaza Strip and West Bank [starting just 11 days after the formation of the Palestinian unity government], Israel's rhetoric, as well as its large-scale and indiscriminate conduct, strongly indicates that Israel's military operations were punitive in nature and motivated by Palestinian reconciliation. In both operations the entire Palestinian population was made to bear the brunt of Israel's actions. As such, Israel's 2014 offensive on the Gaza Strip forms part of Israel's overarching policy of separating the OPT [Occupied Palestinian Territory] and its Palestinian population with the desired end-goal of conquering the entire territory.²¹⁴

²¹⁴ Dr. Susan Power and Nada Kiswanson van Hooydonk, *Divide and Conquer - A Legal Analysis of Israel's 2014 offensive against the Gaza Strip*, Al Haq (2015) <http://www.alhaq.org/publications/DIVIDE.AND.CONQUER.pdf>

Aggression: Because the facts show that Israeli forces initiated the combat, Israeli political and military leaders should be held accountable for crimes against peace, including the crime of aggression. The U.S. government, its political and military leaders, and its corporate military suppliers should be held accountable for equipping and resupplying the Israeli forces.

Israel failed to observe its obligation under Article 2 of the [UN Charter](#)²¹⁵ to settle its disputes by peaceful means and refrain from the threat or use of force. Instead Israel chose to use military force in violation of the effective cease-fire in place. The existence of the successful cease-fire, and the fact that Hamas had observed the cease-fire and had not fired any rockets since the end of Operation Pillar of Defense on November 21, 2012 demonstrated that peaceful resolution was possible and that a military assault was not necessary. Nor did Israel observe Articles 33 to 38 of the UN Charter that describe the mechanisms Israel could have chosen for peaceful resolution of issues that arose during the cease-fire.

Israel is also subject to obligations under the [Nuremberg Principles](#)²¹⁶ that set out as punishable under international law the crime against peace for “planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances.”

Aggression is defined in UN General Assembly (UNGA) Resolution 3314:²¹⁷

Article 1: Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.

Article 2: The First use of armed force by a State in contravention of the Charter shall constitute prima facie evidence of an act of aggression. . .

. . . Article 5:

1. No consideration of whatever nature, whether political, economic, military or otherwise, may serve as a justification for aggression.

2. A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.

²¹⁵ United Nations, *Charter of the United Nations* (June 26, 1945),

<http://www.yale.edu/lawweb/avalon/un/unchart.htm>

²¹⁶ International Committee of the Red Cross Treaties and States Parties to Such Treaties, *Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal, 1950*, adopted by the International Law Commission of the United Nations (July 29, 1950),

<https://www.icrc.org/applic/ihl/ihl.nsf/xsp/.ibmmodes/domino/OpenAttachment/applic/ihl/ihl.nsf/854DDAACFD.E285E4C12563CD002D6B95/FULLTEXT/IHL-58-EN.pdf>

²¹⁷ United Nations General Assembly, Resolution 3314, <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/739/16/IMG/NR073916.pdf?OpenElement>

3. No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful.

A noteworthy exception is provided in Article 7 for those forcibly deprived of the right to self-determination, freedom and independence, particularly those living under colonial and racist regimes or other forms of alien domination:

Article 7: Nothing in this Definition, and in particular article 3 [which lists acts of aggression including invasion, occupation, annexation, bombardment or use of other weapons, and blockade of the ports or coasts], could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist regimes or other forms of alien domination: nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.²¹⁸

The first use of armed force by Israel was both in violation of the cease-fire agreements or assurances Israel had given and in contravention of Article 2 of the UN Charter,²¹⁹ which is an international treaty. The Israeli assault on the West Bank from June 13 to June 30 and the repeated bombing of Gaza before Hamas rockets were launched from Gaza may make Israeli political and military leaders liable under the Nuremberg Principles for their act of aggression and for the escalation by Israeli forces into the full scale air and ground attack on Gaza that followed.

However, the ICC does not yet have jurisdiction cover acts of aggression: While member states of the International Criminal Court at a Review Conference in Kampala in 2010 adopted by consensus amendments to the Rome Statute that include a definition of the crime of aggression and a regime establishing how the court would exercise its jurisdiction over this crime, a sufficient number of countries have not yet ratified the [law regarding the crime of aggression](#).²²⁰ The court's jurisdiction over the crime of aggression may be activated after January 1, 2017 if 30 countries ratify or accept the amendments and 2/3 of the states parties activate jurisdiction. So a charge of aggression cannot be brought before the ICC at this time.

But as the facts show that Israeli forces initiated attacks before Hamas and non-Hamas groups fired any rockets, Israeli officials should at least not be permitted to use self-defense to shield themselves from violations of the Fourth Geneva Convention and from the crimes that can now

²¹⁸ *Id.*

²¹⁹ United Nations, *Charter of the United Nations* (June 26, 1945), <http://www.yale.edu/lawweb/avalon/un/unchart.htm>

²²⁰ Coalition for the International Criminal Court, *The Crime of Aggression*, includes description of and a link to the amendments to the Rome Statute adopted by consensus at the Kampala Review Conference (May 31 to June 11, 2010) <http://www.iccnw.org/?mod=aggression>

be brought before the ICC under the Rome Statute, including war crimes, crimes against humanity, and genocide.

Self-defense claim critical for legitimacy: A report by a highly respected Israeli think tank explained the crucial importance of legitimacy for Israeli officials to have the freedom to conduct future military action. The report, "[Building a Political Firewall Against Israel's Delegitimization](#),"²²¹ was the product of a year of research by a team of Tel Aviv-based [Reut Institute](#)²²² investigators and includes contributions from more than 100 individuals in Israel, the United Kingdom, and the United States.

The Reut Institute report states that the Israeli government requires the ability to continue launching "harsh military responses in case of future provocations across the border." (par. 106).

As described in an article, "[Israeli Think Tank Calls for Sabotaging 'Delegitimizers' of Israel](#),"²²³ by the present author, the Reut Institute report says that in the past the Israeli government was successful at using peace moves to obtain the legitimacy it needed for its next war, but admits that its widely publicized withdrawals from Lebanon in 2000 and Gaza in 2005 were not effective to achieve legitimacy for its attack on Lebanon in 2006 or for its 2008-2009 attack on Gaza, Operation Cast Lead.

The Reut Institute report further asserts that the failure of those two withdrawals to achieve legitimacy for that 2008-2009 attack on Gaza had consequences that accelerated the delegitimization. For example, the Reut Institute report notes that "following Operation Cast Lead," the intense criticism of the Israeli government "was expressed in the Goldstone report²²⁴ and in legal proceedings against IDF officers and Israeli politicians."²²⁵ The Reut Institute report states as one consequence that the legal proceedings restricted Israeli military and political leaders' freedom to travel "due to application of universal legal jurisdiction."²²⁶ The Reut

²²¹ The Reut Institute, *Building a Political Firewall Against Israel's Delegitimization Conceptual Framework*, Version A, Submitted to the 10th Herzliya Conference (Adar 5770 March 2010), <http://reut-institute.org/data/uploads/PDFVer/20100310%20Delegitimacy%20Eng.pdf>

²²² The Reut Institute, about the Reut Institute, <http://www.reut-institute.org/en/Publication.aspx?PublicationId=4109>

²²³ James Marc Leas, *Israeli Think Tank Calls for Sabotaging 'Delegitimizers' of Israel*, Counterpunch.org (May 21-23, 2010), <http://www.counterpunch.org/2010/05/21/israeli-think-tank-calls-for-sabotaging-quot-delegitimizers-quot-of-israel/>

²²⁴ Justice Richard Goldstone et al, United Nations Human Rights Council, *Report of the United Nations Fact-Finding Mission on the Gaza Conflict* (September 28, 2009), <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>

²²⁵ The Reut Institute, *Building a Political Firewall Against Israel's Delegitimization Conceptual Framework*, Version A, Submitted to the 10th Herzliya Conference (Adar 5770 March 2010), <http://reut-institute.org/data/uploads/PDFVer/20100310%20Delegitimacy%20Eng.pdf>

²²⁶ *Id.*

Institute report also admits that even “the Jewish world is growing more distant from Israel” and that “criticism of Israel is more prevalent within the Jewish world than in the past.”²²⁷

In international public opinion, Israel is increasingly branded as a violent, aggressive, and occupying state that tramples on human and civil rights. This leads to a situation in which it can be easily equated with the apartheid regime and depicted as the moral equivalent of terror organizations (par. 106).²²⁸

Thus, one of the most authoritative think tanks in Israel explained the crucial importance of retaining and regaining legitimacy. The self-defense claim touted by Israeli and U.S. officials was not just crucial to justify the recent attacks on the West Bank and Gaza but also to obscure and trump war crimes allegations to avoid substantial further self-inflicted loss of legitimacy and to avoid the resulting loss of freedom to act militarily the loss of legitimacy brings.

Conclusion

Both facts and law refute the Israeli self-defense claims:

The Israeli government's violation of the cease-fire and its lethal assaults on the West Bank and Gaza starting June 11 and June 13 preceded Hamas rocket fire by several weeks. As reported by the ITIC and Israeli newspapers, Hamas maintained its cease-fire from November 2012 for 19 months until July 7 (with the possible exception of a salvo on June 30, 2014). The Israeli government's escalation of its attacks and its killing of Hamas members in Gaza on June 30 and on the night of July 6 and during early morning hours of July 7 brought on massive Hamas rocket fire later on the night of July 7, ending the Hamas cease fire. Israeli leaders admitted to military and political purposes for the attacks other than stopping Hamas rocket fire. The June 11 and June 13 Israeli attacks also preceded non-Hamas rocket fire.

The International Court of Justice ruled that Israel, the occupying authority, cannot claim self-defense from the population living under its control under Article 51 of the UN Charter for the wall passing through occupied Palestinian territory. As even such a passive structure could not qualify, the court would not be expected to find air and ground attacks against the occupied population to qualify as self-defense, regardless of who fired first. And Article 7 of UN General Assembly Resolution 3314 provides that people living under alien domination have the right to self-determination and the right “to struggle” to achieve their self-determination. Thus, self-defense could not properly be invoked to justify the onslaught on Gaza – even if Israeli forces had not been first to launch military attack, which they were.

If not to stop rockets, what was the motive for the Israeli government onslaughts in 2008, 2012, and 2014? One realistic possibility is that they were meant to do what the massive attacks on Gaza did in fact do to Gaza, its families, and their property. It was yet another periodic attack on

²²⁷ *Id.*

²²⁸ *Id.*

Gaza, “mowing the grass,” as otherwise described by then Israeli Defense Minister Ehud Barak on November 20, 2008, regarding the Israeli attacks on Gaza leading up to Operation Cast Lead: “the recent waves of rocket attacks are a result of our operations, which have resulted in the killing of 20 Hamas gunmen.” Although without the admission that rocket attacks were the result of his operations, similar goals and accomplishments were laid out by current Prime Minister Netanyahu on July 4, 2014, just two days before the massive Israeli escalation on the night of July 6: “in Gaza we hit dozens of Hamas activists and destroyed outposts and facilities that served Hamas terrorists.”²²⁹ As Al Haq concluded, the periodic attacks on Gaza and the West Bank of ever increasing killing and destructiveness have as their underlying purpose dividing and conquering the entire territory of Palestine.²³⁰

As Noam Chomsky pointed out:²³¹

Since the fake “withdrawal” [from Gaza] and the Agreement on Movement and Access²³² in November 2005, there has been a consistent pattern: Israel rejects outright the agreements that are reached, Hamas observes them (as Israel officially concedes) until some Israeli escalation of violence elicits a Hamas response, which Israel then uses as a pretext for the next episode of shooting fish in a pond (“mowing the lawn”). And while they may be getting away with it in the US media, Congress, and the White House, that’s not true of world opinion, as the Reut Institute [report]²³³ recognizes.

While the Goldstone Report received much notice for its conclusion that Israeli military and political leaders committed war crimes and, possibly, crimes against humanity, during

²²⁹ “In Gaza we hit dozens of Hamas activists and destroyed outposts and facilities that served Hamas terrorists.” Herb Keinon, *Netanyahu: If quiet not restored to South, troops amassed near Gaza will act with power*, The Jerusalem Post (July 3, 2014), The video of Netanyahu’s speech at 1:34 to 2:05 has the quoted text <http://www.jpost.com/Diplomacy-and-Politics/Netanyahu-If-quiet-not-restored-to-South-troops-amassed-near-Gaza-will-act-with-power-361492>

²³⁰ Dr. Susan Power and Nada Kiswanson van Hooydonk, *Divide and Conquer - A Legal Analysis of Israel’s 2014 offensive against the Gaza Strip*, Al Haq (2015) <http://www.alhaq.org/publications/DIVIDE.AND.CONQUER.pdf>

²³¹ Noam Chomsky, private email communication, July 3, 2015. See also his article, *Ceasefires in Which Violations Never Cease: What’s Next for Israel, Hamas, and Gaza?*, TomDispatch.com (September 9, 2014), http://www.tomdispatch.com/post/175892/tomgram%3A_noam_chomsky%2C_the_fate_of_the_gaza_ceasefire/

²³² United Nations Office for the Coordination of Humanitarian Affairs *The Agreement on Movement and Access One Year On* (November 2006). A review of its terms shows that Israel had agreed to the export of goods from Gaza, movement of convoys for goods and people between Gaza and the West Bank, improved movement within the West Bank, Gaza seaport construction, and the reconstruction of Gaza’s airport (previously destroyed by Israel). Within one year of the agreement, none of this happened, as described by the at https://www.ochaopt.org/documents/ama_one_year_on_nov06_final.pdf

²³³ The Reut Institute, *Building a Political Firewall Against Israel’s Delegitimization Conceptual Framework*, Version A, Submitted to the 10th Herzliya Conference (Adar 5770 March 2010), “In international public opinion, Israel is increasingly branded as a violent, aggressive, and occupying state that tramples on human and civil rights. This leads to a situation in which it can be easily equated with the apartheid regime and depicted as the moral equivalent of terror organizations” (paragraph 106), <http://reut-institute.org/data/uploads/PDFVer/20100310%20Delegitimacy%20Eng.pdf>

Operation Cast Lead,²³⁴ the Goldstone Report also alluded to a purpose for the war other than defending against rocket fire, consistent with what is now called “mowing the grass.” That report concluded:

While the Israeli Government has sought to portray its operations as essentially a response to rocket attacks in the exercise of its right to self-defence, the Mission considers the plan to have been directed, at least in part, at a different target: the people of Gaza as a whole.²³⁵

But the resort to claiming self-defense does demonstrate that the Israeli government, and its U.S. government collaborator, seek legitimacy for their violence against Palestinians.

However, with or without a valid self-defense claim, the killing and wounding of civilians in Gaza and in the West Bank are illegitimate. The collective punishment and reprisals, the destruction of homes, and the attacks on homes, ambulances, hospitals, schools, and government buildings are illegitimate. The occupation, the racism, the apartheid, the settlements, the blockade, and the credibility gap implemented by the Israeli government are all illegitimate.

To actually achieve legitimacy the Israel government must conform to international law, end its aggressive attacks, end the occupation, enforce equal rights for all living under Israeli rule, allow Palestinian refugee families to return to their homes, provide a legal forum that fairly allows an effective remedy, compensate the Palestinians for their losses, and hold the Israeli political and military leaders and military personnel responsible for the violations to account.

As the Preamble of the Rome Statue says in its opening lines:

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

²³⁴ Justice Richard Goldstone et al, United Nations Human Rights Council, *Report of the United Nations Fact-Finding Mission on the Gaza Conflict* (September 28, 2009), the report found facts indicating war crimes, crimes against humanity, and grave breaches of the Fourth Geneva Convention committed by Israeli forces during Operation Cast Lead, as discussed in paragraphs 32, 46, 50, 53, 55, 60, 75, 390, 815, 842, 885, 931, 937, 1006, 1105, 1106, 1171-1175, 133 5, 1546, 1935, 1936 1946, and 1965 of the report,
<http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>

²³⁵ Justice Richard Goldstone et al., United Nations Human Rights Council, *Report of the United Nations Fact-Finding Mission on the Gaza Conflict* (September 28, 2009), paragraph 1883,
<http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>

... Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

... Resolved to guarantee lasting respect for and the enforcement of international justice.²³⁶

In no way should Israeli government officials and military leaders continue to enjoy impunity or be given any credit based on claimed self-defense from rocket fire. When Israeli forces initiated and escalated attacks in the West Bank and Gaza to accomplish military and political objectives in violation of an existing cease-fire agreement, they were the ones putting aside the goal of protecting Israeli citizens from rocket fire. Because Israeli forces initiated and escalated attacks fully aware of the history of such attacks provoking a dialing up of rocket fire, they should be precluded from using the foreseeable rocket fire to divert attention from the war crimes they committed. They should also be precluded from further using the foreseeable rocket fire that followed the Israeli attacks as a basis for undermining the legitimacy of the ICC preliminary examination and any investigation and prosecution that may follow. They should also be sanctioned for their public relations campaign to discredit the court, for their threats to the funding of the International Criminal Court, and for their pressure on plaintiff.

The court should provide the State of Palestine and the Palestinian victims of the assault a remedy²³⁷ commensurate with the violations of the Rome Statute the court finds to secure justice for the victims and to ensure that no government, including the Government of Israel, and no political and military leaders, ever consider committing such violations or ever permit such violations to be committed in the future.

James Marc Leas is a patent attorney and a past co-chair of the National Lawyers Guild Palestine Subcommittee. He collected evidence in Gaza immediately after Operation Pillar of Defense in November 2012 as part of a 20 member delegation from the U.S. and Europe and authored or co-authored several articles describing findings including "[Where's the Accountability for Israeli War Crimes?](#)," with Audrey Bomse, "[Shattered Lives in Gaza: How the IDF Targeted Civilians](#)," with Eva Lewis, "[Wrecking Gaza: Civilian Infrastructure Targeted by Israeli Military](#)," with Theresa McDermott, and "[Hold Israel accountable for aggression and war crimes in Gaza](#)." He also participated in the February 2009 National Lawyers Guild delegation to Gaza immediately after Operation Cast Lead and contributed to its report, "[Onslaught: Israel's Attack on Gaza and the Rule of Law](#)."

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²³⁶ Rome Statute of the International Criminal Court, available at http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

²³⁷ UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, General Assembly resolution 60/147 (December 16, 2005). <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>