

## **Attack First, Kill Thousands, Claim Self-Defense, then Campaign to Discredit the ICC**

by James Marc Leas

*Supposed self-defense against rockets diverted attention from war crimes allegations, and top Israeli officials are now pleading self-defense against rockets in a campaign to discredit the ICC inquiry, but neither facts nor law supports the self-defense claims.*

Submission to: Ms. Fatou Bensouda, Prosecutor of the International Criminal Court<sup>i</sup>

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

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### **Self-defense claims eclipsed war crimes charges**

Self-defense against Hamas rocket fire was a central justification for the 2014 Israeli attack on Gaza invoked by Israeli Prime Minister Netanyahu, U.S. President Obama, U.S. Secretary of State John Kerry, and the United States Senate. Self-defense against the rockets was also used to deflect criticisms that Israeli forces were committing war crimes by targeting civilians and civilian property in Gaza.

Self-defense against the rockets is also the underlying basis for the ongoing Israeli and U.S. government campaign against the ICC inquiry into the situation in Palestine.

Though the war crimes allegations came from respected sources, including [Amnesty International](#), [Human Rights Watch](#), the [United Nations Human Rights Council](#), the [National Lawyers Guild](#) and the [United Nations High Commissioner for Human Rights](#), the central message that Israeli forces were protecting Israeli citizens from Hamas rockets was so ubiquitous in the Western media as to eclipse the war crimes charges. Pervasive self-defense claims against rocket fire have been crucial to Israeli political and military leaders maintaining impunity and avoiding accountability for their periodic assaults on civilians and civilian infrastructure in Gaza.

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

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

The Israeli government’s campaign to discredit the ICC inquiry is consistent with the same public relations strategy, relying entirely on claimed self-defense against Hamas “terror,”

especially rocket fire, as described in "[Netanyahu rejects ICC's 'preposterous' inquiry into possible war crimes](#)," in *Haaretz*, January 17, 2015.

However, the facts and law are otherwise.

This submission to the ICC prosecutor:

- Presents facts showing that Israeli air and ground attacks preceded Hamas rocket fire. Because Israeli armed forces launched large-scale attacks on the West Bank and Gaza during a period when a cease-fire with Hamas was in place and while Hamas continued to observe the cease-fire, before any Hamas rockets were launched from Gaza and while no non-Hamas rockets were being fired at Israel, Israeli forces could not have been defending Israeli citizens from rocket fire.
- Presents facts showing that the Israeli bombardment and ground invasion of Gaza not only did not defend Israel from rocket fire, they sparked a vast increase in rocket fire as compared to the level during the month preceding the Israeli onslaught.
- Shows that the Israeli prime minister admitted to military goals for the Israeli attacks that had nothing to do with stopping rocket fire.
- Presents the law regarding self-defense, and shows that even if the facts were otherwise, self-defense is inapplicable to an occupying power, which Israel in Gaza remains, despite its claims that the occupation ended in 2005. Thus, the onslaught on Gaza could not legally be based on self-defense even if Israeli forces had not been the first to launch military attack.
- Even if we assume for the moment that self-defense could be applied to an occupying power, the UN Charter is the authoritative document on self-defense, and International Court of Justice opinions have generally taken a strict approach to the UN Charter's approach to self-defense, requiring an actual attack to have occurred before self-defense applies.
- Nevertheless, some authors and some states, including the UK, continue to argue that the Charter also includes the right to self-defense if an armed attack is "imminent." But even the UK position does not authorize the use of force to mount a pre-emptive strike against a threat that is more remote and requires that the use of force be necessary and proportionate to the threat.
- The "Caroline Doctrine," articulated by then U.S. Secretary of State Daniel Webster in a letter to the British Ambassador in 1841 became established in international law as the specific criteria that must be in place for a government's anticipatory self-defense position to be legitimate:

It will be for that Government to show a necessity of self-defence, instant, overwhelming, leaving no choice of means, and no moment for deliberation. It will be for it to show, also... even supposing the necessity of the moment authorized them to enter the territories... at all, **did nothing unreasonable or excessive**; since the **act justified by the necessity of self-defence, must be limited by that necessity, and kept clearly within it.**

The Hamas rocket fire was neither actually occurring nor imminent when Israeli forces launched a non-judicial execution in Gaza, killing a Hamas member and severely wounding three civilians on June 11. Nor when Israeli forces launched their massive assault on the West Bank on June 13, 2014. The Israeli attacks were not necessary to stop rockets because rockets were not being fired at the time by Hamas and non-Hamas groups. Nor was rocket fire imminently threatened at the time.

### **Israel launches “campaign to discredit the ICC inquiry” based on rocket fire**

On January 16, 2015 the Prosecutor of the International Criminal Court opened a [“preliminary examination of the situation in Palestine.”](#) Israeli officials immediately responded with [“a public diplomacy campaign”](#) to delegitimize the ICC inquiry, as reported by the authoritative self-described “Jewish and Israel news service,” *JNS.org* on January 19, 2015, in an article entitled [“Israel launches campaign to discredit International Criminal Court inquiry.”](#) First, Israeli Prime Minister Netanyahu said the inquiry “gives international legitimacy to international terrorism.” Then, at the start of a meeting with the Japanese Prime Minister, Netanyahu said:

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

With his attack linking the ICC examination to terrorism and with his threat to continue practices no matter what the ICC may decide about the legality of those practices, Netanyahu demonstrated a distinct lack of interest in following the traditional method of respectfully presenting facts and arguments to persuade the court. The grossly disparaging attack on the dignity and legitimacy of the court and the threat to disregard and disobey its decisions manifest an outlaw attitude.

Although the attack on the ICC inquiry is consistent with the Israeli government’s undeviating strategy of diverting attention from acts by Israeli forces by citing rocket fire, applying the same strategy to the International Criminal Court carries special risks. Unlike similar statements made in other contexts, many thoughtful people are likely to take Netanyahu’s high intensity attacks on the court as admissions that Israeli political leaders and military personnel committed violations of law and fear the decisions of the court. Furthermore, the prosecutor has authority to investigate the facts independently and return a fact-based, carefully reasoned judgment about whether rocket fire provoked the Israeli military action or vice versa, what the law is regarding self-defense for an occupying power acting in occupied territory, and whether self-

defense against rockets can be used to exempt Israeli political leaders and military personnel from criminal responsibility under the Rome Statute for their acts in occupied territory.

As reported in the [Jerusalem Post](#) on January 18, 2015, Israeli Foreign Minister Avigdor Liberman indicated “one of the ways Israel would combat the ICC move, saying that if Israel does not see a ‘dramatic change’ in the ICC position, ‘we will ask all our friends to stop any funding of the ICC.’ ” In addition, as [Haaretz](#) reported on January 16, “Israel retaliated to the Palestinian move to join the ICC by freezing the transfer of more than \$100 million a month in taxes it collects for the Palestinians.” Members of the U.S. Congress also threatened to cut off the \$400 million per year it provides for the Palestinian Authority, as reported by [The Hill](#) on January 20. Thus, Israeli officials openly threatened the ICC, and Israeli and U.S. officials openly admitted to plans to wield economic pressure on the court.

As the following portions of this letter will show, the underlying claim of self-defense against Hamas rockets made by Israeli and U.S. officials is incompatible with the fact that weeks of intensive – and lethal – Israeli military activity on the West Bank and Gaza preceded the first Hamas rocket fired since the end of Operation Pillar of Defense in November 2012. Because Israeli forces initiated the violence with large-scale military operations in occupied Palestinian territory beginning weeks before the first Hamas rocket was fired, they could not have been acting in self-defense against Hamas rocket fire, even if the law allowed a self-defense claim.

Moreover, as further described below, the law does not support a self-defense claim: a legal opinion handed down by the International Court of Justice in 2004 found self-defense under the UN Charter inapplicable for an occupying power acting in occupied territory. With no legitimate basis for self-defense either in the facts or in the law, the extension of the invalid self-defense claim to attack the ICC inquiry as a facilitator of attacks on Israel is without any foundation at all.

As facts presented later in this letter show, Israeli forces have best protected Israeli citizens not by launching attacks targeting civilians on the West Bank and Gaza (while claiming self-defense) but by continuing to observe cease-fires in place before they initiated their attack.

### **Self-defense in the Rome Statute**

Certainly, the Rome Statute recognizes a place for self-defense. Article 31(c) of the statute exempts from criminal responsibility acts by a person “reasonably to defend himself or herself or another person ... against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person.”

However, the article then expressly states, “The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility.”

Thus, even if the facts and law were consistent with the Israeli and U.S. claim of self-defense against rockets – which they are not – nothing in the Rome Statute would automatically exempt

Israeli political leaders and military personnel from criminal responsibility for ordering or carrying out such defensive operations if those operations included violations of the statute, such as by targeting civilians or civilian property, using weapons in heavily populated areas that are inherently incapable of being targeted to distinguish civilian from military objectives, and going forward with attacks in which the foreseeable damage to civilians or civilian property is disproportionate to the anticipated military advantage.

**“Full independence and impartiality” is under intense pressure**

The office of the ICC prosecutor announced that “The Office will conduct its analysis in full independence and impartiality.” But if the intense Israeli and U.S. pressure on the ICC inquiry somehow succeeds in preventing that independent and impartial analysis or succeeds in later preventing an investigation and prosecution, all the protections of civilians embodied in law in the Rome Statute will suffer degradation.

Certainly the successful degradation of the rule, embodied in Article 21(3), that the court will apply and interpret the law with no distinctions based on grounds such as “gender ... age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status” – presumably including status as a rich, powerful, swaggering and bullying country with the political and material support of a superpower – will solidify impunity.

Degradation of this and other provisions in the Rome Statute will also deeply threaten Palestinian civilians who have suffered through repeated onslaughts based on the *de facto* system of impunity that now prevails. Degradation will also threaten people distant from Palestine, since no one can guarantee that the damage from the degradation of the rule of law will be limited to Palestinian civilians.

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

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

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

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

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

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

Among the common bonds is recognition that grave crimes and atrocities against one nationality, combined with impunity, put people of all nationalities at risk. The ICC was created by many countries to put an end to such impunity. Respect for and the enforcement of international justice are essential for that purpose. If the independence and impartiality of the

ICC prosecutor remains under intense pressure regarding the inquiry into the situation in Palestine, not just Palestinian civilians but people all over the world are endangered.

The stakes are high. The human right to an independent and impartial judicial process is now under threat from powerful perpetrators and their collaborators who are distorting the facts about rocket fire in their public campaign to degrade and subordinate the International Criminal Court to maintain and solidify their own impunity. Action is needed now to protect and defend the independence and impartiality of the prosecutor and of the court.

To protect and defend that independence and impartiality from the improper self-defense attack by Israeli officials, the actual facts about rocket fire are quite useful. The remainder of this submission provides those facts, primarily from authoritative Israeli sources. It also provides the law regarding self-defense, including whether self-defense can be invoked by an occupying power for actions in occupied territory.

#### **When did Hamas start firing rockets?**

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

#### **Was the first Hamas rocket fire July 7 or did Hamas actually fire rockets on June 30?**

However, uncertainty about exactly when Hamas rocket fire began is indicated in the [July 1 ITIC weekly report](#):

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

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

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

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

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

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

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

### **When did Israeli forces attack?**

Israeli news media reported that Israeli forces escalated lethal attacks on Palestinian territory in mid-June - weeks *before* Hamas launched rockets. The intensive Israeli operations were supposedly to find and bring back three kidnapped Israeli teenagers.

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

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

...

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

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

...

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

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

Thus, Israeli forces were engaged in a large scale military operation in the West Bank, to (a) arrest Hamas members ([some of whom the Israeli government had previously released in a prisoner exchange](#)) and (b) break up the unity government, as admitted by Israeli Prime Minister Netanyahu. Nothing about stopping rocket fire.



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

In a video and in an article, "[West Bank Hamas leadership in Israeli custody](#)" on June 16, the *Jerusalem Post* reported:

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

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

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



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

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

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

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

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

In a new crime of extra-judicial executions, on Wednesday, 11 June 2014, Israeli forces killed a member of a Palestinian armed group and wounded three civilians, including his brother. The victim, who was riding his motorbike on the coastal road, southwest of Beit Lahia in the northern Gaza Strip, was killed when an Israeli drone launched two missiles at him. Following the execution, Israeli forces admitted committing it as the spokesman of Israeli forces claimed that the man was targeted as he was recently involved in firing rockets at Israeli towns. [However the ITIC weekly report for the previous week states that “Israel's south was quiet,” meaning no rocket fire for that entire week.] His brother, 'Ali Abdel Latif Ahmed al-'Awour (10 years old), was also wounded by shrapnel throughout his body causing him bleeding in the brain and entering into a coma. Another two civilians were wounded as well by shrapnel.

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

On June 11, 2014, a Salafist-jihadi terrorist operative named Muhammad Ahmed al-'Awar was killed in a joint Israeli security force action. He had been involved in firing rockets into Israeli territory. In recent months his network planned to carry out other terrorist attacks, including shooting down Israeli helicopters. In

addition to membership and activity in a Salafist-jihadi network, he was also an officer in the Hamas police force (IDF Spokesman, June 12, 2014).

In addition [the PCHR weekly report](#) for the period immediately before the kidnapping, June 5-11, states that:

- a. “In the West Bank, Israeli forces wounded nine Palestinian civilians, including a child. Eight of them were wounded during the peaceful demonstrations and the ninth one was wounded when Israeli forces moved into Al-'Arroub refugee camp, north of Hebron.
- b. “During the [seven-day] reporting period, Israeli forces conducted at least 76 military incursions into Palestinian communities in the West Bank. During these incursions, Israeli forces arrested at least 28 Palestinians, including four children and a woman.”

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

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

...

The two children who were killed were identified as:

1. Nadim Ahmed Nowarah (17 years old), a student at the Evangelical School in Ramallah, from South Mazra'a village, northwest of Ramallah, hit by a bullet to the chest; he was transferred by the medical crews to Palestine Governmental Medical Complex in the city, where he underwent surgery, but doctors' efforts failed to save his life.
2. Mohammed Mahmoud 'Odah Abu Thaher (17 years old), a student from Abu Shkhaidem village, northwest of Ramallah, hit by a bullet to the heart. The killed was a student at the village school.

### **First non-Hamas rocket fire begins after Israeli attacks**

Only the day after Israeli political and military leaders escalated their incursions into Palestinian communities on the West Bank on the night of June 13 – supposedly to search for

and return alive the three missing teens – did ITIC report the firing of two rockets from Gaza by non-Hamas groups on June 14, as described in the [June 11-17 ITIC weekly report](#),

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

Israeli forces could not have been acting in self-defense against Hamas rocket fire when they launched their June 11 attack on Gaza that killed one and wounded three. Nor could they have been acting in self-defense when they massively escalated with their June 13 military offensive on the West Bank: there had been no Hamas rocket fire for 20 months. Nor could Israeli forces have been acting in self-defense against non-Hamas rocket fire, which had not occurred for 10 days and was close to zero for more than a month when Israeli forces attacked on June 11 and escalated on June 13. As the [ITIC July 2-8 weekly report](#) describes the history, “[Rocket fire from the Gaza Strip] *began* in the second half of June *during* Operation Brothers' Keeper, conducted to find the three abducted Israeli youths” (emphasis added).

Consistently, the [ITIC weekly report dated June 3-10](#) states, “This past week no rocket or mortar shell hits were identified in Israel's south.” The [ITIC weekly report dated June 11-17](#) shows that no rockets were fired at Israel by Hamas or non-Hamas groups in Gaza during the period from June 2 until after Israeli forces launched their military attack on the West Bank during the night of June 13.

Thus, when Israeli forces launched their massive military assault on the West Bank on the night of June 13, following their lethal military attack in Gaza on June 11, their dozens of military assaults in the West Bank earlier in the week, and their shooting the Palestinian youths demonstrating on May 15, they could not accurately say they were acting in self-defense against rocket fire.

### **Israeli officials deceived the Israeli public – the supposed search for missing boys was mere pretext to attack**

As *Jewish Daily Forward* editor at large J. J. Goldberg wrote in a column in the *Forward* on July 10, “[How Politics and Lies Triggered an Unintended War in Gaza:](#)”

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

The truth came out when part of the recording of the emergency call from one of the Israeli teens was widely circulated on WhatsApp and social media on June 30. The Israeli government then lifted [a gag order](#) on part of the recording. A July 1, 2014 report, “[Recording of teen's](#)

[emergency call released](#),” in *The Times of Israel*, includes a partial transcript and [The Jerusalem Post](#) posted part of the recording in which one can hear the gunshots. Putting that together with the blood stains and bullet shells found in a burned out car, Israeli authorities must have known that the three teens were dead. Israeli officials suppressed that information when they launched their military campaign on June 13 “to bring the three Israeli teenagers home safely and as soon as possible” [as described by IDF spokesman Brig. Gen. Moti Almoz](#).

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

### **Prime Minister Netanyahu admits the real purpose**

After describing the Israeli operations that caused Hamas to pay a “heavy price” on the West Bank, [Netanyahu acknowledged in his speech on July 4](#), that “in Gaza we hit dozens of Hamas activists and destroyed outposts and facilities that served Hamas terrorists.” Thus Netanyahu himself acknowledged the military purposes of the military operations, purposes that had nothing to do with rocket fire or rescuing the three teens, military operations ignored by the U.S. Senate resolution and U.S. Secretary of State John Kerry.

### **The November 2012 cease-fire agreement had successfully stopped all Hamas rocket fire**

Not only did the cease-fire put in place in November 2012 – at the end of the Israeli government's previous massive assault on Gaza – put a complete stop to Hamas rocket fire, a May 2013 article in the *Jerusalem Post*, [“IDF source: Hamas working to stop Gaza rockets,”](#) reported that Hamas was policing non-Hamas groups in Gaza to prevent rocket fire.

### **Cease-fire or not, Israeli forces continue military operations**

Although under the terms of the November 2012 cease-fire agreement, Israeli forces had agreed to completely hold their fire as well, Israeli land, sea, and air forces actually continued military operations against Gaza non-stop regardless of the cease-fire. [“PCHR Annual Report 2013”](#) summarizes PCHR's findings for the year, part of the 20 month period during which zero Hamas rockets were being fired at Israel:

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

### **Israeli attacks escalate in 2014**

An escalation of Israeli attacks in early 2014 is evident from PCHR's "[Report on the Human Rights Situation in the Occupied Palestinian Territories, 1st Quarter of 2014](#)." Among the violations presented in the report, 20 Palestinians were killed by Israeli forces during this three-month period, including 11 civilians of whom two were children; 259 were wounded, of whom 255 were civilians, including 53 children. "The majority of these Palestinians, 198, were wounded during peaceful protests and clashes with Israeli forces."

Notwithstanding the Palestinian casualties accumulating since the end of the 2012 war - and the increasing rate of Israeli attacks counted during the first three months of 2014 – Hamas launched no rockets during that period. Each Palestinian casualty during the 20-month period between the major Gaza assaults showed that it was Israeli forces who were violating the 2012 cease-fire agreement.

### **How to stop rocket fire**

Nevertheless, Israeli government officials had shown how they could successfully defend Israeli citizens. What worked time and time again for calm on the Israeli side of the border was a cease-fire agreement. In this regard, the November 2012 cease-fire agreement was wildly successful: Hamas rocket fire was zero and Hamas was policing the non-Hamas groups notwithstanding the egregious violations of the agreement by Israeli forces.

### **How to start rocket fire**

When Israeli forces attacked on June 11 and escalated on June 13, they put this cease-fire at risk. We will see that their gamble at first paid off – because even after Israeli forces massively escalated military attacks on Palestinians in the West Bank on June 13, quickly arresting the entire Hamas leadership on the West Bank, Hamas still maintained its side of the November 2012 cease-fire.

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

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

The HRW report also states that

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

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

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

### **Israeli forces finally provoke Hamas by killing Hamas members**

The [July 8, 2014 ITIC weekly report](#) divulged why on July 7 Hamas launched and claimed its first rocket fire at Israel in 20 months: During the night before, Sunday, July 6, Israeli forces had bombed and killed six Hamas members in Gaza. The ITIC report includes a picture of the slain Hamas members.

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

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

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

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

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

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

At 2:24 a.m.:

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

At 3:29 a.m.:

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

At 9:26 a.m.:

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

At 10:47 a.m.:

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

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

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

Thus, Hamas launched its first rockets since November 2012 some 20 hours after Israeli forces killed the six Hamas members.

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

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

### **That's chutzpah: attack first, kill first, and claim self-defense**

Thus, reports from authoritative Israeli sources described the multiple provocations that the U.S. Senate resolution denied existed. Regardless of whether it was June 30 or July 7, Hamas launched rocket fire only *after* Israeli forces had engaged in weeks of intensive military operations in the West Bank and in Gaza in violation of the Fourth Geneva Convention and in violation of the cease-fire agreement and only after Israeli forces had killed Hamas members in Gaza.

### **Media collaboration**

Facilitating the Israeli and U.S. government campaign to pin responsibility on Hamas and support a self-defense claim, certain western news media, including the [New York Times, published an incorrect timeline](#), dating the start of the war to July 8, the first full day of Hamas rocket barrages, and the day *after* Israeli forces had escalated their aerial attack on Gaza killing the six Hamas members. The *Times* timeline simply omits mention of the lethal Israeli attacks on the night of July 6 and early morning hours on July 7 that preceded the Hamas barrage of rockets on the night of July 7. The *Times* timeline also omits mention of the 24 days of Operation Bring Back Our Brothers, the June 11 extra-judicial execution of a Hamas member in Gaza, and the killing of the two Palestinian teenagers on May 15.

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

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

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

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

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

According to the [Israeli government's website](#) on August 26, 2014, the day the final cease-fire went into effect: "Since the start of Operation Protective Edge [July 7 to August 26], 4,562



rockets were fired at Israel from Gaza.” The [ITIC weekly report for August 26 to September 2](#) states that 3,852 of these hit Israeli territory.

Just as happened during the massive air and ground attack on Gaza in 2008-2009 and during the aerial attack in November 2012, the massive Israeli government bombing of and ground attack on Gaza that began early on July 7, 2014 resulted in a huge *increase* in rocket fire from Gaza.

What put a stop to the rocket attacks back in 2009 and in 2012 was when the Israeli government agreed to cease-fires – like the cease-fire that was already in place before the 2008 Israeli attacks began. A cease-fire is the one method that has reliably worked to stop rocket fire; and a cease-fire was what finally worked to stop rocket fire on August 26, 2014. Of course, Israel already had a successful cease-fire in place before it started its 2014 attacks.

### **Israeli assaults dialed up rocket fire in 2008, 2012, and 2014**

Numbers from an [Israeli government website](#) and from the [ITIC weekly report for August 26 to September 2](#) tell the story for the Israeli government's assaults on Gaza in 2008, 2012, and 2014.

### **Operation Cast Lead**

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

### **Admission – Operation Cast Lead**

During the 2008 lead-up to Operation Cast Lead, then Defense Minister Ehud Barak said “the recent waves of rocket attacks are a result of our operations, which have resulted in the killing of 20 Hamas gunmen” ([Ynet-News.com November 20, 2008](#)).

With that, Barak acknowledged that rocket fire was an expected result of the operations to kill Hamas gunmen. As rocket fire had been effectively stopped by the cease-fire in place since June 19, 2008 the purpose of the operations he directed starting on November 4, 2008 was certainly not to stop rocket fire. The killing stopped on January 18, 2009 when Israeli government officials and Hamas agreed to a new cease-fire, and that stopped the rocket fire the Israeli attacks on Gaza had produced.

### **Operation Pillar of Defense**

The next major onslaught on Gaza was the November 14-21, 2012 Operation Pillar of Defense. According to the ITIC data, an average of 105 rockets a day struck Israel during the Israeli government's eight day attack (845 rockets hit Israel total). The cease-fire that followed was again superbly effective. The number of rockets went to zero for months after the cease-fire

went into effect – despite the continuing killing of Palestinian farmers and fishermen by Israeli forces.

### **Operation Protective Edge**

The 50-day July 7 to August 26 2014 assault on Gaza, Operation Protective Edge, included 10 days of temporary cease-fire. According to the ITIC data, an average of 96 rockets a day hit Israel during the 40 days of combat. By contrast, the [ITIC weekly report for August 26 to September 2](#) includes a graph showing that two rockets hit Israel during the entire month of May 2014. That nearly rocket-free month was before Israeli forces launched their three-week raids on the West Bank and before the Israeli government's massive escalation on July 7.

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

### **Israeli government has a strong hand on rocket dial**

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

If Israeli Prime Minister Benjamin Netanyahu meant what he said about using “any means necessary” to stop Hamas rocket fire, he would have done from the start what he knew would work: stopping the assault on Gaza and observing the previously existing cease-fire.

The fact that the military onslaughts do not work to stop rocket fire poses a credibility problem for Israeli officials. The fact that the Israeli government attacks instigated the rocket fire means that the onslaughts have nothing to do with self-defense. Rocket fire has been a mere pretext for escalating Israeli attacks after earlier Israeli attacks provoked the rocket fire.

### **“Cutting the grass” is not self-defense**

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

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

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

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

...

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

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

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

### **No claim of self-defense under the UN Charter is valid for an occupying power**

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

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

If Israeli occupying forces could not legally justify a relatively passive structure like the wall with self-defense, certainly still less could the Israeli government legally justify schemes against

those living under its control - including the bombs, bullets, and missiles Israeli forces rained down on the people in Gaza - as self-defense.

Therefore, even if Israel could show that armed groups in Gaza had initiated the armed conflict, Israeli officials would still have no legally acceptable self-defense claim because the Israeli government is an occupying power and Gaza is under the control of the Israeli government. But in this case, the fact is that Israel initiated the armed conflict during an effective cease-fire by attacking way before any rockets were fired. So both the facts and the law deny Israel its self-defense claim.

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

Reaffirms the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial and foreign domination and foreign occupation by all available means, including armed struggle and  
Reaffirms the inalienable right of the Namibian people, the Palestinian people and all peoples under foreign and colonial domination to self-determination, national independence, territorial integrity, national unity and sovereignty without outside interference.

**Even though it does not, let's assume for the moment that self-defense applies**

But let us assume for the moment that article 51 applies to an occupying power in the territory it occupies. A review of self-defense in international law, "[The Right of Self-Defense](#)," by Mary Ellen O'Connell, confirms that:

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

...

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

In full, Article 51 states:

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

any time such action as it deems necessary in order to maintain or restore international peace and security.

As O'Connell points out, "The ICJ is the principal judicial organ of the UN system. It makes binding decisions in contentious cases and gives advisory opinions to UN organs. Because the ICJ applies the law to concrete facts, its decisions are particularly helpful in understanding self-defense."

In a leading case, the ICJ held that Article 51 is part of customary international law and that the United States failed to comply with Article 51 when it used force against Nicaragua, where its evidence showed only low-level shipments of weapons from Nicaragua to rebels fighting in El Salvador. The weapons shipments, together with other factors, did not suffice to trigger self-defense. International Court of Justice. "Military and Paramilitary Activities in and against Nicaragua ([Nicaragua v. United States of America](#))."

O'Connell further notes that ICJ opinions have generally taken a strict approach to article 51, requiring an actual attack to have occurred before self-defense under Article 51 applies. Notwithstanding these judicial opinions, some authors and some states, including the UK, continue to argue that article 51 also includes the right to self-defense if an armed attack is "imminent," as described in a paper, "[Principles Relevant to the Scope of a State's Right of Self-defense Against an Imminent or Actual Armed Attack by Nonstate Actors](#)," by Daniel Bethlehem.

But there is a limit to even the expansion of Article 51 under the UK interpretation: "It is therefore the [UK] Government's view that international law permits the use of force in self-defence against an imminent attack but does not authorise the use of force to mount a pre-emptive strike against a threat that is more remote." In addition, the Daniel Bethlehem article says, "two further conditions apply where force is to be used in self-defence in anticipation of an imminent armed attack. First, military action should be used only as a last resort. It must be necessary to use force to deal with the particular threat that is faced. Secondly, the force used must be proportionate to the threat faced and must be limited to what is necessary to deal with the threat." Bethlehem also notes that the ordinary rules of war apply when acting in self defense: "Any use of force in self-defense would be subject to applicable *jus in bello* principles governing the conduct of military operations."

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

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

Let us assume for the moment that the most expansive extension of article 51 or of the *Caroline* Doctrine applies. However, as shown above, Hamas rocket fire was neither actually occurring nor imminent when Israeli forces launched a non-judicial execution in Gaza, killing a Hamas member and severely wounding three civilians on June 11. Nor when Israeli forces launched their massive assault on the West Bank two days later on June 13, 2014. Just the opposite: As shown in the ITIC weekly reports cited herein, Israeli forces were able to continue the assault for several weeks on the West Bank and Gaza while Hamas maintained its side of the cease fire that it had been observing for 20 continuous months. Only when Israeli forces vastly escalated, launching a massive attack on 50 targets in Gaza in the early morning hours of July 7, killing 6 Hamas members in a tunnel, did Hamas end its side of the cease fire and start launching rockets at Israel later that night. Nor were the Israeli attacks necessary to deal with non-Hamas rocket fire: simply maintaining its side of the cease fire would have been far more effective. Nor were the Israeli attacks proportionate to the scale of the threat even if rocket fire had been imminent, which it was not. Thus, even under the most liberal interpretation, Israeli forces cannot expect that international law provides any basis whatsoever for its claim of self-defense.

Nor would self-defense be legitimate in regard to the June 12 kidnapping and murder of the three Israeli teens. If indeed the massive assaults on occupied Palestinian territory that began on June 13 were actually in response to the kidnapping, rather than the kidnapping being mere pretext for the military purposes described by Prime Minister Netanyahu in his July 4 speech, the assaults would have been illegal under the Fourth Geneva Convention, both as reprisal and

as collective punishment. Furthermore, the assaults on the West Bank and Gaza were unreasonable and excessive, as locating the offenders required at most police investigation and police action, and not a massive military assault. The military attack was only justified at the time by hiding the recording of the emergency call that showed that the three teens had already been killed and creating hysteria about returning the boys alive.

### **Israeli forces violated the rules of war**

The assault on Gaza is also illegal because even if Israel were not the occupying power and even if this were an ordinary war against another country, rather than an attack on territory and people living under Israeli military control, Israeli political and military leaders violated the ordinary rules of war. Who started the war and why, and whether national self-defense can be invoked are irrelevant to the laws of war. Even if the Israeli government's self-defense claim were valid, it would not have been legitimate to target civilians or civilian property either in the West Bank or in Gaza.

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

Extensive destruction of property not justified by military necessity

Willful killing of civilians

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

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

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

The [Fourth Geneva Convention](#) Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, which was ratified by Israel in 1951, protects civilians and civilian property in occupied territory, including by making reprisals and collective punishment illegal.

Reports by the human rights organizations indicate that Israeli forces:

. [intentionally targeted civilians](#)

- . [deliberately targeted and destroyed civilian buildings and property on a large scale, carried out without military necessity](#)
- . used weapons, such as artillery, that inherently could not be used in a way that distinguished civilian and military targets in the densely populated Gaza strip
- . used weapons that caused great suffering
- . interfered with ambulance workers seeking to care for the wounded
- . destroyed farms
- . targeted civilian facilities, including hospitals, schools, mosques, UN facilities, and government buildings serving civilian needs
- . engaged in reprisals against and collectively punished the entire civilian population of Gaza for acts they did not personally commit

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

### **The blockade is collective punishment and an act of aggression**

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

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

Because of its greater duty as occupying power, the Israeli government blockade of Gaza qualifies as a more egregious violation than were it merely engaging in a normal form of aggression by blockading another state.

### **Conference of High Contracting Parties**

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

The participating High Contracting Parties reiterate the need to fully respect the fundamental principles of international humanitarian law, according to which all



parties to the conflict, and as such also non-State actors, must respect, at all times, inter alia, (1) the obligation to distinguish between civilians and combatants and between civilian objects and military objectives, (2) the principle of proportionality, and (3) the obligation to take all feasible precautions to protect civilians and civilian objects.

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

### **Aggression**

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

Israel did not observe its obligation under Article 2 of the [UN Charter](#) to settle its disputes by peaceful means and refrain from the threat or use of force. Instead Israel chose to use military force in violation of the effective cease-fire. The existence of the successful cease-fire demonstrated that peaceful resolution was possible. Nor did Israel observe Articles 33 to 38 of the UN Charter that describe the mechanisms Israel could have chosen for peaceful resolution of issues that arose during the cease-fire.

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

Aggression is defined in Article 2 of [UN General Assembly \(UNGA\) Resolution 3314](#):

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

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

While member states of the International Criminal Court in 2010 adopted by consensus amendments to the Rome Statute that include a definition of the crime of aggression and a regime establishing how the court would exercise its jurisdiction over this crime, the countries

have not yet ratified the [law regarding the crime of aggression](#). The court's jurisdiction over the crime of aggression [may be activated in 2017](#). So a charge of aggression cannot be brought before the ICC at this time.

But, as the facts show it was Israeli forces that initiated attacks before Hamas and non-Hamas groups fired any rockets, Israeli officials should at least not be permitted to use self-defense to shield themselves from violations of the Fourth Geneva Convention and from other potential crimes that can now be brought before the ICC, including war crimes, crimes against humanity, and genocide.

### **Self-defense claim critical for legitimacy**

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

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

As described in an article, "[Israeli Think Tank Calls for Sabotaging 'Delegitimizers' of Israel](#)," by the present author, the Reut Institute report says that in the past the Israeli government was successful at using peace moves to obtain the legitimacy it needed for its next war, but admits that its widely publicized withdrawals from Lebanon in 2000 and Gaza in 2005 were not effective to achieve legitimacy for its attack on Lebanon in 2006 or for its 2008-2009 attack on Gaza. The report asserts that the failure of those peace moves to achieve legitimacy for that attack on Gaza had consequences that accelerated the delegitimization. For example, the report notes that "following Operation Cast Lead," the intense criticism of the Israeli government "was expressed in the Goldstone report and in legal proceedings against IDF officers and Israeli politicians." The report states as one consequence that the legal proceedings restricted Israel military and political leaders' freedom to travel "due to application of universal legal jurisdiction." The report also admits that even "the Jewish world is growing more distant from Israel" and that "criticism of Israel is more prevalent within the Jewish world than in the past."

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

Thus, one of the most authoritative think tanks in Israel explained the crucial importance of retaining and regaining legitimacy. The self-defense claim touted by Israeli and U.S. officials was not just crucial to justify the recent attacks on the West Bank and Gaza but also to obscure and

trump war crimes allegations to avoid substantial further self-inflicted loss of legitimacy and to avoid the resulting loss of freedom to act militarily the loss of legitimacy brings.

## **Conclusion**

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

The Israeli government's violation of the cease-fire and its lethal assaults on the West Bank and Gaza starting June 13 provoked non-Hamas rocket fire. The Israeli government's escalation of its attacks and its killing of Hamas members in Gaza during early morning hours of July 7 brought on massive Hamas rocket fire later that night, ending the Hamas cease fire. Israeli leaders admitted to other military purposes for the attacks.

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

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

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

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

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

In no way should Israeli government officials and military leaders continue to enjoy impunity or be given any credit based on claimed self-defense from rocket fire. When Israeli forces initiated and escalated attacks in the West Bank and Gaza to accomplish military and political objectives

in violation of an existing cease-fire agreement, they were the ones putting aside the goal of protecting Israeli citizens from rocket fire. Because Israeli forces initiated and escalated attacks fully aware of the history of such attacks provoking a dialing up of rocket fire, they should be precluded from using the foreseeable rocket fire to divert attention from the war crimes they committed. They should also be precluded from using the foreseeable rocket fire as a basis for attacking the legitimacy of the ICC examination and any investigation and prosecution that may follow.

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

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<sup>i</sup> A version of this letter was submitted to the United Nations Independent Commission of Inquiry on the 2014 Gaza Conflict on July 11, 2015.