

Is Israel guilty of war crimes?

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On 23 July 2014, the UN High Commissioner for Human Rights, Navi Pillay, accused Israel of possible war crimes committed during the ongoing conflict between the Jewish state and Hamas, a terrorist organization in control of the Gaza Strip. ‘There seems to be a strong possibility that international law has been violated, in a manner that could amount to war crimes,’ Ms Pillay said.¹ Already notorious for her anti-Israel views, Pillay’s comment was hardly surprising, nor was hers the only voice to issue this claim. Predictably, the Palestinians took an even stronger view. On a visit to the Hague on 5 August, the Palestinian Foreign Minister Riad al-Malki argued that “Everything that has happened in the last 28 days is clear evidence of war crimes committed by Israel, amounting to crimes against humanity... There is no difficulty for us to show or build the case. Evidence is there ... Israel is in clear violation of international law.” Speaking earlier in the year, Human Rights Watch, had already said much the same, declaring that Israeli attacks on Gaza “in violation of international humanitarian law (or the laws of war) which prohibits attacks on civilians, Israeli soldiers have repeatedly shot at civilians near the fence on the Palestinian side,” adding that the rules state attacks can only be carried out against military personnel in the form of enemy combatants. If there is any doubt as to the identity it is stated that attacks must be cancelled. “Military personnel who wilfully kill civilians are committing a war crime,’ said the HRW statement.² In a slightly more balanced comment, Amnesty International urged the UN to urgently mandate an independent international investigation into Israeli air strikes on Gaza as well as

¹ BBC News 23 July 2014, at: <http://www.bbc.co.uk/news/world-middle-east-28437626>

² <http://rt.com/news/154936-gaza-israel-hrw-shooting/>

Palestine's indiscriminate shelling of Israel, and hold accountable those responsible for war crimes.³

Others round the world have chimed in, using their own words, but chasing a single fox: the assumption that Israel has committed war crimes pure and simple, and that the world must turn on Israel to make it mend its ways. And so the world has turned, across Europe, America, Latin America and, of course, the Middle East. There have been half-demented demonstrations, rallies calling for the slaughter of Jews, cries for the destruction of Israel and its replacement with a jihadi state, Palestine writ large ("from the river to the sea"), and all the Jews gone for ever. The media in every country have portrayed the conflict in the most one-sided way, belatedly admitting their reporters were not allowed to film anything in Gaza that Hamas censors did not see and approve of, which meant we had streams of images of dead civilians and not a sight at all of Hamas fighters alive or dead, shooting or hiding behind civilians.

At the end of December, Mahmoud Abba, acting as president of a joint government between the Palestinian Authority in Judaea and Samaria and Hamas in Gaza signed the Rome Statute in order to join the International Criminal Court based in the Hague. On 6 January 2015, the UN Secretary General, Ban Ki Moon, announced that the Palestinians could do so on 1 April, basing eligibility on a majority vote of the General Assembly on 30 October 2014 to recognize "Palestine" as a state. This decision came in spite of a vote against recognition of a fully fledged Palestinian state by the UN Security Council on 30 December 2014.

There is an ongoing debate about all of this: whether Palestine, which has few of the characteristics of a sovereign state can legitimately join the ICC and launch war crimes accusations against Israel, whether the ICC will consider itself legally empowered to take on such a case, and whether the Palestinians may not risk being accused of war crimes themselves. And it is clear that, should the Israeli Supreme Court prosecute individual Israeli citizens for crimes during the last Gaza war, the

³ <http://rt.com/news/172232-israel-gaza-amnesty-war-crimes/>

ICC would automatically recuse itself from a broader prosecution. This not the place to discuss these issues. Alan Dershowitz has written cogently [here](#) about the problems such an application entails.

The fundamental issue is whether nay of the accusations against Israel are true. Has Israel been committing terrible crimes in Gaza? Does the international community have the right — as the human rights organization Avaaz has asked — to ban the sale of arms to Israel “to indiscriminately murder children?”⁴ We shall argue the very opposite, that the war crimes in this conflict have all been committed by Hamas and that Israel and its armed forces have behaved in an exemplary fashion in hard-fought battles to minimize civilian casualties. And we will argue that claims of war crimes and indiscriminate killing are born, not from humanitarian anxieties, but from a recrudescant anti-Semitism that calls for the gassing of Jews yet dare not speak its name, and anti-Semitism that has morphed into anti-Israel invective and rallies that call on Hamas to rise up for human rights, forgetting that the Palestinian Islamic Resistance Movement offers no such rights to the very people they rule as if by divine right. A liberal democracy, then, maligned by a theocratic tyranny.

Avaaz’s letter and petition equated Israel with Russia and with ‘brutal regimes’ against which you have made a stand in the past. In the Middle East, the brutal regimes are or have been those in Iran, Iraq, Syria, Libya, Jordan (for its massacre of Palestinians during Black September), Egypt (under Mubarak), Saudi Arabia, Yemen and several others. Israel is not brutal nor is it a regime. It is a liberal democracy whose behavior is open to scrutiny, a country which gives full rights to all its citizens, to women, gay men and women, all its religious minorities, and to Arab political parties and their press, even when they rain down curses on the state that secures their lives. Nowhere else in the Middle East comes within miles of Israel and its assertion of freedom for all its citizens.

⁴ <http://buzz50.com/forum/2-serious-discussion/1494333-guess-who-we-still-sell-weapons-to#1969276>

It is time that Israel's harsher critics, politicians, and the media acquainted themselves with the physical and legal facts of this conflict. Their motives seem to be admirable, even if their claims are not, for which of us does not wish to minimize the deaths of innocents? But, sadly, they have taken precisely the wrong side of the moral argument. Rather than helping save innocent lives, attempts to put Israel in the dock before the International Criminal Court or petitions to ban arms sales to a beleaguered state, or the incessant rounds of boycotts, divestments and sanctions that are mounted against Israel and no other nation in the world, however brutal, will, if they are successful, lead to yet another round of fighting, that will be followed by another round and so on, with thousands of civilians and soldiers dying in the process. Israel is not mankind's enemy, nor is it even an enemy of the Palestinian people. But Hamas, a brutal internationally-recognized terrorist organization allied with the murderous Islamic State in Syria and Iraq is the greatest threat to civilians in Gaza, and Western attempts to weaken Israel only serve to strengthen its enemies. Hamas is explicit in its 1988 Charter that its long-term goal is to commit the genocide of all Jews in Israel and elsewhere. It could not be plainer. Cries that Israel deliberately commits war crimes support that genocidal intent, for if Israel is weakened and Hamas grows stronger (and is assisted by other genocidal movements), the possibility of a second Holocaust of Jews looms closer on the horizon. Is that what the marchers and the sloganeers and the NGOs want?

We wish to argue that, in terms of the Geneva Conventions and other legal instruments regarding conflict, the war crimes have been committed by Hamas, whereas Israel has acted with considerable probity and within the law at every point. I do believe members of the public wish to balance military action against international law norms, and I think readers of this guide may find the documentary evidence for what is and what is not legal in this matter surprising.

Let us start, however, by addressing something that is always overlooked in this field. Naturally, most people know and agree that Islamist groups like al-Qa'ida, the

Islamic State (formerly ISIS), Hizbullah, or Hamas are considered terrorists because they do not abide by the terms of international or domestic law. We are now at war with the Islamic State, presumably on the same grounds that Israel has been fighting Hamas. That total neglect of international conventions, as well as the acts they commit, is what identifies all these groups as terrorists rather than ‘freedom fighters’ or simple ‘militants’. Hamas is not an exception. Like the German Rote Armee Fraktion, the Italian Brigade Rosse and other European revolutionary bodies in the 1970s, they use terror to achieve their ends, and that helps us place Hamas within that category. But there is a differentiating factor with the Islamist terror organizations, and that is that they do not recognize international law at all.

All the norms of the Geneva Conventions, UN resolutions, international treaties and all the other things that govern military action, the protection of refugees, and the other aspects of internationally accepted norms of law, they reject because they only recognize one legal system, namely Islamic shari‘a law. The aspect of shari‘a law in all the law schools that applies to international relations, the fighting of war, and the making of truces and treaties, is the law of jihad. It has a special section in all books of general shari‘a law.

A dependence on Islamic law frees Hamas (and others) from any obligation to abide by international standards, standards that they demonize as “Western” and therefore “satanic”. When the Islamic State in Syria and Iraq give Christians or Yazidis a choice between conversion, payment of protection money (jizya), or death, they abide by the strict terms of jihad law as it has been practised for fourteen centuries. When they kill without the offer of subordinate status in return for the annual jizya payment, they breach Islamic law in the case of Christians, but not in the case of Yazidis (or Hindus or other “pagans”), who are not entitled to opt for Dhimmi status and must convert or die. Therefore, calling on Hamas to abide by recognized international conventions is pointless. For those who wish to look at this in a little more detail, I recommend Ann Elizabeth Meyer’s learned study, *Islam and Human Rights*, especially the chapter on the Cairo Declaration at which the Organization of

Islamic Cooperation declared that all forms of domestic law were subject to the rulings of the Islamic legal code — a position wholly compatible with the values of Hamas. To illustrate this, let me cite three passages from Article 13 of the Hamas Charter

Initiatives, and so-called peaceful solutions and international conferences, are in contradiction to the principles of the Islamic Resistance Movement. Abusing any part of Palestine is abuse directed against part of religion. Nationalism of the Islamic Resistance Movement is part of its religion.... Now and then the call goes out for the convening of an international conference to look for ways of solving the (Palestinian) question. Some accept, others reject the idea, for this or other reason, with one stipulation or more for consent to convening the conference and participating in it. Knowing the parties constituting the conference, their past and present attitudes towards Moslem problems, the Islamic Resistance Movement does not consider these conferences capable of realising the demands, restoring the rights or doing justice to the oppressed. These conferences are only ways of setting the infidels in the land of the Moslems as arbiters. When did the infidels do justice to the believers?.... *There is no solution for the Palestinian question except through Jihad. Initiatives, proposals and international conferences are all a waste of time and vain endeavors.* The Palestinian people know better than to consent to having their future, rights and fate toyed with. (My italics.)

And, from Hamas's statement of purpose: "Jihad is its path and death for the sake of Allah is the loftiest of its wishes" (Article 8).

It is inevitable that any movement that rejects peacemaking outright and is determined on the abolition of a sovereign state and the genocide of its citizens must be prepared to face the consequences of its ideology and actions. What, after all, are we to make of Hamas's threats elsewhere in the Charter? Threats such as these: "Israel will exist and will continue to exist until Islam will obliterate it, just as it obliterated others before it" (Introduction) and "The Day of Judgement will not come about until Moslems fight the Jews and kill them (*hatta yuqatil al-muslimun al-yahud fa-yaqtuluhum al-muslimun*), when the Jew will hide behind stones and trees. The

stones and trees will say O Moslems, O Abdullah, there is a Jew behind me, come and kill him.” (Article Seven) .

It is this cynical assumption of superiority to international legal norms and complete indifference to their demands that makes Hamas, like all other jihadi movements such as Islamic State (Da'ish), such formidable enemies. Their obsession with suicide increases their alienation, not only from legal standards in warfare, but from the ethical standards of every civilization known to man. And it is not their own thirst to die that marks them out, it is their arrogant assumption that they wish for the deaths of their own people, whether by sending them out to be suicide bombers or when they become casualties of a conflict started by Hamas itself. The spokesperson for Hamas in Gaza, Sami Abu Zuhri, said on July 13 in an interview on Al Aqsa TV (Hamas's TV network), “We aren't leading our people today to destruction. We are leading them to death”.⁵ (The translation is correct, distinguishing *i'dam* – destruction – and *mawt* – death)

How this plays out on the ground should not be hard to digest. Several basic elements must be taken into account,

1. Israel has never initiated any of the conflicts in which it has been engaged. Not the 1948 war, when seven Arab armies from five countries invaded it. Not the 1967 Six-Day War, when Israel found itself surrounded by armies from Egypt, Syria and Jordan about to invade. Not in 1973, when a coalition of Arab states led by Egypt and Syria with Jordan again invaded Israeli territory and were fought off at great cost. Not over the two intifadas, not in the case of the thousands of terrorist attacks launched the Jewish state over 67 years, not in the first Gaza war, the second Gaza war, and not in this most recent Gaza conflict. All Israel's actions have been defensive, all Arab actions offensive. This has a serious bearing on the issue of which side has acted legally within the confines of international law. This is not a matter of opinion, but of plain historical, verifiable fact.

⁵ <https://www.youtube.com/watch?v=EXxAdzSHyC4>

2. Since 2017, Hamas and Islamic Jihad have bombarded southern Israeli towns, kibbutzim, and villages with rockets. Over the years, those rockets have become larger and more accurate, with supplies of advanced rockets from Syria. Over 15,000 missiles have struck Israel during that period. Now, strikes have been made across most of Israel, including Tel Aviv and Jerusalem. All of these attacks have been offensive and indiscriminate.

3. Israel has taken the defence of its citizens seriously, providing them with bomb shelters, ordering all houses to be equipped with secure rooms, creating an extensive alarm system to warn of incoming rockets, and building the very effective Iron Dome missile defence system. This has meant that Israeli casualties have been small in number without hurting a single Palestinian in the process. Israel's defensive measures have also protected its indigenous Arab population. Palestinian Israelis are not shoved out of bomb shelters to serve as human shields (not that that would hold Hamas back from firing.) This has a direct bearing on claims of disproportion in fighting.

4. Hamas has provided absolutely no defences for its civilian population. There are no bomb shelters, secure rooms, alarm systems, or anti-missile installations in the Strip. On the contrary, Hamas has spent billions of dollars of aid money to supply itself with a vast array of rockets that can only be used in offensive attacks, on underground tunnels designed to protect the Hamas military forces (a proscribed terrorist militia) and to serve as conduits for attacks on Israel civilians across the Gaza-Israel border.

5. Hamas, as already mentioned, has fired thousands of rockets onto Israeli civilian centres, including several thousand before and after the latest conflict. It has not fired directly on any Israeli army base or installation, any Israeli Air Force base or

aerodrome, or on any Israeli naval base. Its firing has been indiscriminate and has targeted civilian areas only. This is a war crime, as indicated here in paragraphs 4-5b of Protocol I of the Geneva Conventions:

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977

Article 51

Protection of the civilian population

Paragraphs 4-5b

4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:

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

5. Among others, the following types of attacks are to be considered as indiscriminate:

- (a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and
- (b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

As stated by several sources, including the UN official report published in August 2009, deliberate and systematic targeting of civilians and civilian objects in southern Israel since 2001 by Palestinian armed groups' rocket attacks violates International Humanitarian Law and amounts to a war crime. The Israeli Intelligence and Terrorism Information Center (ITIC) notes that such attacks contravene the Principle

of Distinction, as encapsulated by Article 48 of Additional Protocol I to the Geneva Conventions of 1949:

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

Former Canadian justice minister and McGill University law professor, Irwin Cotler and the Intelligence and Terrorism Information Center point out that violation of this prohibition also amounts to a war crime as defined in Article 8(2)(b)(i) of the Rome Statute of the International Criminal Court: “Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State”. This applies to the aggressive firing of over 15,000 rockets from Gaza into Israel between 2001 and 2014.⁶

With respect to Palestinian terrorist acts and the discovery of armed Hamas operatives entering Israeli civilian areas through tunnels, It is also worth noting that this is also a war crime according to Article 8(2)(g) of the same Statute:

“The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.”

Human Rights Watch and the pro-Palestinian Israeli rights group B'Tselem have both issued reports stating that, even if the above attacks were directed at a specific military objective, they would still be unlawful, due to the fact that the types of rockets used by Palestinian armed groups are imprecise and cannot be directed in a way that discriminates between military targets and civilians. A Human Rights Watch report⁷ on the 2008-2009 Gaza war stated that Palestinian armed groups unnecessarily

⁶ <http://www.idfblog.com/facts-figures/rocket-attacks-toward-israel/>

⁷ <http://www.hrw.org/en/node/84867/section/2>

placed Palestinian civilians at risk from retaliatory attacks by firing rockets from densely populated areas. Additionally, reports by news media and a nongovernmental organization indicate that in some cases, Palestinian armed groups intentionally hid behind civilians to unlawfully use them as shields to deter Israeli counter-attacks.

All of this holds true of Hamas assaults on the civilian population of Israel, but cannot be applied (for reasons given below) to attacks by Israel on Hamas military infrastructure and command centres or tunnels, as will be explained later.

The use of human shields

6. There is overwhelming evidence that Hamas uses human shields in various ways.⁸ Over a dozen Hamas fighters captured in the war have admitted to doing this.⁹ Children have been used to protect fighters, who hold them physically. Numbers of civilians have been ordered into buildings containing military placements, against which Israeli attacks are likely or planned. More broadly, as I shall explain later, Hamas military structures, rocket launch pads, and command centres have been situated directly in or next to civilian dwellings, hospitals, mosques, and schools. This is a deliberate Hamas policy, as is clear from a 2008 video of a speech by Fathi Hammad, the Hamas Interior Minister:

The enemies of God do not know that the Palestinian people have developed their methods of death and death-seeking. For the Palestinian people, death has become an industry, at which women excel, as do all the people living in this land. The elderly excel at this, and so do the Mujahidin [i.e. the jihad fighters] and the children. This is why they have formed human shields [*duruq bashariyya*] of the women, the children, the elderly, and the Mujahidin, in order to challenge the Zionist bombing machine. It is as if they were saying to the Zionist enemy: “We desire death, just as you desire life.”¹⁰

⁸ http://www.israelnationalnews.com/News/News.aspx/182716#.VCgQsecma_U

⁹ <http://www.algemeiner.com/2014/08/25/report-more-than-a-dozen-hamas-terrorists-admit-to-use-of-hospitals-kindergartens-and-mosques-for-military-activity/>

How does Hamas's use of human shields play out in legal terms? Let me start with conclusions that were reached during and after the 2008-09 Gaza War, in which Hamas used tactics similar or identical to those it has used in 2014. The BBC reported on January 5, 2009 that "Witnesses and analysts confirm that Hamas fires rockets from within populated civilian areas."¹¹ Amnesty International also assessed that Hamas fighters put civilians in danger by firing from homes.¹² United Nations Humanitarian Affairs Chief John Holmes accused Hamas of war crimes, saying "The reckless and cynical use of civilian installations by Hamas, and the indiscriminate firing of rockets against civilian populations, are clear violations of international humanitarian law."¹³

In the course of the fighting in Gaza in 2008 and 2009, purported evidences of Hamas's exploitation of civilian infrastructure were recorded in reports from the Israeli Intelligence and Terrorism Information Center (ITIC).¹⁴ A study¹⁵ by the Washington-based Center for Strategic and International Studies (CSIS) suggests that Hamas must share responsibility for the outcome on the civil population, as it seems to have relied on the population density of Gaza both to deter Israeli attacks, and as a defense against Israeli offensive. Law professor and former Canadian Minister of Justice Irwin Cotler has said that attacks from within civilian areas and civilian structures in order to be immune from a response, e.g. apartment building, a mosque or a hospital, are unlawful; he argues that in these cases Hamas bears legal responsibility for the harm to civilians, as enshrined in general principles of

¹⁰ <https://www.youtube.com/watch?v=g0wJXf2nt4Y>

¹¹ http://news.bbc.co.uk/1/hi/world/middle_east/7811386.stm

¹² http://news.bbc.co.uk/1/hi/world/middle_east/7818122.stm

¹³ http://www.un.org/apps/news/story.asp?NewsID=29690&Cr=gaza&Cr1=holmes#_U_R94C8mZaE

¹⁴ Israeli Intelligence and Terrorism Information Center, 'Civilians as Human Shields', 20-01-2009 at: <http://www.terrorism-info.org.il/en/article/18333>; ITIC

'Evidence of the Use of the Civilian Population as Human Shields', 6-02-2009, at:

<http://www.terrorism-info.org.il/en/article/18321>; ITIC

'Using civilians as humans shields: launching rockets at Israel from locations close to buildings and schools', 19-01-2009, at: <http://www.terrorism-info.org.il/en/article/18335>).

¹⁵ Anthony H. Cordesman, 'The "Gaza War": A Strategic Analysis'

http://csis.org/files/media/isis/pubs/090202_gaza_war.pdf

International Humanitarian Law. “There is ‘almost no comparable example’ anywhere in today’s world of a group that so systematically violates international agreements related to armed conflict’, he argues, referring to Hamas.¹⁶

The ITIC has accused Hamas of making systematic use of protected civilian areas (including homes and mosques) for the hiding and storage of rockets, explosives and ammunition; the use of civilian facilities (such as universities) for weapons development; calling on Palestinians to flock to targets which are expected to be attacked in order to form “human shields”.¹⁷ Such conduct contravenes the Laws of Armed Conflict and some of the practices above, e.g. Art. 8(2)(b)(xxiii) of the Rome Statute of the International Criminal Court amount to a war crime.¹⁸

The issue of human shields was addressed earlier in 2003 in a document produced by the US Central Intelligence Agency, entitled ‘Putting Noncombatants at Risk: Saddam’s Use of “Human Shields,”’ in which it is stated that

The four Geneva Conventions of 1949 prohibit the taking of hostages and ban the use of human shields through clauses that forbid a party from harming those in its control “not actively taking part in hostilities.” Common Article 3 of the conventions bans the taking of hostages in internal conflicts, while the Fourth Convention forbids taking civilians hostage during times of war. The conventions also decree that both POWs and civilians should not be “used to render certain points or areas immune from military operations.” Iraq is not a signatory to the two additional protocols of 1977, which address internal conflicts and also ban hostage taking.’ In a section entitled ‘Putting Iraqi Civilians and Civilian Facilities at Risk,’ (pp. 5-7) Saddam’s tactic of placing military revêtements in villages and other civilian locations is discussed and illustrated with aerial photographs that bear a close resemblance to photographs of Gaza from the air, except that the enormity of Hamas installations is much greater.¹⁹

In the University of Pennsylvania’s 2013 *Global Go To Think Tanks Report*, CSIS is ranked the number one think tank in the world for security and international affairs and was also ranked as the 4th best overall think tank in the world.

¹⁶ ‘Law professor: Hamas is a war crimes “case study”’, *Jerusalem Post*, at:

<http://www.jpost.com/Israel/Law-professor-Hamas-is-a-war-crimes-case-study>

¹⁷ Reuven Ehrlich, ‘Using the Civilian Population of Gaza as Human Shields’, 26 January 2009, at:

<http://www.policypointers.org/Page/View/8743>

¹⁸https://en.wikisource.org/wiki/Rome_Statute_of_the_International_Criminal_Court#Article_8_bis:_Crime_of_aggression%29

¹⁹ https://www.cia.gov/library/reports/general-reports-1/iraq_human_shields/iraq_human_shields.pdf

Under international law, it is obligatory to distinguish between military and civilians. This is a major theme in international law protocols. [Article 51](#) of the protocol additional to the 1949 Geneva Conventions²⁰ makes this clear, as follows. (Please note that the figures 1951-1955 are not dates but paragraph numbers.)

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol International law), 8 June 1977.

Article 51

“Sub-paragraph (a)”

1951 This refers in the first place to attacks which are not directed at a specific military objective. Article 52 (General protection of civilian objects), paragraph 2, defines military objectives, as far as objects are concerned, limiting them “to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage”.

Obviously military objectives also include, indeed principally so, the armed forces, their members, installations, equipment and transports.

1952 The military character of an objective can sometimes be recognized visually, but most frequently those who give the order or take the decision to attack will do so on information provided by the competent services of the army. In the majority of cases they will not themselves have the opportunity to check the accuracy of such information; they should at least make sure that the information is precise and recent, and that the precautions and restrictions laid down in Article 57 (Precautions in attack) are observed. In case of doubt, additional information must be requested.

1953 The armed forces and their installations are objectives that may be attacked wherever they are, except when the attack could incidentally result in loss of human life among the civilian population, injuries to civilians, and

²⁰<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=4BEBD9920AE0AEAEC12563CD0051DC9E>

damage to civilian objects which would be excessive in relation to the expected direct and specific military advantage. In combat areas (15) it often happens that purely civilian [p.621] buildings or installations are occupied or used by the armed forces and such objectives may be attacked, provided that this does not result in excessive losses among the civilian population. For example, it is clear that if fighting between armed forces takes place in a town which is defended house by house, these buildings -- for which Article 52²¹ '(General protection of civilian objects)', paragraph 3, lays down a presumption regarding their civilian use -- will inevitably become military objectives because they offer a definite contribution to the military action. However, this is still subject to the prohibition of an attack causing excessive civilian losses.

1954 Outside the combat area the military character of objectives that are to be attacked must be clearly established and verified. Similarly the limits of such objectives must be precisely determined.

1955 The question arose what the situation would be if a belligerent in a combat area wished to prevent the enemy army from establishing itself in a particular area or from passing through that area, for example, by means of barrage fire. There can be little doubt in such a case that the area must be considered as a military objective and treated as such. Yet, during the Diplomatic Conference several delegations insisted on confirming this interpretation in their statements. (16) Of course, such a situation could only concern limited areas and not vast stretches of territory. It applies primarily to narrow passages, bridgeheads or strategic points such as hills or mountain passes.

That human shields are used by Hamas is self-evident from detailed maps that show how totally embedded Hamas military forces are within the public and private buildings across the strip, but mainly in Gaza City, where entire neighborhoods such as Shuja'iyya²² are as much military bases as residential sectors. This is very well illustrated from the maps and commentary recently released by the Israeli Defence

²¹<https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F08A9BC78AE360B3C12563CD0051DCD4>

²²Israeli Defence Forces, 'New Map Exposes Hamas' Fortress in Shuja'iyya', 4 August 2014, at: <http://www.idfblog.com/blog/2014/08/04/map-exposes-hamas-fortress-shujaiya-neighborhood/>

Forces Military-Strategic Information Section on 9 August 2014 under the title “‘ Hamas War Tactics: Attacks from Civilian Centers Evidence of Hamas’s Violations of International Law through Use of Civilian Facilities and Densely Populated Areas for Terror’”.²³

This document provides a table which shows that, among others, Hamas fired rockets from 31 UN facilities, 41 hospitals, 50 children’s playgrounds, 85 medical clinics, 248 schools, 331 mosques, and 818 other civilian sites. On the next page, we read that ‘ Hamas uses UN facilities, schools, children’s playgrounds, water towers, mosques and countless other active civilian facilities as launching sites for rockets and attacks. In this operation alone, Hamas has launched above 1,600 rockets from civilian sites.

The report continues:

Additionally, Hamas purposefully engages IDF troops in conflict in urban areas. For example, in Shuja‘iya and in Jebaliya, IDF troops have come under intense attack by terrorists in highly populated areas, and have been forced to defend themselves.

Hamas also uses civilian infrastructures for other military purposes, and places weapon caches and C2 centers in civilian places. Hamas’s tactic serves two purposes. Firstly, because the IDF responds to attacks with acute concern for innocent lives, attacking from these sites gives Hamas a major strategic advantage. Secondly, any civilian casualties that are incurred from these attacks are used to create international pressure against Israel, even though it is ultimately Hamas that is to blame for these deaths.

Such tactics flagrantly violate international law and the most basic of moral precepts.

The same report provides links to videos showing Hamas firing from civilian areas, placing civilians in the line of fire, and admitting that they do this. It shows very detailed aerial reconnaissance maps which provide overwhelming evidence of the

²³IDF Herzliya. <http://www.ict.org.il/Article/1187/Hamas-War-Tactics-Attacks-from-Civilian-Centers>. NB Click on ‘Read Full Article’.

extent of launching sites in Gaza north, central, and south. Further maps and videos show launches from educational facilities, from UN and Red Cross facilities, from mosques, from power plants, hospitals and media hotels, the maps delineating rocket trajectories towards Israel villages. A detailed map of Gaza City's Shuja'iyya district shows the area peppered with terrorist locations of every size.

A recently-discovered ' Hamas Combat Manual'²⁴ lists the benefits to Hamas of using human shields. In a portion entitled "Limiting the Use of Weapons," Hamas explains that:

The soldiers and commanders (of the IDF) must limit their use of weapons and tactics that lead to the harm and unnecessary loss of people and [destruction of] civilian facilities. It is difficult for them to get the most use out of their firearms, especially of supporting fire [e.g. artillery].

Clearly Hamas knows the IDF will limit its use of weapons in order to avoid harming civilians,²⁵ including refraining from using larger firepower to support for infantry.

The manual goes on to explain that the "presence of civilians are [sic] pockets of resistance" that cause three major problems for advancing troops:

- (1) Problems with opening fire
- (2) Problems in controlling the civilian population during operations and afterward
- (3) Assurance of supplying medical care to civilians who need it

Lastly, the manual discusses the benefits for Hamas when civilian homes are destroyed:

²⁴ IDF, 'Captured Hamas Combat Manual Explains Benefits of Human Shields', at: <http://www.idfblog.com/blog/2014/08/04/captured-hamas-combat-manual-explains-benefits-human-shields/>

²⁵ IDF, 'Exclusive Interview With IAF Pilots: How They Limit Casualties', at: <http://www.idfblog.com/blog/2014/07/20/exclusive-interview-iaf-pilots-limit-casualties/>

The destruction of civilian homes: This increases the hatred of the citizens towards the attackers [the IDF] and increases their gathering [support] around the city defenders (resistance forces[i.e. Hamas]).

It is clear that Hamas actually desires the destruction of homes and civilian infrastructure, knowing it will increase hatred for the IDF and support their fighters.

Two or three things emerge from the above statements. First, Hamas has done its level best to avoid distinguishing its fighters from the civilian population. Not only do they hide among that population, they do not wear distinctive uniforms and as often as not play dual roles as fighters and civilians. This makes it hard if not difficult for the IDF and IAF to make that essential distinction. Second, it points out that it is legitimate to attack embedded military sites. And thirdly, it indicates that such attacks on undistinguished sites are subject to the condition that injuries and damages to civilians and their property should not be excessive.

Customary International Humanitarian Law

Let us look at this again from the standard of Customary International Humanitarian Law by citing relevant passages from military manuals in use around the world to determine what is and what is not legal in warfare.

Australia's Defence Force Manual (1994) lists among military objectives 'objects, normally dedicated to civilian purposes, but which are being used for military purposes, eg a school house or home which is being used temporarily as a battalion headquarters'.²⁶

The manual specifies: "For this purpose, 'use' does not necessarily mean occupation. For example, if enemy soldiers use a school building as shelter from

²⁶ https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule10

attack by direct fire, then they are clearly gaining a military advantage from the school. This means the school becomes a military objective and can be attacked.”

The document also considers that “civilian aircraft, vessels, vehicles and buildings which contain combatants, military equipment or supplies” are also military objectives.

Belgium’s Teaching Manual for Soldiers states that objects occupied or used by enemy military forces are military objectives ‘even if these objects were civilian at the outset (houses, schools or churches occupied by the enemy)’.²⁷ Its Law of War Manual (1983) gives a broad definition of military objects: ²⁸

Considered as military objectives are:

- 1) Persons: combatants
- 2) Objects: a) objects which by their nature, location, purpose or use make an effective contribution to military action
and
b) whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage
- 3) Places: every defended position. This does not necessarily mean that it must be reinforced: it is sufficient that enemy troops go through it, or that it is protected by mine fields, or that its access is closed by artillery fire

Canada’s Law of Armed Conflict (LOAC) Manual (1999) states: “Where a civilian object is used for military purposes, it loses its protection as a civilian object and may become a legitimate target.” The manual further states: “Civilian vessels, aircraft, vehicles and buildings are military objectives if they contain combatants, military equipment or supplies.”²⁹

The 2001 edition of the same manual states in its chapter on targeting:

²⁷ https://www.icrc.org/customary-ihl/eng/docs/v2_cha_chapter2_rule10

²⁸ https://www.icrc.org/customary-ihl/eng/docs/v2_cou_be_rule8

²⁹ https://www.icrc.org/customary-ihl/eng/docs/v2_cha_chapter2_rule10

407. Examples of objects which are military objectives

2. Civilian vessels, aircraft, vehicles and buildings are military objectives if they contain combatants, military equipment or supplies.

428. Civilian object used for military purposes

1. Where a civilian object is used for military purposes, it loses its protection as a civilian object and may become a legitimate target.

Israel's Manual on the Rules of Warfare (2006) states:

It may be the case that a target might change its status from civilian to military or vice versa. For example, if an anti-aircraft battery is positioned on the roof of a school or if a sniper takes up a position on the minaret of a mosque, the protection provided for the facility by the virtue of it being [a] civilian target is no longer valid, and the attacker is permitted to attack it. The legal responsibility for the deaths of civilians in such a case is that of the side that made unreasonable use of a civilian target rather than on the side who attacked this target. In the case of incidents in which there is a doubt as to whether the target changed its status from civilian to military, the Additional Protocols determine that it should be assumed that it is not a military target unless proven otherwise.

The opposite situation may occur, in which a target that was originally military changes into a civilian target, such as a large military base converted into a clearing station for the wounded. In such cases, it must not be attacked as it is a medical facility (on the assumption that no military activities are conducted therein, being disguised as treatment for the wounded).³⁰

UK LOAC Manual: 15.16.1:

There is no definition of civilian objects nor is the term used in the treaties dealing with internal armed conflicts, but the principles of military necessity and humanity require attacks to be limited to military objectives. Thus attacks on the following are prohibited unless they are being used for military purposes:

³⁰ https://www.icrc.org/customary-ihl/eng/docs/v2_cha_chapter2_rule10

civilian dwellings, shops, schools and other places of non-military business, places of recreation and worship, means of transportation, cultural property, hospitals and medical establishments and units.³¹

The US Naval Handbook (2007) states that “misuse of protected places and objects for military purposes renders them subject to legitimate attack during the period of misuse”.³²

Human Shields law is based on Rule 97 of Customary IHL.³³

The prohibition of using human shields is contained in numerous military manuals, many of which extend the prohibition to all civilians. Using human shields constitutes a criminal offence under the legislation of many States. This practice includes that of States not, or not at the time, party to Additional Protocol I or to the Statute of the International Criminal Court. In 1990 and 1991, there was extensive condemnation by some states of the use of prisoners of war and civilians by Iraq as human shields, and the United States declared that such use amounted to a war crime. The use of prisoners of war as human shields during the Second World War was the subject of war crimes trials by the UK Military Court at Lüneberg in the Student case in 1946 and by the US Military Tribunal at Nuremberg in the Von Leeb (The High Command Trial) case in 1948. In the Karadžić and Mladić case in 1995 before the International Criminal Tribunal for the former Yugoslavia, the accused were charged with war crimes for using UN peacekeepers as human shields. In its review of the indictments the Tribunal upheld this charge.

Claims to excess and disproportion

Many argue that Gazan casualties in the 2014 war have been “excessive” and that this delegitimizes Israeli counter-terrorist actions during this conflict. I will argue that this is by no means the case. To begin with we have to understand that the term

³¹ https://www.icrc.org/customary-ihl/eng/docs/v2_cha_chapter2_rule10

³² https://www.icrc.org/customary-ihl/eng/docs/v2_cha_chapter2_rule10

³³ https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule97

“excessive” in international law is both a blessing and a curse. The blessing lies in its intent to control military action in future conflicts, and this is derived from the excesses of Nazi and Allied force in World War II, just a few years before the 1949 Geneva Conventions. The four 1945 US and British bombings of Dresden caused widespread destruction and around 25,000 mainly civilian fatalities. The US use of atomic bombs on Hiroshima caused some 80,000 fatalities, of whom 20,000 were soldiers and a second atomic weapon on Nagasaki led to between 39,000 and 80,000 civilian fatalities. But the atrocities committed by Nazi Germany make even these figures pale by comparison. The list of Nazi massacres during the war is far too long to reproduce here. It is almost unbelievable. Let me cite only a few of the larger ones. In 1941, the Ponary massacre in Lithuania killed 100,000 people. In 1942 alone, Operation Bamberg killed 4,396, the Slowodka-Bobrujsk massacre had 100,000 dead, those in Borki (1,741), Zbyszyn (1,076), Jelsk (1,000), in Operation Adler (1,381), in Operation Sumpflieder (10,063), Maloryta (4,038), in Operation Karlsbad (1,051), in Operation Nürnberg (2,974), in Operation Hamburg (6,172), and in Operation Altona (1,032). Who can forget the sheer wickedness of the massacre at the French village of Oradour-sur-Glane in 1944? Similar killing sprees went on throughout the war. All of the massacres on every front included children. Millions died in the Holocaust, including 6 million Jews. According to the *Cambridge History of Russia* (pp. 225-227), sixteen million civilians were murdered by German forces in Russia, with a total of between 24 to 26 million Russian dead in all. The German Blitz on British cities caused 43,000 deaths. Significantly, this figure would have been much greater had not Britain paid considerable attention to air-raid shelters, blackouts, and anti-aircraft placements.

Some 70 million people died in World War II. This was excess flavored by sheer brutality, sadism, and contempt for human life. It was this level of excess that prompted the international law regulations permitting attack on military targets within residential areas or from public buildings provided civilian losses were not excessive. But the curse of the term “excessive” is that it is vague. That is not the fault of the

legislation. What is excessive in one instance might be quite proportionate in another. But given the figures I have just cited, it must be perfectly clear that Palestinian losses in the three Gaza wars, though profoundly regrettable, were not excessive, nor were they “disproportionate”. It should be very clear indeed that, had Israeli planes and troops behaved in a fashion like the Germans or even the Allies of World War II, there would be little left of Gaza today, and few Gazan Palestinians would still be alive. The same consideration would apply to the Palestinians on the West Bank.

Many say that the fighting in Gaza has been disproportionate because 2,100 Gazans have died in the conflict, as opposed to 66 Israeli soldiers and a mere 3 civilians.³⁴ But this apparent disproportion is highly simplistic. It ignores the fact that something like 50% of the Gazan casualties have been among men of fighting age, a statistic detailed in several places. Both the BBC and the *New York Times*, neither remotely friendly to the Israeli narrative, have pointed out the enormous discrepancies in the available figures. “If the Israeli attacks have been ‘indiscriminate,’ as the UN Human Rights Council says, it is hard to work out why they have killed so many more civilian men than women,” Anthony Reuben wrote in an article for the BBC “Caution needed with Gazas casualty figures”.³⁵

The New York Times – no friend of Israel – reached much the same conclusion. Jodi Rudoren, the Times principal Middle East reporter describes the issue in “Civilian or not? New Fight in Tallying the Dead from the Gaza Conflict,” 5 August 2014,³⁶ where the names of 1,431 casualties were reviewed, showing that ‘the population most likely to be militants, men ages 20 to 29, is also the most over-represented in the death toll. They are 9% of Gaza’s 1.7 million residents, but 34% of those killed whose ages were provided.’ More broadly, the highest figures are for men aged between 15 to 34. Men 20-29 make up only 9% of the 1.7 million Gazan

³⁴ See ‘Gaza crisis: Toll of operations in Gaza’, *BBC News*, 1 September 2014, at: <http://www.bbc.co.uk/news/world-middle-east-28439404>

³⁵ Anthony Reuben, ‘Caution needed with Gaza casualty figures’, *BBC News*, 11 August 2014, at: <http://www.bbc.co.uk/news/world-middle-east-28688179>

³⁶ http://www.nytimes.com/2014/08/06/world/middleeast/civilian-or-not-new-fight-in-tallying-the-dead-from-the-gaza-conflict.html?_r=0

residents, but 34% of the dead. That is disproportionate. Women and children form 71% of the population yet a mere 33% of casualties. That is also disproportionate.

Anthony Reuben, writing for the BBC (as above), quoted IDF Spokesman Capt Eytan Buchman, who said that “the UN numbers being reported are, by and by large, based on the Gaza health ministry, a Hamas-run organisation.” Buchman added that we should keep in mind that “when militants are brought to hospitals, they are brought in civilian clothing, obscuring terrorist affiliations” and that “Hamas also has given local residents directives to obscure militant identities.” Reuben further quoted Buchman saying: “It’s important to bear in mind that in Operation Cast Lead [the last Israeli ground offensive in December 2008-January 2009], Hamas and Gaza-based organizations claimed that only 50 combatants were killed, admitting years later the number was between 600-700, a figure nearly identical to the figure claimed by the IDF.”

Although no independent investigations have been carried out in Gaza during the current war, there is film footage (now deleted) of ‘corpses’ moving and even smiling. Since Fatah, Hamas and other groups have a long-standing reputation for falsifying figures and filming fake scenes of carnage, it is highly likely that the true casualty figures for civilians will prove to be much lower than claimed.

The sense of disproportion dwindles to almost nothing when we consider the contrast, already noted, between Israeli defensive measures to save lives and Hamas’s use of civilians as human shields. It should also be noted that claims that Gazan civilians were killed and injured because they had nowhere to run to are simply laughable: there are vast open areas in the Strip in which Hamas fighters might have placed military infrastructure or to which they might have directed civilians in the event of war (since it was Hamas that started the war in the first place).

And it is highly irresponsible to speak of Israeli attacks as “indiscriminate”. No army in history has fought with as great a concern to avoid civilian casualties. It is Israeli policy to warn civilians of impending attacks by dropping thousands of

leaflets, making telephone calls, and sending text messages in order to give due notice of their intentions. This is disadvantageous for the Israeli Air Force in two ways: it warns Hamas fighters and rocket-launching teams that they have spotted and designated as targets. And it allows Hamas to order civilians to remain in buildings or go onto flat roofs in order to dissuade Israelis from firing. Large numbers of attacks have been aborted by the Israeli Air Force —hardly the actions of a nation bent on murder. And when Hamas fires from near or inside a school, mosque or hospital and civilians are killed in the reprisal, Hamas reaps great benefit by parading dead civilians (and fighters posing as civilians) before the eyes of the world media.

Those who blithely condemn Israeli actions in war should hold their fire until they have read this useful article, “Every IDF officer has more training in international law than practically every columnist and reporter,”³⁷ which argues that every IDF officer receives detailed and ongoing training in international law relating to combat, that the IDF has a website devoted to international law issues, that there is a legal expert in every IDF division, that Israeli assaults are either called off or adapted in order to avoid illegal action, and that every single shell shot by Israeli artillery or the air force was thought about in advance, and targets were vetted in advance, after they were visually identified by one or more of the layers of eyes the IDF had over Gaza — pilots, drones, satellite images, radar and other high-tech wizardry. Israel understands the need to stay on the right side of the law and knows that the eyes of the world are on them every step of the way, but Hamas sneers at the Geneva conventions and breaks international law in all matters. Yet the world condemns Israel and gives Hamas billions of dollars to buy more missiles and build more tunnels.

To speak of “indiscriminate” attacks by Israeli forces betrays a lack of rational understanding. Israel is one of the most technically advanced countries in the world, and the sophistication of its military equipment is second to none. It is also, as just

³⁷ http://elderofziyon.blogspot.com.au/2014/08/every-idf-officer-has-more-training-in.html#.U_Sg7S8ma_V

mentioned, highly trained in the rules of war. When an Israeli aircraft targets something, you can expect it to strike precisely. Since every civilian death is detrimental to Israel's standing in the world community, it makes no sense at all for such a technically savvy country to fire indiscriminately on civilians, something that would only help Hamas win the war through media coverage alone. Some may ask why, if that is so, Israeli attacks kill so many civilians. The answer is simple: first, the fact, as we have discussed, that civilian deaths may not even be in the majority, as has been the case in previous conflicts; second, that it is more reasonable to suppose that Hamas's use of human shields and the proximity of firing sites and command centres and ammunition dumps to every sort of civilian location are the primary cause of those deaths and not some irresponsible and self-defeating lack of discrimination or incompetence on the part of a country that was the very first and is still almost the only country in the world to issue advance warnings of attacks in order to spare the enemy's civilian population.

The humanitarian issues have been cogently addressed by the human rights and international tolerance organization, the Simon Wiesenthal Center, in a long letter to the Secretary-General of the United Nations, Ban Ki Moon.³⁸ Dated August 13 2014, this letter puts forward arguments for a fair and honest assessment of the war, Hamas, and the UN's role in advancing an anti-Israel agenda. A similar letter, sent by the Legal Forum for Israel on behalf of thousands of associated lawyers round the world, accuses Moon in stark terms and uncompromising language:

15 August, 2014

UN Secretary General, the Hon. Ban Ki-moon
United Nations Headquarters
New York, NY 10017

³⁸ http://www.wiesenthal.com/att/cf/%7B54d385e6-f1b9-4e9f-8e94-890c3e6dd277%7D/LETTER-TO-BAN-KI-MOON_8-13-2014.PDF

Excellency,

It is with considerable sadness and disappointment that we write this letter to you, in the name of thousands of lawyers associated with the Legal Forum for Israel.

We heard and read with amazement and incredulity your recent statements accusing Israeli forces of violating international humanitarian law, and especially your statement of 12 August 2014 questioning Israel's respect for the principles of distinction and proportionality, and your call for an "investigation into the repeated shelling of UN facilities harboring civilians".

We find these statements by you to be nothing less than shocking, deceitful and totally inaccurate. We know that you have been fully briefed, and are well aware of the circumstances that have given rise to the hostilities between Israel and the Hamas terror organization, including the mass barrage of rockets fired by Hamas at Israel's civilian centers, and the extensive offensive tunnels under Israel's sovereign territory.

We also know that you are fully aware of the extraordinary lengths to which the Israeli forces have gone in order to ensure that all targets are legitimate military targets, and to fully observe the principles of distinction and proportionality – to the extent of suffering casualties because of this.

We know that you are fully aware of the repeated warnings given to civilians to distance themselves from those structures used by Hamas for purposes of combat. We know that you are fully aware of the fact that Hamas, as a matter of its basic operational procedure, deliberately and willfully uses its civilians and its civilian structures, whether schools, hospitals, mosques or private homes, in order to shield its rocket emplacements, weapons manufacture facilities, tactical planning and operation centers and its stocks of rockets and other weapons.

You are fully aware of the fact that they do this deliberately in order to generate civilian casualties, as part of their propaganda warfare.

Yet despite your knowing all these facts, you have nevertheless found it necessary to play along with the Hamas tactics and to arbitrarily and falsely accuse Israel of violating humanitarian norms, and you have even determined "that these attacks should be investigated and those found responsible will bear the consequences of their actions."

We have great difficulty in understanding the reasons for this deliberate and false deceit on your part. As Secretary General of the United Nations, we would have

expected you to live up to the principles set out in the UN Charter requiring you and your staff to “refrain from actions which might reflect on [your] position as international officials responsible only to the Organization.”

To lay the blame so blatantly and falsely on Israel, while totally ignoring the continued, willful and indiscriminate aggression by Hamas against Israel’s citizens, its utter disregard of humanitarian norms, and Hamas’s cynical violation of the basic rights to life of its own civilian population, you are undermining and discrediting your own position as Secretary General, as well as undermining the guiding principles set out in the Charter, and discrediting the organization. We are shocked at your utter disregard of the fact that the very UN premises which you accuse Israel of attacking, have been cynically abused by Hamas and used as store-houses for ammunition, and launching pads for rockets.

Rather than falsely accusing Israel, one might have expected that as the executive head of the UN, you would have admitted responsibility of the UN for such abuse of its facilities, and instituted a thorough inquiry as to how and why UNRWA facilities were placed at the disposal of the Hamas terror organization, how and why the UN officials responsible for such facilities permitted this situation to occur, and why those rockets and other weapons that were discovered in such facilities were transferred to Hamas, for their continued use against Israel’s citizens.

In permitting the storage of weapons, and in transferring such weapons into the hands of Hamas, the UN has in fact permitted itself to become accessory to the commission of war crimes.

We expect and demand that you, as Secretary General and executive head of the UN, immediately establish a high-level inquiry with a view to thoroughly investigating these crimes and ensuring that those found responsible will bear the consequences of their actions.

Mr. Secretary General, your exaggerated, selective, biased and often false accusations against Israel and your total disregard of the truth, have irreparably discredited you and the UN.

Sincerely

Alan Baker, Ambassador (retired),
Attorney Nachi Eyal, Director, International Action Division,
CEO, Legal Forum for Israel

With regard to the UN, in particular its notoriously anti-Israel Human Rights Council, please read this recently published article, “The United Nations ‘Human Rights’ Council” by the present author.³⁹ It argues that a heavily unbalanced treatment of Israel in the UN has been created by bodies like the 57-member Organization of Islamic Cooperation and nations sympathetic to it. This distinct lack of balance has been in part generated by attempts to introduce the principles of Islamic law into a previously Western legal context.

The broader context

More important in its way than the foregoing is the almost total absence of any context within which to place the current war. Events in Gaza and elsewhere are treated by the media, the UN, many Western states, and even the general public (whose base their views solely on what the media tell them) as if each one is entirely discrete. This serves to lock us into a fractured discourse, in which nothing appears to be related to anything else. But there are, in reality, chronological, geographical and ideological links that together form a pattern both intricate and simple, yet too often overlooked because all the focus is on Israel’s supposed misdemeanors.

In 1947, following the UN vote to create two states side by side, Israel and Palestine, the Arabs in the British Palestine Mandate territory from which these new entities were to be cut launched an all-out civil war against the Jews. When the British left and Israel was brought into being in May of the following year, five Arab countries sent seven armies to invade Israel. They lost, but the Palestinian Arabs and their allies resumed terrorist operations against the Jewish state. The Arabs had been given a generous state, but they refused to establish it because they wanted everything for themselves and were prepared to annihilate the Jews to the last man in order to get it. In 1967, Egypt, Syria and Jordan prepared to invade Israel again and lost for the second time in the Six-Day war. At a meeting of the Arab League in Khartoum in

³⁹ <http://www.gatestoneinstitute.org/4573/united-nations-human-rights-council>

September of that year, a Declaration was made which contained the following words in paragraph 3: ‘no peace with Israel, no recognition of Israel, no negotiations with it...’⁴⁰ And observers still do not understand just what it is Israel, a democratic state, is faced with. In October 1973, Egypt and Syria launched a surprise invasion of Israel on Yom Kippur, the holiest day in the Jewish year; they were aided and abetted by troops and materiel from Iraq, Jordan, Algeria, Morocco, Tunisia, and even Cuba. This was a longer war, but Israel scored another victory and another impermanent ceasefire was agreed.

In 1979, following the Camp David Accords of the previous year, Egypt and Israel signed a peace treaty in which Israel gave up the Sinai Peninsula, which it had captured during the Six-Day War, and Egypt became the first Arab state to recognize Israel. Yet today, Israel is treated as a belligerent nation with no interest in peace, a state that works to destabilize all efforts to bring about a lasting peace. Such critics should meditate carefully on three “Nos” of Khartoum and Israel’s readiness to give up valuable land in return for peace.

It was not until 26 October 1994 when President Clinton arranged a similar peace treaty between Israel and another old enemy, the Hashemite Kingdom of Jordan. In that treaty, mutually agreed borders were established. Since those treaties were signed, Israel has not gone to war with Egypt or Jordan, and all three sides have benefited greatly from the cessation of hostilities. But all other Arab states remain in a state of hostility.

In 2005, in a further gesture aimed to bring peace with the Palestinians in Gaza, Israel pulled out of Gaza — every civilian, every soldier, every family, every yeshiva, every synagogue. This was virtually unprecedented in history. But in 2006, Hamas won an election and turned on its former partners, Fatah, killing hundreds of Palestinians and turning Gaza into an armed conclave devoted to the destruction.

⁴⁰ http://www.jewishvirtuallibrary.org/jsource/Peace/three_noes.html

Since then, Hamas and associated factions have rained over 15000 rockets on Israel and started three wars.

Is it so hard to see a pattern here? Arabs attack and Israel responds – for it has no choice in the matter. If Hamas were disarmed, there would be peace, albeit an edgy one; if Israel held fire, it would be obliterated.

But that is not the only pattern. Who can fail to see how radical Islam, led by groups like al-Qa'ida, the Muslim Brotherhood (of which Hamas is a member), Lebanon's Hizbullah, the Taliban, Somalia's al-Shabab, Nigeria's Boko Haram, and others from Indonesia to North Africa, have changed the face of international politics and warfare. Radical states like Iran, Libya, Qatar and (possibly) Iraq and Syria finance, arm and train client terrorist factions. From 9/11 to the killing of Yazidis, Christians and Shi'i Muslims in Iraq to the beheading of James Foley and other hostages, Western states have fought hard to bring rogue states and belligerent radicals under control in order to bring peace to a deeply troubled region. The Israeli struggle with Islamic terrorism is in no way separate from that wider struggle between the Western democracies and the jihadist movements or the countries that sustain them. There is another pattern here, and again I challenge readers to deny it. Israel's actions cannot be judged without reference to the nightmare of the "Arab Spring" and the convulsions of the Middle East or the worldwide struggle against jihad fighters everywhere. In what sense does Hamas's claim that the only solution to the Palestine problem is jihad differ from the jihadi ideology of ISIS, al-Qa'ida, Boko Haram, the Muslim Brotherhood's ideologue and martyr Sayyid Qutb and his "Our Struggle against the Jews" (1951), or the Islamist supremacism of the late Sayyid A'la Mawdudi and the Jama'at-e Islami in Pakistan, or the Iranian regime's threat to wipe Israel from the page of time?

There is one thing that is often overlooked, but which is capital to any serious apprehension of the context, not merely of the war in Gaza, but in the meaning of Western calls for the weakening of Israel by banning arms sales, by attacking the

Israeli economy through boycotts, disinvestments and sanctions, or by breaking political and religious ties.

The need for a nation state to which Jews could escape from the pogroms in Russia, the anti-Semitism of Europe, or today's threat of a second Holocaust is self-evident to all but deep-rooted anti-Semites, who deny Jews then rights common to all men and women, above all the right to live as free people, free from persecution in a liberal democracy. And here's the problem.

When I was born in 1949 and as I grew to adulthood, it was widely thought that anti-Semitism was a thing of the past in Europe at least, for had we not seen just how great an evil had been wrought by it over centuries, and after the Nazi Holocaust, the Shoah, had we not been sickened of it for ever. In those days, photographs and film footage of the death and concentration camps produced indelible images of hell that haunted my parents' generation and gave mine nightmares. But today in London, Paris, Berlin, Amsterdam, and every European capital and in every provincial capital the anti-Semites have taken over once again. Do I not mean the anti-Israel marchers? Perhaps you have been among them. No, I do not: I mean the anti-Semites, for there they are, self-righteously parading with banners that read "Hitler was right", wearing tee-shirts stamped with Hitler's photograph, and chanting words the Nazis would have thrilled to, " Hamas, Hamas, Jews to the gas". Sing that again. Does it not chime to the strains of the Horst Wessel Lied? Not Israelis, mark you, Jews. Or the voices of young men and women, children born in the US or the UK, chanting "*Khaybar, Khaybar, Ya Yahud, jaysh Muhammad sa-ya'ud*" — which I loosely translate as "Remember the battle of Khaybar, O you Jews — the army of Muhammad is coming back". Not "O you Israelis", but "O you Jews".

Such naked contempt and raw hatred on the streets of cities where Jews were rounded up to be transported like cattle and gassed like insects. The hatred is tangible, and it comes as much from the European left as from the Islamist right, and it is reflected in the supersessionist movement within many Christian churches, by which Jews are denigrated as a people rejected by God and Israel handed on a plate to those

same Islamists who kill Christians in their thousands. Is this not a mental illness, to hate your best friends and welcome your enemies with open arms, handing them the weapons with which to murder you and your family in your beds? With the self-proclaimed Islamic State rampaging in Iraq and Syria, what might Jews not fear when they see the ISIS flag at these marches and watch their neighbors walking alongside it without turning a hair. It has happened before, why should it not happen again? The man more responsible than any other for the Palestinian preference for war over peace was Hajj Amin al-Husayni, a predecessor of Hamas and a close friend of the Nazis, who spent World War II in Berlin broadcasting Nazi propaganda to the Arab world, where it was well received, and planning with Himmler death camps for the Jews in Palestine.

Jews have greater reason than any other people to see a second Shoah on the horizon. Already, attacks on individual Jews, Jewish communities, synagogues and other Jewish institutions (like the Jewish Museum in Brussels where four Jews were gunned down not many months ago) are increasing by the day, and Jews are fleeing France and other countries, just as their grandparents did in the 1930s. And people read the Hamas Charter, nod and yawn and think Israeli Jews have no right to defend themselves against a genocidal enemy, then dream up ways to help bring the Jewish fortress to its knees. It never seems to occur to anyone that a permanent peace would be a much better solution, but that the Palestinians will have to learn from scratch the art of compromise.

There are many places where displaced Jews can go, but nowhere now is free from anti-Semitism, that oldest and most vicious of hatreds that is always revived from generation to generation, and nowhere is safe from anti-Jewish attacks. Only Israel offers a safe haven to Jews everywhere who feel the hot breath of murderous intent on their necks, who fear for their lives and their children's lives, whose family photograph albums show faces from the 1930s who could not flee and were swallowed up by that most evil of things wholesale. Yet you wish to weaken Israel, to make it less capable of staving off genocidal attacks from an enemy sworn before its

God to its destruction. Israel has no neighbors who will come to its side in its defence, no neighbor that does not call to heaven for the death of every Jew on the planet, no neighbor that can be trusted to refrain from joining forces with Hamas when they think the time is right. Yet it seems that half the world supports demands for a lifting of Israel's entirely legal security blockade of Gaza so that Hamas can get down to some serious importing of long-range missiles from Iran and its other allies. In a recent [interview](#) between a Reuters reporter and a Hamas leader, the jihadi stated openly that 'the group would press on with restocking its arsenal or rockets and other weaponry and shoring up its underground network. In peace we make preparations, and in war we use what we have readied.'⁴¹

Calls for an end to the blockade of Gaza (which has never blocked the import of genuine humanitarian goods at all) amounts to a policy of arming terrorists and disarming Jews are quite simply shameful and inexcusable. Hamas has already diverted billions of dollars of aid money to build concrete tunnels and purchase missiles and other arms, leaving ordinary Gazans without the basic necessities of life while the Hamas elite has a shopping mall selling designer goods, builds luxury apartments, and drives expensive sports cars. If this war ends now, the international community will pour in more billions to rebuild Gaza. And if there is no blockade, those billions will build another arsenal, and with that arsenal, Hamas will start another war in which even more Gazans and Israelis will die or fall injured for life. There is a simple solution to this, which is peace. Israel has always asked for peace. But Hamas, as you have read in their Charter, rejects peace out of hand and for all time. Let's pull the plug on the maniacal fundamentalist jihadis of Hamas and bring a moderate government to power in Gaza, a government that might in the end see a permanent peace as the right way forward for everyone.

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⁴¹ 'Hamas fighters show defiance in Gaza tunnel tour,' *YNet News*, 19 August 2014, at: <http://www.ynetnews.com/articles/0%2c7340%2cL-4560444%2c00.html>

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