

Investigating Israeli War Crimes in Gaza

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Independent investigations and convincing testimonies, on both sides, provide compelling evidence of Israeli war crimes in Gaza. It's time to hold the guilty accountable.

In February, the Adalah Legal Center for Arab Minority Rights showed conclusively how Israel violated core international law principles by indiscriminately attacking civilians in spite of IDF claims such instances were justified.

Amnesty International accused Israel of war crimes and called on the UN Security Council to impose an arms embargo.

Human Rights Watch (HRW) has a long record of acting as an imperial agent even while at times fulfilling its mandate "to protect the human rights of people around the world....stand with (them) and uphold political freedom (by) bring(ing) offenders to justice."

It partly did this in a report titled "Rain of Fire" by citing "Israel's Unlawful Use of White Phosphorous in Gaza....over populated areas, killing and injuring civilians, and damaging civilian structures, including a school, a market, a humanitarian aid warehouse and a hospital."

The IDF also used "missiles, bombs, heavy artillery, tank shells, and small arms fire in densely populated neighborhoods, including downtown Gaza City (in violation of) international humanitarian law (and laws of war) which require taking all feasible precautions to avoid civilian harm and prohibits indiscriminate attacks."

HRW called the use of white phosphorous "indiscriminate, deliberate (and) reckless." It said America supplied the weapons and needs to answer for its actions. It called on the UN Security Council or Secretary-General to appoint an independent international commission to investigate credible war crimes allegations, including use of illegal weapons.

Omitted from the report were over six decades of mass slaughter and destruction, a process amounting to genocide. Also not mentioned was the full impact of 22 days of attacks, Gaza still under siege, and the West Bank under military occupation. Unlisted was the death and injury toll; civilian shootings in cold blood; the vast number of homes, government buildings, hospitals, ambulances, fishing boats, crops, schools, mosques, businesses, UN buildings and shelters, entire infrastructure and neighborhoods, and all other wanton destruction. Silence as well on the incalculable toll on 1.5 million Gazans and continued assaults against them.

On April 6, Physicians for Human Rights-Israel (PHRI) and the Palestinian Medical Relief Society (PMRS) compiled detailed evidence of war crimes in a lengthy report - from Gazan and medical staff testimonies of wounded being denied care, shot in cold blood at close range, prevented from being evacuated, and being terrorized "without mercy." A team of

international independent legal, health, and medical experts conducted the investigation.

PHRI executive director Hadas Ziv said: “One of the difficult things in the report is clear harm to innocent people....(the unleashing of) such fire power among the population.” It documented 44 civilian testimonies and took samples of tissue, soil, water, swamp grass, suspected infected ammunition, and chemical weapons, then sent them to the UK and South Africa for testing and evaluation.

Al-Haq on Operation Cast Lead

Al-Haq is an independent Palestinian NGO based in Ramallah, West Bank, established in 1979 to “protect and promote human rights and the rule of law” in Occupied Palestine.

In April, it issued a position paper titled: “Operation Cast Lead and the Distortion of International Law – A Legal Analysis of Israel’s Claim to Self-Defense under Article 51 of the UN Charter.” The justification is preposterous by a nation absolving itself of compelling war crimes evidence.

Nonetheless, on March 30 (after 11 days), the IDF closed its inquiry into military misconduct allegations with judge advocate general, Avichai Mendelblit, dismissively calling them “heresay” based on no substantiating evidence. “They were based on rumors (and) did not reflect the operational circumstances which had actually taken place on the ground.” This is typical Israeli stonewalling whenever it’s caught red-handed along with blaming victims for its own crimes.

On March 31, a Palestinian Centre for Human Rights (PCHR) press release stated:

PCHR “believes that the speed with which this inquiry was concluded illustrates the consistent failure of the (IDF) to genuinely investigate crimes (its soldiers regularly commit) against Palestinian civilians. Investigations of this nature do not meet international standards of independence and transparency, and obstruct justice.”

Al-Haq reviewed 22 days of “unrelenting aerial attacks coupled with intensive ground incursions” as well as the deaths, injuries, and destruction they caused. Yet, incredibly, in the morning before the attack, Israel’s UN ambassador, Gabriela Shalev, informed the Secretary-General:

“After a long period of utmost restraint, the government of Israel decided to exercise, as of this morning, its right of self-defense....as enshrined in Article 51 of the (UN) Charter.”

Its basis was legally untenable on at least two counts:

- that Gaza remains effectively occupied and Israel bears full responsibility for it; and
- Israel’s attack was unprovoked, preemptive, and related to the broader occupation and conflict matching the world’s fourth most powerful military against a defenseless civilian population with only small arms and homemade weapons for defense.

Gaza’s Legal Status

Despite its 2005 disengagement, Gaza remains occupied. Article 42 of the 1907 Hague Regulations states that:

“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.”

Legally, “effective control” exists if adversarial military forces can “at any time they desire assume physical control of any part of the country.” In addition, whether an “occupying power” has enough “force” or “capacity” to make its power felt. Israel’s disengagement plan asserts its right to “guard and monitor (Gaza’s) external land perimeter and will continue to maintain exclusive authority (of its) air space” and coast line. It also allows troop deployments inside the Territory and right to control the population administratively through the tax and revenue system, civil population registry, and exclusive regulation of all goods and people traffic in and out.

Self-Defense under International Law

The UN Charter’s Article 2(4) declares that all Member States “shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any manner inconsistent with the purpose of the United Nations.”

However, the Charter permits armed force under two conditions – when authorized by the Security Council or under Article 51 authorizing the “right of individual or collective self-defense if an armed attack occurs against a Member....until the Security Council has taken measures to maintain peace and security.”

Operation Cast Lead was unprovoked aggression in the context of 42 years of occupation and conflict, and as such is “regulated exclusively by international humanitarian law,” not the whim of the occupier to twist it.

As an occupying power, Article 51 doesn’t apply, since Israel is bound by international humanitarian laws, including Fourth Geneva Convention provisions. It has specific legal obligations over Gaza and the West Bank:

- to treat civilians humanely;
- refrain from violence of any kind;
- care for the sick and wounded;
- ensure adequate food and medical supplies;
- afford judicial guarantees; and
- look after “protected persons” under its control in all other respects.

International law also restricts combat methods and means employed by all parties. Legally, only narrowly defined “military necessity” justifies an attack – on targets intended to weaken or overcome the enemy or bring conflict to an end. Even then, the principles of distinction and proportionality apply:

- distinction between combatants and military targets vs. civilians and non-military ones;

attacking the latter is a war crime; and

— proportionality prohibitions against disproportionate, indiscriminate force likely to cause damage to or loss of lives or objects.

Prior to an attack, Israel is also obligated to provide “effective advance warning” to alert civilians, then take all measures possible to minimize non-combatant casualties. Under Fourth Geneva, “neutralized zones” protect them to assure they’re free from harm as much as possible during conflict.

Israel violated the rules of war and occupation and committed crimes of war and against humanity. It attacked civilians disproportionately without distinction, including in densely populated areas. It made no effort to distinguish between military and civilian targets. It willfully targeted the entire Gaza population, its property and infrastructure – indiscriminately in grave breach of Geneva and other international humanitarian laws. The laws of war as well. As such, its officials and commanders are criminally liable and should be held accountable for their actions.

Al-Haq concluded:

“Israel’s reliance on self-defence misconstrues international law in an attempt to evade (its) international legal obligations....” Its self-defense justification under Article 51 is fraudulent on its face and “holds no validity under international law.”

UN Gaza War Crimes Inquiry

On April 3, the UN announced Richard Goldstone’s appointment to head a Gaza fact-finding investigation into alleged Gaza war crimes during Operation Cast Lead. Martin Uhomoibhi, president of the UN Human Rights Council, said an independent team of experts will conduct the mission after discussing it in Geneva for the next few weeks.

Goldstone is a respected jurist, having been a justice for nine years on South Africa’s Constitutional Court. He also served as chief prosecutor for the Yugoslavia and Rwanda tribunals and is a Hebrew University board member. As a Jew, he was “shocked” to be appointed but promised to be fair and even-handed. He “hope(s) that the findings....will make a meaningful contribution to the peace process....and provide justice for the victims.”

On March 17, he was one of 16 international figures, including Archbishop Desmond Tutu, calling for a war crimes investigation. His mandate is to focus on Palestinian victims of the recent Gaza war but will investigate all alleged violations before, during, and after the conflict.

Earlier, Israel refused to participate in previous Council investigations, calling them biased. It’s unclear if it will cooperate now after Foreign Ministry spokesman Yigal Palmor said “This committee is instructed not to seek out the truth but to single out Israel for alleged crimes.” He accused the Council of having “practically (no) credibility at all.”

Goldstone is currently a Spinoza Fellow at the Netherlands Institute for Advanced Study in The Hague. He’s received several human rights awards, most recently the MacArthur Foundation Award for International Justice to be awarded at The Hague on May 25, 2009.

On May 3, 2007, he was unequivocal as one of four panel members on the topic of whether

war crimes trials do more harm than good. When asked to participate, he said “organizers must have known that I would be saying they do more good than harm and that, of course, is my view.”

He cited Nuremberg successes as “the first attempt to hold individual criminals liable for violating international criminal law. It was the first recognition that the rule of law could be applied internationally” but did it through a “fair trial” exposing “the most appalling war crimes” by focusing on “the victims....They know what happened to them. They don’t need to go to court and hear evidence....but they want official acknowledgment (as) the beginning of their healing process....I have no doubt that the world is a better place today (as a result of) the rapid growth of international criminal justice” and the Rome Treaty establishing the International Criminal Court.

B’Tselem’s Guidelines to Investigate Operation Cast Lead

B’Tselem is the Israeli Information Center for Human Rights in the Occupied Territories. It’s part of a coalition of Israeli human rights organizations pressing Israel to investigate allegations of its war crimes thoroughly and fairly. Of course, we now know it whitewashed them, much like it’s done in the past.

Nonetheless, B’Tselem cites the enormity of lost lives, injuries, destruction, homelessness, and irrevocable human loss and suffering demanding full accountability. It prepared a document “to lay out the principal questions” regarding Israel’s conduct and outlined guidelines to investigate it.

Firing at Civilians

Civilians were willfully targeted in violation of international law, and the vast majority of deaths and injuries were non-combatants. B’Tselem documented numerous incidents “in which young men not involved in hostilities were killed” or wounded.

“Examination of the (IDF’s) conduct during the operation raises (serious) concerns as to the extent (it) complied with its obligations under international humanitarian law.” Compelling evidence, by any standard or measures, indicates systematic and grievous war crimes.

During the conflict, B’Tselem got “particularly grave reports of soldiers intentionally aiming gunfire directly at civilian” non-combatants. They must be thoroughly investigated to learn if commanders ordered these actions or if troops acted on their own.

Lack of Protection of Civilians

Israel willfully trapped 1.5 million Gazans during the conflict. Border crossings were closed, and Egypt (in compliance with Israel and Washington) refused to open the Rafah one. Israel claimed dropping flyers was enough. False. International law requires that advance warning be given and all precautions taken to protect civilians. Instead they were targeted in their homes, schools, mosques, work places, and UNRWA shelters.

B’Tselem got testimonies that the IDF also used Palestinians as human shields. They were ordered into buildings ahead of soldiers to assure they weren’t booby-trapped. Also to remove suspicious objects on roads and stand in front of troops so they wouldn’t be shot. Fourth Geneva’s Article 28 bans the practice and states:

“The presence of a protected person may not be used to render points or areas immune from military operations.” In other words, act as human shields. In *Adalah et al v. OC Central Command et al*, Israel’s Supreme Court prohibited the practice in any form for any purpose.

Targeting Symbols of Government

During the conflict, the IDF bombed hundreds of civilian targets, including homes, hospitals, schools, mosques and government buildings – in clear violation of international law. Israel’s response: Targets “support(ing) the financing, planning, and carrying out terrorist acts” were struck. Other statements were similar but failed to say anything about these structures being for military purposes. B’Tselem concluded that “the reason for striking these targets was not related to the purposes for which they were being used” and thus were off-limits to attack.

For its part, Israel claimed everything related to Hamas was a legitimate target. Deputy chief of staff general Dan Harel stated:

“We are striking not only terrorists and launchers, but the entire Hamas administration, and all its arms. We are striking government buildings, manufacturing plants, security branches, and so forth. We demand governmental responsibility from Hamas and we do not distinguish between the various branches. Following the operation, no Hamas building will be left standing.” Presumably he included hospitals, schools, mosques and private homes.

Another official statement said:

“When a terrorist organization controls the government, all government ministries are used to fulfill the objectives of the terrorist organization. Why do you assume that the Palestinian transportation ministry serves only to set bus routes? Maybe it serves other purposes. Hamas does not make the separation that is customary in an orderly-run country.” Maybe also surgeons, teachers, women, and infants are covert suicide bombers and thus legitimate targets.

B’Tselem wrote to Israel’s attorney general, Menachem Mazuz, “demanding clarifications on the attacks on civilian objects.” The response “completely ignored the questions raised....”

Evacuation of Wounded and Attacks on Medical Teams

Numerous reports were that IDF forces targeted hospitals, ambulances, and medical workers, and “that soldiers (prevented) wounded persons from getting to hospitals.” In some cases, they were fired on at close range or left stranded to bleed to death. Once Israel invaded, medical teams movement was impossible “as was access to hospitals in (Gaza’s) central section...at least 16 medical-team personnel were (targeted and) killed during the operation.”

The ICRC deviated from its normal procedure by stating that Israel violated international humanitarian law that requires treatment and evacuation of wounded persons, and that prevention or delays were illegal and unacceptable.

On January 6, eight human rights organizations petitioned the Supreme Court “demanding that the military permit medical teams and ambulances to move about in (Gaza) and enable evacuation of wounded to hospitals.” Israel claimed it gave unequivocal instructions to refrain from attacking medical teams and ambulances and let the wounded be evacuated to

hospitals. It then qualified the statement saying:

“Reports (received) indicate clearly and unequivocally that the terrorist activities sometimes use ambulances to carry out terrorist acts, and also disguise themselves as medical-team personnel. This is a mode of operation, rather than isolated and exceptional incidents.”

This is a typical Israeli defense to justify its most outrageous crimes of war and against humanity. It's a fictitious legal shield dismissed by international jurists. They're based on supposition, not facts, and would be thrown out of any legitimate court as unfounded and unproved.

International law is clear and unequivocal. Civilian hospitals, medical personnel, and all others tending to the wounded “may in no circumstances be the object of attack, but shall at all times be respected and protected by the Parties to the conflict.” Israel blamed Hamas instead of taking full responsibility for its actions.

Collapse of Civilian Infrastructure and Public Services

During the conflict, Gaza's civilian infrastructure and public services “collapsed almost completely.” Its power station ran out of fuel and shut down. Residents got only 25% of the electricity they needed. Water and sewage systems were impaired. At the peak of fighting, over 800,000 people had no running water. Sewage flowed onto farmland and flooded Beit Hanun streets. Hospitals had to run on generators. They also suffered shortages of virtually everything necessary to function. Food and other essentials were in short supply. Bakeries shut down for lack of flour, cooking gas and electricity. International agencies weren't able to distribute food and other supplies.

The result was a human catastrophe compounded by 18 months under siege. Two weeks before the conflict, an OCHA report said Gaza was in crisis, and its residents struggled daily to meet basic needs and survive – like get enough food, water, fuel and medical care. Most of them felt trapped “physically, mentally, and emotionally.”

According to OCHA, in Q 2 2008, unemployment reached 50%, and in 2007, 79% of households lived in poverty and for 70% it was “deep.” This was Gaza on the eve of conflict. Today it's far worse after so much destruction.

Conclusion

“The extent of the harm to the civilian population during Operation Cast Lead is unprecedented. Only now is the full magnitude of the destruction coming to light” with further evidence from newly revealed testimonies. Entire families were killed. Parents were helpless to prevent their children from dying. Others were powerless to prevent loved ones from bleeding to death. These are permanent scars, forever etched in the collective memory of a tortured people – isolated, uncared for, and ignored by world leaders.

Human rights groups and others demand full accountability “for the gravest of crimes.” Israel claims its military acted properly. Defense Minister Ehud Barak called the IDF “the most moral army in the world....(that it) employed every possible means to avoid injuring people.” The IDF's judge advocate general, Avichai Mandelblit, told B'Tselem:

“While we regret, of course, any harm to civilians, we emphasize again that the responsibility for that lies solely at the doorstep of the Hamas organization....”

B'Tselem was unforgiving in calling Israel's actions "unacceptable." International law protects civilians from the "horrendous effects of war....Using ambiguous terminology (and unwarranted justifications to condone) such grave harm to civilians, in an attempt to create a semblance of compliance with the law, constitutes" blatant deceit of the highest order.

Israel's conduct "raises grave suspicion that soldiers and commanders breached international humanitarian law" willfully and repeatedly. "In light of this, a public reckoning....is crucial....The scope and severity of the violations can be determined only in the framework of a comprehensive investigation - (one that is) independent, effective, open to public review, and conducted within a reasonable time."

B'Tselem calls on Israel to do it. It never has and won't now beyond claiming to have examined allegations and determined them to be unfounded. Only an independent body should be tasked. It remains to be seen if the UN Human Rights Council team under Richard Goldstone is up to the job. The whole world is watching.

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