

Editorial Introduction to the Israel/Palestine Section of the March/April 2009 *Tikkun*:

Normally *Tikkun* tries to publish articles that reflect a progressive middle path, but in the heat of the violent struggle that erupted in January 2009, that proved difficult to find. In our *New York Times* ad of 1/14/09, which you can read here www.spiritualprogressives.org/article.php/gaza, we avoid the discussion of who is really to blame for what happened in Gaza. As you can see by looking at this issue's letters to the editor (see the print edition), which include a representative sample of responses, many of our readers came down heavily on one side or the other. We decided that instead of presenting our perspective once again, we would present two partisans, neither of whom reflects the compassionate tone and attempt to understand the other side that we believe is essential if we are ever to move from the "blame game" to the healing. We hoped thereby to document the extent of each side's inability to hear the suffering of the other side. It is this inability that makes real, tikkunish healing impossible. This healing would be better achieved through the approach outlined by Cherie Brown (see the print edition) and is reflected in the proposals that you can read in our ad or in the introduction to our "Israel at 60" issue from May 2008 (both print editions can be bought by clicking on Store at www.tikkun.org).

Website Editor's note: A shorter version of this article was printed in the March/April 2009 issue of Tikkun (see www.tikkun.org/article.php/mar09_slater), along with a response to it by Doug Lieb, "Gaza: A Just War," (www.tikkun.org/article.php/mar09_lieb2). While that issue was going to press, Jerome Slater prepared this much longer, footnoted version of his article for the web. We decided to put both the long and short versions of Slater's articles on the web so that it was clear that Lieb was only responding to the shorter one.

A Perfect Moral Failure: Just War Philosophy and the Israeli Attack on Gaza [*Extended, footnoted version for the Tikkun website*]

By Jerome Slater

It is astonishing—indeed, appalling—that a majority of Israelis and their American supporters seem unable to hold in mind the most important and obvious fact in the Israeli-Palestinian conflict, namely that Israel has not only occupied but brutally repressed the Palestinian people for over four decades. Consequently, Palestinian resistance, even violent resistance, cannot be regarded as primarily a function of religious fanaticism or of a mindless, immutable, and *a priori* anti-Semitism—though both do play some role—but rather of Israeli behavior.

With only a few exceptions, even American and Israeli critics of the Israeli attack have failed to realize the plain implications of the demonstrable facts in the long Israeli-Palestinian conflict. What might be called the consensus liberal criticism has become a predictable mantra: "Of course Israel has every right to defend itself against Hamas rocket attacks, but its methods are disproportionate." Or, as it is sometimes put: "no country would ignore attacks on its territory and citizens." Other commentators have proposed what they clearly believe to be a rhetorical question, or what might be called "the Mexican analogy:" What would the United States do if it were repeatedly attacked

by Mexico? This is not really a head-scratcher, however, since the U.S. doesn't occupy and repress Mexico.

What is going on here? At one level, the argument is admittedly a complex and relatively unfamiliar one, in the first instance necessitating a distinction between a moral and a legal right to "self-defense." Even so, it should not be so difficult to understand that a state cannot claim a *moral* right of self-defense if attacks on its soil are triggered by—or are acts of resistance against—its own illegitimate behavior, such as aggression, colonialism, occupation, or repression.

In any case, the legal case on behalf of the Israeli attack is equally shaky. The right of self-defense is based most importantly on the famous Article 51 of the UN Charter, which states that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense 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." Though if taken literally that language would seem to provide an absolute legal right, regardless of circumstances, but surely it cannot be read in that manner. If it were, then in WWII Germany would have had the right of self-defense when U.S. and Soviet armies entered its territory late in the war. And so would the Taliban and al-Qaeda in Afghanistan, in light of the US (and NATO) attacks on it after 9/11.

Clearly then, Article 51 cannot be understood in a manner that would produce such absurd results. Nor, in fact, has it been so understood, either by states or by legal experts. In that light, Israel had neither a moral nor a legal right to attack Gaza in the circumstances that prevailed in December 2008. To be sure, as a practical matter, of course it is true that "no country would ignore attacks" on its territory, and all governments undoubtedly would seek to protect their citizens against them, regardless of the circumstances that led to those attacks. Those are just the facts of life, but those facts do not establish either moral or legal *rights*.

Moreover, it is not necessarily the case that all governments would respond to attacks with overwhelming military force without first seeking to explore reasonable political methods of ending the attacks. Indeed, it is not inconceivable that a nation might be capable of recognizing when attacks are responses to its own illegal and immoral behavior, and would first take steps to end that behavior—for example, by ending its occupation and repression of the people attacking it. Returning to the Mexican analogy, then: If the United States had been occupying and repressing Mexico, among other things regularly killing its opponents as well as large numbers of uninvolved bystanders, it is not inconceivable that the U.S. government would respond to retaliatory attacks by ending its occupation and withdrawing.

No doubt part of the explanation for the unconvincing argument of a number of liberal critics—who protest that they are only criticizing Israel's methods rather than its right to defend itself—is that they may feel compelled to demonstrate that they are not "anti-Israel," lest their criticisms be dismissed out of hand. While one can sympathize

with their dilemma, the consequences are unacceptable, for what is—or should be—the central point has been obscured, namely that Israel today is not “defending itself,” but rather seeking to deny the Palestinian people’s right to resist Israeli occupation and crushing oppression.

And that’s not all. Aside from the question of whether Israel has the right to use any military “methods” against the Palestinians, most of the commentators who have criticized those methods have fallen well short of revealing the full horror of Israeli behavior: the Israeli way of war, including many of its previous wars as well as the recent attack on Gaza, is much worse than merely “disproportional,” or even “indiscriminate.”

Just War Moral Philosophy

The framework of analysis for this article is just war moral philosophy. Originally developed by Catholic theologians and philosophers, particularly St. Augustine in the 4th century and Thomas Aquinas in the 13th century, and reaffirmed and applied to contemporary warfare by the U.S. Catholic Bishops in 1983, just war philosophy is no longer only a Catholic doctrine, for it has become the central Western framework for moral analysis of war throughout the West.¹

The underlying assumption of just war philosophy is that human nature being what it is, together with the absence of world government, there is almost no prospect of eliminating warfare between states. That being the case, just war philosophy at least provides a moral framework that can limit and constrain the inevitable devastation of war. Cynics think that states pay no attention to just war constraints, but this belief is actually a naïve reductionism: nations going to war invariably wish to convince both themselves and others that they had no other choice, that their intentions are just, and that they are fighting the war in as just a manner as possible.

Because that is so, just war morality—or similar variations of it—has in fact had a major effect on warfare: in its absence, there would be many more wars and they would be even more devastating than they have been. Should this be doubted, consider how unimaginable it is that the United States would invade and subjugate Canada—perhaps to seize its large oil fields—no matter how easily it could do so.

The central moral principles of just war philosophy are *jus ad bellum*—the justice of going to war—and *jus in bello*, or just methods in fighting the war. Within that overall framework, just war morality requires that a number of constraints must be accepted. The most important are that states must have a just cause for going to war, that war must be a last resort, and that even if those two moral criteria are met, the war must have a high probability of success in attaining the just cause—sufficiently high, that is, to offset the inevitable devastation of war.

Further, even if all the *jus ad bellum* criteria—or constraints—are met, a state must not resort to morally unacceptable methods. The three major constraints within *jus in bello* are *proportionality*, meaning that there are limits to the amount of force that is

morally allowable, even for a just cause; *distinction*, meaning that every effort must be made to distinguish between soldiers and civilians; and *noncombatant immunity*, meaning that there may never be deliberate attacks on civilians—especially, but not limited to, women and children.

The Israeli attack on Gaza violated every one of these just war criteria: it was, one might say, an almost perfect moral failure.

Just Cause and the Israeli Attack

Begin with just cause: did Israel have a moral right to go to war against Hamas in order to end its rocket attacks aimed at the Israeli population? The standard argument of those who believe that Israel was merely exercising its right of self-defense is that in 2005 Israel ended its occupation of Gaza, allowing the Gazans to peacefully govern themselves and develop their economy, only to be met with continued terrorist attacks whose purpose was to destroy the state of Israel and restore all of Palestine to Islamic rule.

No part of this argument can withstand serious analysis. First, it is widely understood in Israel that the main purpose of Ariel Sharon's withdrawal of the Jewish settlements in Gaza in 2005 was to ease the overall burden of the occupation on Israel rather than on the Palestinians and to allow Israel to consolidate its occupation of the West Bank and East Jerusalem: the West Bank because it is far larger than Gaza and contains much better agricultural land as well as invaluable water aquifers, and East Jerusalem because of its religious and symbolic importance.²

In any case, there was no true end to the Israeli occupation even of Gaza, for Israeli forces retained control over Gaza's borders, coastline, and airspace and refused to allow Gaza a functioning airport, seaport, or a commercial crossing on its border with Egypt; consequently, Israel continued to wield overwhelming power over Gaza's economy and external trade. Beyond that, Israel continued to control Gaza's telecommunications, water, and electricity networks. Finally, it reserved its "right" to launch incursions at will—which, of course, it has done.

As a 2004 Human Rights Watch report put it, "The removal of settlers and most military forces will not end Israel's control over Gaza—Israel plans to reconfigure its occupation of the territory, but it will remain an occupying power.... Whether the Israeli army is inside or redeployed around its periphery and restricting entrance and exit, it remains in control."³ Similarly, in March 2005, B'tselem released a report—entitled "One Big Prison"—on the continuation of Israeli repression in Gaza after the "withdrawal."⁴ Indeed, it is even becoming increasingly common for the occupation to be described as "apartheid"—or even worse than apartheid.⁵

Moreover, even if Israel had genuinely withdrawn from Gaza and also ended all its other means of repression of its people, that hardly would have met the need and the right of the Palestinians as a whole for a viable independent state of their own. The Palestinians living in Gaza are not a separate nation from those living in the West Bank and East Jerusalem; to believe otherwise is the equivalent of believing that if in the 1770s

the British had withdrawn from New Jersey but continued to occupy New York, the residents of New Jersey would no longer have the right to take up arms in support of American independence.

Finally, to say only that Israel remains an occupying power is not sufficient, for occupations can be enforced with varying degrees of severity. Israel's occupation, before and since its 2005 "withdrawal," is so extensive and repressive that it amounts to collective punishment of the entire Gazan population, the clear purpose of which is to intimidate them and induce them to turn away not only from Hamas terrorism, but from all forms of resistance—including nonviolence.⁶

There certainly is a strong case that the Palestinians should have eschewed all forms of violence, including non-terrorist armed resistance, as I shall discuss later. That said, however, it is also important to note that Israel has also regularly repressed nonviolent protest. The point is so important that it merits a full quotation from Meron Benvenisti, the columnist, writer, and former Deputy Mayor of Jerusalem:

"The fear that nonviolent protest will take root among the Palestinians has accompanied the conflict for many years, and the response of the Israeli authorities to nonviolent protest has been no less severe than their reaction to violent acts.... The way to prevent the spread of nonviolent resistance is to threaten that it will be met with a violent response, including the use of firearms, in the hope that the threat will be taken seriously, serve as a deterrent and preclude the need to follow through and actually use such means. And indeed, until now the deterrence has worked: the Palestinian population is showing little willingness to adopt a strategy of nonviolent resistance. This may be because such a path is incompatible with its nature, or because the Israelis have managed to persuade the Palestinians that they have no inhibitions when it comes to using force, even gunfire, against unarmed protesters, and that they make no distinction between violent and nonviolent demonstrations."⁷

Or, as Yitzhak Laor, the Israeli poet, author, and political columnist more succinctly put it: "We control the roads, and the checkpoints and the borders. We control their electricity, their water their milk, their oil, their gasoline.... If they launch a missile, we destroy families, neighborhoods, streets, towns... If they protest peacefully, we fire tear gas at them."⁸

Israeli Repression

Consider the extent of Israeli repression, as it has been described by international human rights organizations, including in many reports by Amnesty International, Human Rights Watch, the Red Cross, Physicians for Human Rights, CARE, Oxfam, and a number of UN agencies; by Western media, including even the *New York Times* (which typically downplays Israeli repression); and above all by Israeli human rights organizations, academics, journalists and newspapers, especially but not limited to *Haaretz*.

**The Killings.* According to studies by the UN and Israeli as well as international human rights organizations, from 2005 through the end of 2008, Israel killed over 1200 Palestinians, up to half of them civilians and as many as a quarter of them children.⁹ During the recent rampage in Gaza, Israel killed more than 1300 Palestinians—*two-thirds of them civilians by the Israeli army's own analysis*,¹⁰ and over 5000 were wounded, 40 percent of them children and women.¹¹

**Torture.* According to Israeli human rights activists and organizations, Israeli intelligence organizations continue to torture Palestinian prisoners (though substantially less often than in the past), despite court rulings that supposedly limited coercive interrogations to cases of “ticking bombs,” or imminent terrorist attacks. Although hundreds of complaints were lodged with the Israeli Attorney General, none of them resulted in judicial action.¹²

**Economic warfare.* In carrying out what is widely termed the siege of Gaza since 2006, Israel has radically cut Gazan trade and commerce with the outside world; has bombed and shelled Gaza's roads, bridges, factories, farms, and olive orchards; and has destroyed most of its electrical generating system as well as severely limited its importation of electricity from Israel. In early November 2008 Israel drastically intensified the siege, as it “sealed all crossing points into Gaza, vastly reducing and at time denying food supplies, medicines, fuel, cooking gas, and parts for water and sanitation systems.”¹³

Consequently, even before the latest attacks the economy of Gaza was on the verge of collapse, unemployment ranged from 45-60%, 80% of Gazans were estimated to be below international poverty lines (according to a number of studies, among the worst such figures in the world), and malnutrition was rampant, even if outright starvation has been averted by a small stream of Israeli food supplies and extensive outside assistance.¹⁴

One can only imagine how much worse this already intolerable situation has become in the aftermath of the recent attacks, in which roads, bridges, factories, agricultural lands and the electrical system were again destroyed or badly damaged. Further, about 4,000 homes were destroyed, 21,000 damaged, and 100,000 people left homeless.¹⁵

**Destruction of Palestinian government.* In the attack on Gaza the Israeli forces repeated their extensive 2002 attacks on the governing institutions of Yassir Arafat's Palestinian Authority in the West Bank:¹⁶ the Gazan parliament, the main government ministries, Hamas offices, the central prison, and nearly all police stations were “reduced to rubble.”¹⁷

**Destruction of public and private health systems.* Throughout the occupation but especially in the last seven years, the Israeli economic siege and a number of direct military attacks have created an ongoing crisis in public health and medical care in Gaza. By 2006, health services and rural clinics were closing down, and “government hospitals were barely operating;”¹⁸ in 2007, according to the editor of the prestigious British medical journal *Lancet*, Gazan health systems were beginning to rapidly disintegrate.¹⁹

In the recent attack on Gaza, as in a number of earlier attacks in the occupied territories, Israel struck hospitals, ambulances and medical personnel; prevented Red Cross and other emergency responders from providing medical care to the wounded and dying; and cut off supplies of desperately-needed medicines and medical equipment.²⁰ Moreover, the attacks on the Gazan electrical system, together with the ban on spare parts for generators, made it impossible for hospitals, already overburdened by the thousands of injured, to properly function. And, of course, the severe shortages of electrical power resulted in greater damage to the sewage system, food production and distribution systems, and even of supplies of drinking water.

**Destruction of Palestinian Education.* Both in the West Bank earlier and in the recent Gazan attacks, Israel has deliberately attacked many Palestinian schools and universities, and in other ways made normal education impossible. Indeed, even before the recent attacks, one UN study concluded that the combined effects of previous attacks as well as the widespread malnutrition and other direct and indirect consequences of Israeli repression had resulted in “the collapse of the education system in Gaza... [and even] failure rates of up to 90 percent in basic literacy and numeracy.”²¹

**Psychological Damage.* Although not so easily quantifiable, a number of Palestinian psychologists as well as outside mental health professionals have pointed to the obvious mental health consequences of years of death, destruction, suffering, and the various forms of daily Israeli humiliation of the Palestinian people.

For all of these reasons, the Israeli attack on Gaza cannot be considered a legitimate act of self-defense, for its true purpose, as Henry Siegman has put it, was “to protect its right to continue the strangulation of Gaza’s population.”²²

Last Resort

Nonetheless, for the sake of analysis let us suppose that Israel really had withdrawn from Gaza and ended its various forms of repression. Even if that had been the case, Israel would still not have had the moral right to launch such a massive attack on Gaza unless it also had met the last resort criterion.

The last resort principle requires that every reasonable effort to seek a political solution must be tried before it can be concluded that only by going to war can a just—and urgent—cause be attained. Israel also failed this test, for it made no attempt at negotiations before attacking Gaza, despite a number of indications that Hamas was becoming increasingly amenable to a reasonable political settlement.

If so, Hamas would be following in the footsteps of Arafat’s PLO, as well as of many other radical movements that became much more moderate when they had countries to run.²³ Beginning in the 1980s, Arafat and the PLO gradually but steadily moved away from its early ideological and uncompromising rejection of the existence of Israel and effectively abandoned its dream of creating a Palestine state in all the historic

land of Palestine. Today, no one doubts that the goal of the PLO and Mahmoud Abbas, Arafat's successor and the West Bank president, is limited to the creation of a small state in the 22-23% that remained of Palestine after the 1948 war, living in coexistence with its far more powerful Jewish neighbor.

Granted, there are no guarantees that Hamas will duplicate the evolution of the PLO, for it has remained committed—at least verbally—to its anti-Semitic founding ideology and 1988 charter, which explicitly states that it is a religious obligation to eliminate Israel and the Jews from the Islamic holy land. However, it is clear that there are internal divisions within the organization—particularly between the relatively more moderate Hamas officials in Gaza, led by Ismail Haniyeh, and Hamas officials in exile, led by Khaled Meshal—over the extent to which this ideology must give way to practical realities.

In recent years there have been many indications that Hamas is moving towards a pragmatic, if reluctant, acceptance of the realities of Israeli power, and prior to the Israeli attack there was reason to believe that it was becoming increasingly amenable to a reasonable political settlement. The only way to have explored and tested these indications was to have entered into direct discussions with Hamas. Far from doing so, not only has Israel refused such discussions but it continues its assassinations that have killed most of the founders and leaders of Hamas and its main activists.²⁴

A Political Settlement with Hamas?

By 2006 there were a number of indications of emerging Hamas flexibility, even including the hardliners. In January 2006 Hamas published its official platform for the upcoming Palestinian elections; it included no language calling for the destruction of Israel and the creation of an Islamic state in all of Palestine. To be sure, the apparent change in Hamas's position was ambiguous, for it continued to proclaim that it did not reject any means, "including armed resistance," in order to "end the occupation... and establish a state whose capital is Jerusalem."

As Israeli analysts noted, the Hamas platform did not specify whether such a state would be limited to the West Bank and Gaza and did not clarify whether "the occupation" to be ended referred only to the post-1967 Israeli expansion or to the entire Jewish state.²⁵ Even so, the very ambiguity greatly differed from earlier Hamas extremism and even suggested that the operational, if not the ideological, goals of Hamas now might not substantially differ from those of Abbas and other Palestinian moderates.

Moreover, the Hamas leaders were surely aware that they won the 2006 parliamentary elections in Gaza not because of their ideology but despite it: as Henry Siegman and others have pointed out, post-election polls showed that 73% of the Gazan population said they favored a peace deal with Israel and a two-state solution, and only 1% said Hamas's priority should be to implement Islamic law in Palestine.²⁶ As nearly all observers agreed, Hamas won because the Palestinians were tired of Fatah's incompetence and corruption, and Hamas promised a clean and efficient government.

It has now been revealed that soon after the elections Haniyeh, the new Gazan prime minister, sent a written message to George Bush, offering a truce for many years in exchange for a compromise political settlement; the Bush administration did not reply to this and additional overtures.²⁷ At about the same time, Hamas secretly conveyed a message to the Israeli government that it “would pledge not to carry out any violent actions against Israel and would even prevent other Palestinian organizations from doing so,” provided Israel stopped its assassinations and military attacks in Gaza and the West Bank.²⁸

Soon after that, Hamas began to go public with its new position. For example, in May 2006 Haniyeh told *Haaretz* that the Hamas government would agree to agree to a long-term truce with Israel if it withdrew to the 1967 lines, and a few months later he told an American scholar that “We have no problem with a sovereign Palestinian state over all of our lands *within the 1967 borders*, living in calm.”²⁹

Perhaps even more important was a May 2006 joint statement of senior Hamas and Fatah members who were imprisoned in Israel, for the prestigious “Prisoner’s Declaration” went much further than the earlier Hamas overtures: abandoning the previous ambiguities, it called for the establishment of a Palestinian state “in all the lands occupied *in 1967*,” and reserved the use of armed resistance *only in those territories*.³⁰ In yet another significant indication that Hamas was moving towards the moderate position of Abbas’s Palestinian Authority government in the West Bank, in March 2007 Hamas and the PA formed a national unity government to negotiate with Israel; Hamas officials stated at the time that they agreed that Abbas should play the leading role in any negotiations.³¹

Israel and its U.S. ally ignored all these overtures or contemptuously termed them “tricks;” indeed, it is now known that in the months after the 2006 Hamas electoral victory in Gaza, the Bush administration sought to foment a Fatah coup against Hamas.³² The coup attempt not only failed, but was undoubtedly instrumental in Hamas’ decision to seize total control of Gaza in June 2007. Nonetheless, throughout 2008 Hamas’ political position continued to evolve, including that of its hardliners; by early 2007 there were indications of a shift in Khaled Meshal’s position and in April 2008 he publicly announced his support of a ten-year truce if Israel withdrew to the 1967 borders.³³

It is undeniable that the Hamas position still contains many ambiguities and inconsistencies. First, it calls only for a truce rather than a permanent settlement—but at various times Hamas officials have suggested that the truce “will be renewed automatically” and extended indefinitely.³⁴ Second, sometimes Hamas officials say that they accept Israel as a “fact” but will “never recognize its legitimacy,” but on other occasions they strongly imply that their formal position has no practical importance and could eventually change.³⁵ One day a Hamas official sounds particularly conciliatory and the next day other officials back away. Sometimes Hamas stresses its commitment to the return of all Palestinian refugees to Israel, perhaps the most difficult obstacle to a permanent settlement, but at other times it downplays the issue. And so on.

Yet, the general direction is clear and in historic terms the evolution has been rapid, as indeed has been acknowledged by some former high-level Israeli government officials. For example, in late 2006 Yossi Alpher, a former deputy head of the Mossad and a pillar of the Israeli establishment, wrote: “‘ Hamas’ conditions for a long-term hudna or ceasefire... are almost too good to be true. Refugees and right of return and Jerusalem can wait for some other process; Hamas will suffice with the 1967 borders, more or less, and in return will guarantee peace and quiet for ten, 25 or 30 years of good neighborly relations and confidence-building.”³⁶

Ephraim Halevy, the former head of Mossad, does not even qualify his observations as “almost too good to be true,” for he states that Hamas militants “have recognized... [their] ideological goal is not attainable and will not be in the foreseeable future.” Instead, “they are ready and willing to see the establishment of a Palestinian state in the temporary borders of 1967.” Halevy concludes, dryly, that “Israel, for reasons of its own, did not want to turn the ceasefire into the start of a diplomatic process with Hamas.”³⁷

A number of factors account for this evolution, including the realities of governing, especially when most Gazans continue to favor an end to the conflict and a two-state solution; the fact that most Arab governments today—particularly Egypt, Saudi Arabia, Jordan and probably Syria, the most important of the Arab states—³⁸ also support a compromise settlement solution and fear Islamic fundamentalism, the economic sanctions imposed by Israel, the U.S., and a number of European states after the 2007 Hamas takeover of Gaza; and, no doubt, the unending Israeli assassinations and other military pressures and attacks.

For these reasons, many Israeli analysts today—including not only Ephraim Halevy but also Ami Ayalon, former head of Shin Bet—now argue that the evolution is meaningful, that Hamas is not al-Qaeda but is becoming a movement fighting for limited national goals rather than uncompromising religious ones, and that Israel, for both moral and national interest reasons, must engage it.

In the final analysis, the key point is that the only way to resolve the ambiguities is through negotiations with Hamas as well as the PA; no serious peace proposal requires Israel to withdraw from the occupied territories unless and until a reasonable and enforceable political settlement is reached. That the Israeli government has refused to take this obvious path of exploring Hamas’ true intentions strongly suggests that it is Israel at least as much as Hamas that is unwilling or (for domestic reasons) unable to accept a genuine two-state solution.

A Ceasefire.

Even if a political settlement—for whatever reason—is presently out of reach, Israel could have come closer to meeting the principle that force is justified only as a last resort had it not ignored a number of Hamas ceasefire proposals as well as complied, in

good faith, with several ceasefires that were either negotiated or unilaterally proclaimed by Hamas. Thus, contrary to the widespread view in Israel and the U.S. that it was unprovoked Hamas rocket attacks that gave Israel no choice but to attack Gaza, the chronological evidence clearly establishes that it is Israel that has been primarily responsible for the continuation of the violence.

*According to ex-Mossad Ephraim Halevy, in 1997 King Hussein of Jordan conveyed to Israel an offer from Khaled Meshal, then the chief Hamas leader, to reach an understanding on a ceasefire to last 30 years. Israel not only ignored the offer, but a few days later, Israeli operatives tried to assassinate Meshal in Jordan.³⁹

*According to Matti Steinberg, former head advisor on Palestinian affairs to the Shin Bet, Hamas refrained from attacking civilians inside Israel until Baruch Goldstein's February 1994 murder of twenty-nine Palestinians in a Hebron mosque. When Israeli prime minister Yitzhak Rabin, fearing "civil war," refused to withdraw the settlers from Hebron in the aftermath of the massacre, Hamas retaliated with suicide bombings in Israel; its subsequent turn towards terrorism, Steinberg says, "stemmed directly from the Goldstein massacre."⁴⁰

*Sporadic terrorist attacks on Israel in the ensuing years typically followed Israeli undercover operations that killed Hamas or other militants, and often civilian bystanders as well. Beginning in February 2005, Hamas unilaterally declared a ceasefire; while Israel then temporarily suspended its assassinations in Gaza, it continued to target Islamic Jihad activists inside the West Bank, who then retaliated with rocket attacks.

*It was Israel rather than Hamas or even Islamic Jihad that violated the de facto truce that followed in the first months after the Israeli withdrawal of its Gaza settlements in August-September 2005. As one Israeli columnist wrote: "We are told that we have withdrawn from Gaza and for some reason they are still shooting. Immediately after the withdrawal, quiet was in fact maintained... Quassams were not fired and the truce was honored. But then Israel said that... in the West Bank it would continue to pursue Islamic Jihad activists. The IDF embarked on extensive assassination operations in the West Bank, and then the Jihad in Gaza declared it would not abandon its people there and would retaliate... the firing on Sderot was renewed... and the IDF responded with assassinations in Gaza."⁴¹

*In January 2006 Israel assassinated a senior Hamas leader; however, Hamas did not retaliate and continued to press for a far-ranging, longterm ceasefire, during which it would not only take no violent actions against Israel but would prevent other Palestinian militants from doing so; Islamic Jihad then stated that it would refrain from suicide or rocket attacks if Israel ended its attacks.⁴² During the next ten months there were no Hamas rocket attacks and very few from Islamic Jihad, apparently as a result of the stringent Hamas restrictions.

*Nonetheless, Israel continued its undercover assassinations in the West Bank. According to the Israeli human rights organizations B'tselem and Physicians for Human

Rights, throughout 2006 but mostly after a Hamas abduction of an Israeli soldier, Israeli raids killed 660 Palestinians, most of them unarmed noncombatants, and up to a third of them minors.⁴³ In November 2006 following an Israeli artillery attack in which a shell struck several homes, killing 19 people, most of them women and children, Hamas retaliated with an attempted suicide bombing in Israel, its first such attack in nearly two years.⁴⁴ Following that attack, however, in the next year there were few attacks inside Israel, whether by Hamas or Islamic Jihad.

*According to official Israeli records, seven Israeli civilians were killed in 2007.⁴⁵ Nonetheless, throughout 2007 Israel stepped up its assassination and other attacks on militants in Gaza as well as the West Bank, using indiscriminate methods that resulted in the killing of 373 Palestinians, 125 of them noncombatants, of which 53 were minors.⁴⁶ An independent investigation by *Haaretz* concluded that in 2007 and 2008, Israel killed 816 Palestinians in Gaza alone, 360 of which were civilians and 152 of them minors.⁴⁷

*In January 2008 Israel closed the border crossing points, drastically reducing supplies of fuel, electricity, and other crucial goods into Gaza and stepped up its attacks, killing 35 Palestinians. Hamas then resumed firing rockets into Israel. A *New York Times* correspondent quoted Yair Lapid, a leading Israeli journalist for Israel's mass circulation newspaper, *Yediot Aharaonot*: "The objective of the operation in Gaza is to prevent the Quassam fire.... but [it] is causing the Quassams to be fired. The Quassam fire will, in turn, bring about the next operation in Gaza...."⁴⁸

*Just as Lapid had predicted, in early February 2008, after warning that continued Israeli attacks would force it to respond, a Hamas suicide bomber killed an Israeli civilian in Dimona; Israel then assassinated five Hamas members in Gaza. That led Hamas to fire Qassam rockets, killing one civilian in Sderot, which in turn was followed by an Israeli raid that killed 20 Palestinians, including 6 children.⁴⁹ Subsequent additional Israeli raids into crowded refugee camps in Gaza killed 130 Palestinians, over half of them civilians, including many women and children.⁵⁰

A *Haaretz* military correspondent explained the retaliatory rocket attacks against Israel: "Hamas has been trying for some time to create a balance of deterrence with Israel... For every large-scale strike on its people, it has responded in recent months with massive rocket barrages. The organization especially wants to see targeted assassinations taken out of the equation."⁵¹

*In April 2008 Meshal stated that Hamas was ready to stop attacking civilians if Israel did the same,⁵² and in mid-June a new truce went into effect. According to Hamas, the ceasefire included an understanding that Israel would open the crossing points and ease its economic sanctions and blockade; for awhile, Israel allowed a minor increase of goods into Gaza, but far less than Hamas had expected⁵³—or, more to point, far from sufficient to truly lift the economic siege. Islamic Jihad also said it would abide by the truce, provided Israel refrained from military actions against its militants in the West Bank.⁵⁴ However, Israel continued its actions, leading to several Islamic Jihad attacks, although they inflicted few casualties.

*Despite the new tensions, Hamas continued to crack down on the Islamic Jihad attacks. A *Haaretz* correspondent wrote that “Hamas leaders have spoken out “vehemently and unequivocally against the rocket fire... [and] have even threatened those who violate the lull with arrest.”⁵⁵ Similarly, Ethan Bronner, the *New York Times* correspondent in Israel, later wrote that Hamas officials had said that “their job was to stop the rocket attacks on Israel not only from its own armed groups but also from others based in Gaza;” Bronner then commented that Hamas “imposed its will and even imprisoned some of those who were firing rockets,” in a “largely successful” effort to halt all attacks.⁵⁶

* In September and October of 2008, only two rockets fell on Israel, neither one from Hamas.⁵⁷ Nonetheless, Israel greatly tightened its siege of Gaza, especially over food supplies, medicines, fuel, and repair parts for water and sewage systems, and continued its killings of militants as well as many civilian bystanders. On November 14, following Israeli attacks that killed 11 militants, Hamas fired rockets into southern Israel and announced it would no longer abide by the latest ceasefire agreement when it expired in December, but would be prepared to negotiate a new one if Israel agreed to stop its attacks and ease its siege.⁵⁸

*According to Israeli newspapers, on December 23 2008, just a few days before the Israeli attack, the head of Shin Bet (Yuval Diskin) told the Israeli cabinet that Hamas wanted to continue the truce if Israel accepted a ceasefire and ended its blockade.⁵⁹ Jimmy Carter later verified the Hamas position; in February 2009 Carter told Akiva Eldar: “I have met twice with Hamas leaders during this past year and both times the only thing that they demanded [was] that there be no more attacks by either side, and that the crossings be opened so that at least a moderate amount of food and water and medicine and fuel be permitted to come in to the people in Gaza.”⁶⁰

*Israel refused these terms; even so, no Israelis were killed until after the full-scale Israeli attack on Gaza that began on December 27, 2008. In an early January blog, Augustus Norton and Sara Roy wrote: “Lost in most of the coverage is the fact that the Israel-Hamas truce was working—a fact fully acknowledged in a recent intelligence report released by Israel’s Ministry of Foreign Affairs (MFA). According to that report, ‘Hamas was careful to maintain the ceasefire.’ Furthermore, ‘the lull was sporadically violated by rocket and mortar shell fire carried out by rogue terrorist organizations in some instances in defiance of Hamas.’”⁶¹

In short, Israel has had many opportunities to bring about a negotiated end to missile or other terrorist attacks from Gaza, if that had been its true goal. However, because its underlying purpose is to destroy all resistance to its continued occupation of the West Bank and external control over Gaza, using both economic siege and military force as its weapons, Israel has repeatedly provoked Palestinian terrorism.

Probability of Success

Just war philosophy prohibits the use of force, *even in a just cause*, unless the probability of success is sufficiently high as to offset the destructiveness of war. Israel's attack also failed this principle.

Even if Israel's purpose had been only to end terrorist attacks, the war was unlikely to achieve that purpose so long as Israel continued its occupation policies and various forms of oppression in the Palestinian territories, for it was clear that Hamas (let alone Islamic Jihad) would not indefinitely refrain from resisting or retaliating with whatever weapons they had at their disposal. That Israel would not be able to destroy Hamas's military capabilities nor its will to use them was predicted in advance by a number of Israeli analysts, including the Shin Bet;⁶² and the predictions are already coming true: only a relatively small number of Hamas fighters were killed during the war, occasional rockets or mortars are again falling on Israel, the tunnels are being rapidly rebuilt, and it is almost certain that Hamas will try to resume its arms smuggling into Gaza.⁶³

The Israeli attack also failed to attain its deeper purpose, the destruction of Hamas or at least the undermining of its support among the Gazan population. Postwar polls showed that 47% of the Palestinian population think that Hamas won the war (10% think Israel did),⁶⁴ and a number of Israeli as well as U.S. news reports have pointed to indications that the hatred engendered by the devastation of Gaza has led to more Palestinian popular support for Hamas rather than less; Israel's "three-year-old effort to topple Hamas has failed," concluded two *Haaretz* columnists.⁶⁵ Indeed, the history of previous Israeli attacks against Arab populations intended to undermine their support for militant movements had already demonstrated the futility, let alone the immorality, of such behavior: the rise of Hezbollah was the direct consequence of the massive 1982 Israeli invasion of Lebanon, and Hamas was created after Israel repressed the first Palestinian uprising in 1987.

Even more importantly, it was perfectly predictable that the devastating attack on Gaza would greatly intensify the hatred of Israel in the Arab world as a whole and undermine the moderate Arab governments that support a compromise peace settlement—already Turkey, long Israel's most important ally in the Arab world, is angrily changing its stance, King Hussein of Jordan is distancing himself, and Mubarak in Egypt is under severe domestic pressures because of his continued cooperation with Israel. Moreover, Israeli-Egyptian relations have been further strained by Israel's response to Egypt's efforts to mediate between Israel and Hamas since the end of the attack on Gaza: General Amos Gilad, the Israeli Defense Ministry's liaison in talks with the Egyptians, is quoted as saying: "I don't understand what it is that they [the Israeli government] are trying to do... To insult the Egyptians? We've already insulted them. It's madness. It's simply madness. Egypt has remained almost our last ally here."⁶⁶

In light of Israel's deteriorating relations with the Islamic world as a whole, even if Israel had destroyed Hamas the Arab battle against Israel almost certainly would have

been transferred from inside Palestine to Arab militant groups or even states that are beyond the effective reach of the Jewish state. Thus, in the absence of a settlement acceptable to the Palestinians, including Hamas, sooner or later there are likely to be far greater terrorist attacks on Israeli cities, whether from inside or outside Palestine

In short, if its long-term security is—or, at least, ought to be—Israel’s true purpose, the attack could not have been a greater failure: “One more victory like this,” said ancient Greece’s King Pyrrhus after his armies defeated the Romans in a particularly bloody war, “and we are ruined.”

Jus in Bello, or Just Conduct of War

Just wars must not only have a just purpose and meet the other conditions or constraints already discussed, but also must be fought justly. Within *jus in bello* there are three guiding principles: proportionality, discrimination, and noncombatant immunity.

Proportionality

The proportionality principle, or constraint, requires that even in a just war, the military measures that are employed must in some sense be proportional to what is at stake. The application of this criterion in many cases is difficult, ambiguous, and a matter of judgment over which reasonable people may disagree.

However, the Israeli attack on Gaza is not one of the difficult cases. As already noted, even the liberal commentators who accept the idea that Israel was only defending itself believe that its methods were disproportional: indeed, even some conservative or “pro-Israeli” observers have admitted to some unease about the nature of the attack. The sheer scale of the Israeli attacks on Gaza makes that an easy judgment to reach.

Even before the attacks, Israeli civilian casualties dropped dramatically, from about 680 from 2001 through 2005, 17 in 2006, and 7 in 2007; over 1200 Palestinians were killed by Israeli forces from 2005 until just before the Israeli attack of December 27, 2008.⁶⁷ As noted earlier, in the recent attack itself the Israelis killed over 1300 Palestinians and inflicted vast economic and property damage. The Israelis suffered almost no property damage and lost three civilians and ten soldiers (several of them by “friendly fire”).

To be sure, the proportionality principle obviously does not require that each side—that is, the aggressor and its victim—must suffer roughly the same number of casualties. Let us suppose that Israel had truly been the victim, that its response had met the just war criteria, and that they were responding in self-defense to unprovoked armed attacks. Suppose further that the Palestinian civilian casualties were an unavoidable and unintended consequence of Israeli attacks on genuine military targets and that the Israelis had been willing to accept some casualties of their own in order to reduce the harm to the Palestinians. As I have argued, none of these conditions were met, but if they had been it is not likely that many objective observers would have argued that the Israelis had

violated the principle of proportionality—even, indeed, if they had inflicted somewhat more civilian casualties than they had suffered.

Distinction

The principle of distinction is seemingly more straightforward: soldiers are morally required to make every effort to distinguish military from civilian targets. Nonetheless, as with the principle of proportionality, judgment and the rule of reason are required, and there may be close cases, especially when a justified use of force results in “collateral damage,” meaning unintentional but foreseeable harm to noncombatants. In certain circumstances some level of collateral damage may be morally defensible, but only if three conditions are met: the military value of the target must be high, the harm to civilians and their infrastructures must be relatively low, and the attacking military forces must be willing to accept casualties of their own in order to keep that collateral damage as low as possible.

The Israeli attack grossly violated all three of those conditions. Indeed, it was about as clear a case of violation of both the proportionality and distinction principles as can be imagined, for the Israelis hardly bothered to claim that the Palestinian civilian casualties were only collateral damage. Rather, they openly admitted—even bragged—that they paid no attention to either proportionality or discrimination.

Several months before the war a leading Israeli general told the *Haaretz* military correspondent that in the next war the army was *planning* to violate both the proportionality and distinction rules: “We will wield disproportionate power against every village from which shots are fired on Israel, and cause immense damage and destruction... efforts to hurt [rocket] launch capabilities are secondary.”⁶⁸ Michael Sfard, one of Israel’s leading human rights lawyers, commented: “In two short sentences, one of the Israel Defense Force’s senior commanders stated his intention to violate the two central tenets of the international laws of war: the principle of distinction and the proportionality principle.”⁶⁹

And that is how Israel fought the war—by its own admission. Said one officer: “We are very violent. We are not shying away from *any method* of preventing casualties among our troops.”⁷⁰ An Israeli general confirmed this, telling Israeli journalists that the military strategy was to utilize tremendous firepower in order to protect the ground forces during the fighting in built-up areas and acknowledging that this was causing a great deal of damage to civilians and their infrastructure: “It will take many years in order to restore this.... When we *suspect* that a fighter is hiding in a house, we shoot it with a missile and then with two tank shells, and then a bulldozer hits the wall. It causes damage but it prevents to the loss of life among soldiers.”⁷¹ Note the double violation of the discrimination principle: mere suspicion is sufficient to destroy homes containing civilians, including women and children—and even if only a single fighter is the object of that suspicion.

In two remarkable commentaries, the *Haaretz* military analyst Reuven Pedatzur bluntly stated what he thought about the way Israel fought the war: “It appears the senior command decided to shock the Palestinians by killing as many people connected to Hamas as possible. The assumption was, apparently, that killing several hundred people would make the Hamas leaders surrender or plead for a cease-fire. This is one of the reasons the air attack was carried out as a surprise. The IDF, which planned to attack buildings and sites populated by hundreds of people, did not warn them in advance to leave, *but intended to kill a great many of them*, and succeeded.”⁷²

In a subsequent column, Pedatzur argued that the Israeli attack did not even constitute a “war:” “The Hamas fighters did not even try to stop the IDF soldiers who entered the Strip, opting to withdraw without a fight. This is not war. It is not even a real battle. At the start of the ground offensive, senior command decided to avoid endangering the lives of soldiers, even at the price of seriously harming the civilian population. This why the IDF made use of massive force.” Pedatzur also explains why Israeli military casualties were so low, noting that the Israeli forces did not even have to assault homes which might or might not have contained Hamas fighters: “As a brigade commander explained, if there is any concern that a house is booby-trapped, *even if it is filled with civilians*, it should be targeted and hit, to ensure that it is not mined—only then should it be approached.”⁷³

Finally, it bears repeating that if you don’t have a just cause, you are not morally allowed to attack even the other side’s *soldiers*, let alone its civilians.

Noncombatant Immunity and the Israeli Way of War

The last *jus ad bellum* principle is noncombatant immunity, and it is even stronger than the principles of proportionality and discrimination, for it categorically prohibits deliberate attacks on civilians, regardless of circumstances. Israel has repeatedly violated this rule throughout its history—so much so that it can be said that systematically attacking crucial civilian infrastructures, and often civilians directly, can be said to be the Israeli way of war.

Thanks to the work of Israeli, Palestinian, and independent historians, there is no serious doubt that during the 1947-1948 war of independence, Israeli forces sometimes deliberately attacked civilians in order to drive many if not most Arabs out of the areas claimed by Israel. That is what created the refugee issue that still plagues the conflict: most of the estimated 700,000 Palestinians who fled into neighboring Arab countries did not do so “voluntarily,” (as the Israeli mythology has it), but either because they were driven out or fled in understandable fear that they would be killed if they didn’t.⁷⁴

Throughout its history since statehood, Israel has repeatedly and deliberately attacked Arab civilians—that is, not just Palestinian civilians—either directly or by destroying their homes, their businesses, their fields and orchards, their electric systems, and their transportation systems. The purpose of these deliberate attacks has been to intimidate the civilian population, or to punish them for their supposed or actual support

of Israel's enemies, and especially to induce them to turn against their own governments or internal militant organizations.

In addition to the numerous attacks on the Palestinians, the most obvious examples of Israel's war on other Arabs were the attacks (typically led by Ariel Sharon) on Jordanian villages in the 1950s; the use of massive airpower against Egyptian cities during the 1970-73 aptly-termed "War of Attrition;" and a number of attacks against Lebanon in the 1970s, 1982, 1996, and 2006. In the 1982 attack at least 10,000 civilians were killed. In 2006, an estimated 1200 Lebanese civilians were killed, almost a third of them children, 4000 were wounded, one million displaced, 130,000 houses were destroyed, and the country's electricity network, thousands of small businesses, hundreds of roads, 300 factories, 80 bridges, and dozens of schools and hospitals were destroyed or damaged.⁷⁵ All of these cases have been repeatedly documented in great detail, particularly by Israeli historians and journalists as well as by international and Israeli human rights organizations. Dozens of citations could be provided, but several will make the point.

* In 1978 General Mordechai Gur (then Chief of Staff of the Israeli Defense Forces and later a leading Labor Party politician) was interviewed about the Israeli methods of warfare; he openly acknowledged what can only be described as Israeli state terrorism: "I've been in the army thirty years. Do you think I don't know what we've been doing all those years? What did we do the entire length of the Suez Canal? A million and a half refugees... Since when has the population of South Lebanon been so sacred? They know very well what the terrorists were doing.... I had four villages in South Lebanon bombed... [as, he says, was done in Jordan]."

The Israeli interviewer then comments: "You maintain that the civilian population should be punished?" Gur responds: "And how... I have never doubted it.... For thirty years... we have been fighting against a population that lives in villages and towns."⁷⁶

Several days after the Gur statements, Ze'ev Schiff, for thirty years Israel's most prominent military correspondent, commented: "In South Lebanon we struck the civilian population consciously, because they deserved it.... The importance of Gur's remarks is the admission that the Israeli Army has always struck civilian populations, purposely and consciously... even when Israeli settlements had not been struck."⁷⁷

*In July 2006, after Hezbollah seized two Israeli soldiers, there were several open threats by Israeli generals of what would be imminently done to Lebanese civilians; for example: "Senior officers in the IDF say that... if the kidnapped soldiers are not returned alive and well, the Lebanese civilian infrastructures will regress 20, or even 50 years."⁷⁸

*As has already been described, even before the recent attacks on Gaza, Israel had been enforcing a deliberate policy of collective punishment against the entire Gazan population. Jessica Montell, the head of B'tselem, Israel's most important and prestigious human rights organization, wrote that "the suffering of the [Palestinian] population is not merely a byproduct of Israel's attacks on militants. It is an intentional part of Israeli

policy. The clear intention of the practice is to pressure the Palestinian Authority and the armed Palestinian organizations by harming the entire civilian population.”⁷⁹

*It is not just Israeli human rights activists or other “leftists” or known critics of overall Israeli policy who have charged that for a number of years Israel has been deliberately attacking civilians and their infrastructure in both Gaza and Lebanon. Even before the recent Israeli attacks, in July 2006 Yossi Alpher, the former high Israeli intelligence official and no leftist, wrote that “Some of the humanitarian suffering in Gaza and Lebanon is a deliberate act on Israel’s part... It is intended to generate mass public pressure on the respective governments to force the Islamic militants to release three IDF soldiers snatched from Israeli territory and end rocket attacks.”⁸⁰ After the invasion, Alpher again denounced “the folly of collectively punishing 1.5 million Gazans for the sins of Hamas [because].... starving masses of Palestinians is a counter-productive strategy.”⁸¹

Even more remarkably, ten months before the attack, Moshe Arens—a high Likud official and well-known hardline rightist, a former ambassador to the United States in the Menachem Begin government, the foreign minister in the Yitzhak Shamir government, and a three time defense minister in Likud governments since the 1980s—wrote the following: “The ‘leverage’ theory - which holds that the destruction of enemy infrastructure and attacks on the enemy’s civilian population will produce pressure on decision makers to cease their attacks against Israeli civilians - ... did not work in Lebanon, and it certainly does not work in Gaza. Quite the contrary, it only increases the support that the terrorists receive from the civilian population.... [Such measures are]... counterproductive, [and are] impermissible by our moral standards.”⁸²

In fact, the blistering attacks by Alpher and Arens—even *before* the far worse recent Israeli attack—understate the issue. The Israeli attacks on Gaza are not merely “counterproductive” or even morally “impermissible:” they are war crimes.⁸³ Indeed, since the accepted definition of “terrorism” is the deliberate attack on innocent civilians, in pursuit of some political purpose, the Israeli attacks on civilians are nothing less than state terrorism.

Hamas and Just War Philosophy

While Israel failed every just war test in its conflict with Hamas, it doesn’t necessarily follow that Hamas passed the test. However, that analysis is more uncertain, and complex. As the central focus of this (already very long) article is on Israeli rather than Hamas’ behavior, I will provide only a brief overview.

Whether Hamas meets the just cause criteria depends on its true objectives. To the extent that it is trying to destroy the state of Israel, its cause is obviously unjust. On the other hand, if its operational or practical goal is—or is becoming—an end to Israel’s occupation of Palestinian territories and the creation of a Palestinian state in the West Bank and Gaza (the two-state settlement), its purpose is just. Indeed, some Israelis in effect have acknowledged this, including no less a figure than Ehud Barak, who in an

unguarded but highly revealing moment once said that if he were a Palestinian “I would join a terror organization.”⁸⁴ Similarly, Nissim Levy, a twenty-year veteran of the Shin Bet’s intelligence operations in the occupied territories, acknowledged that “If I were in their situation, I would make our lives bitter. I would not blow up women and children. But yes, I would fight against the foreign occupier. When you take a person and put him up against the wall and don’t leave him many options, then what do you want him to do? ... Do you think that if we were in their situation we wouldn’t have suicide bombers?”⁸⁵

Moreover, and again to the extent that Hamas’ practical purpose is to “fight against the foreign occupier” rather than destroy the occupier’s country, it has a strong case that it has met the principle of last resort. That Israel either will not or cannot be induced to end its occupation and repression of the Palestinians by peaceful political means has been amply demonstrated in the last few years, during which there has been an ongoing expansion in the West Bank and East Jerusalem of the settlements and the various “separation barriers,” as well as continued Israeli military actions, assassination operations, severe curtailment of Palestinian freedom of movement, and an intensified economic siege. And all of this has occurred during the period in which the West Bank Palestinian government of Mahmoud Abbas, the most moderate Palestinian leadership in the long history of the Israeli-Palestinian conflict, and one that has embraced nonviolence, forswearing not only terrorism but all forms of armed resistance.⁸⁶

In short, since the Abbas government has not brought a two-state solution one bit closer—in fact, has been helpless to prevent the ongoing expansion of Israeli settlements in East Jerusalem and the West Bank, as well as other continuing manifestations of the occupation—it is hard to blame Hamas for concluding that no political or nonviolent strategies can work. Nonetheless, Hamas must still pass the just-means test: and it can’t, since its attacks that are intended to kill Israeli civilians, whatever their cause, certainly constitute terrorism, and terrorism is always morally wrong.

That said, not all moral wrongs are equally wrong. Both Israel and Hamas have deliberately attacked civilians, but state terrorism in which the stronger side kills civilians in order to maintain a repressive occupation is worse than non-state terrorism by the weaker side in the service of the just cause of resisting that occupation and repression. And it is scarcely irrelevant that the Zionist movement used terrorism—indeed, successfully so—in the service of the just cause of the creation of an independent Jewish state.

That example suggests a broader argument. In the standard contemporary rhetoric about terrorism, especially in the U.S. and Israel, it is usually asserted that all terrorism is equally abhorrent and no moral distinctions can be made. However, this argument is either hypocritical or mightily forgetful: we always make such distinctions, we just don’t admit that we do, sometimes even to ourselves. Even aside from Israel’s blindness to its own history, it is not difficult to find examples in which our condemnation of terrorism committed in what we believe to be a just cause—or even merely in our “national interest”—is considerably less vigorous than when it is our enemies that are engaged in terrorism.

Consider several examples, the first hypothetical, the others real. Suppose the resistance in Nazi-occupied France had turned towards rocket attacks or suicide bombings of German cities in order to force Hitler to withdraw. Such methods would certainly have been terrorist, but who would wish to argue that Germany would have had the right—the right of “self-defense”—to even more ruthlessly suppress the resistance, for example by killing a hundred Frenchmen for every German that was killed? And if it had, would the most persuasive moral criticism be that its methods were “disproportionate?”

That aside, there are several actual examples of double standards from recent U.S. history, even beyond those we apply to Israeli vs. Palestinian terrorism. During the cold war the U.S. actively supported Latin American terrorist military dictatorships which routinely tortured and murdered thousands of their own people in the name of “anticommunism;” more recently we breathed a great sigh of relief when an Algerian military dictatorship used extensive terrorist methods of its own to reverse the victory of Islamic fundamentalists in democratic elections.

So far, my overall argument is not that terrorism is sometimes morally acceptable, for it is not; rather, the argument is that there are lesser or greater degrees of evil and many historical examples of our different reactions to injustices done in pursuit of just causes as opposed to the double evil of injustices done for unjust causes.⁸⁷ Put differently, there can be mitigating circumstances (a point we clearly recognize in our own domestic judicial system) for moral wrongs, perhaps even for terrorism.

A particularly strong statement of this argument, as it applies to the Israeli-Palestinian conflict, is to be found in a UN report by John Dugard, the Special Rapporteur in the Israeli-Palestinian conflict to the UN Human Rights Council. In his report Dugard, an internationally renowned South African scholar and leading opponent of apartheid in the 1980s, concludes: “common sense... dictates that a distinction must be drawn between acts of mindless terror, such as acts committed by Al-Qaeda, and acts committed in the course of a war of national liberation.... While Palestinian terrorist acts are to be deplored, they must be understood as being a painful but inevitable consequence of colonialism, apartheid or occupation.... As long as there is occupation, there will be terrorism.”⁸⁸

In short, Hamas has a stronger argument from mitigation for the moral wrongs it has done to Israel than Israel has for the much greater moral wrongs and the more extensive terrorism it has inflicted on the Palestinians. Nonetheless, the argument cannot rest there, for there still is the practical matter of probability-of-success to be considered: by now it is quite clear that Hamas terrorism has failed that test and will continue to do so, for terrorism will not force an end to Israeli oppression but only worsen it.

Indeed, in light of what we now know about the outcome of the second intifada that began in 2000, it is now evident that the Palestinians should have resisted the occupation only by nonviolence and eschewed any kind of armed resistance, let alone

terrorism.⁸⁹ However, that was hardly clear at the time, especially because the historical record of Israel's occupation of the West Bank after 1967, and especially after the Oslo agreements of 1993, made it unmistakably clear that the longer "the peace process" was stretched out, the more Israel would take advantage of its unconstrained power to preempt the outcome of negotiations by creating "facts on the ground."

Moreover, consider the startling admissions of Shlomo Ben-Ami, the Minister of Security and then later Foreign Minister of the Barak government in 1999-2000, as well as a leading Israeli scholar. Writing in 2006, he concluded that there was ample historical evidence to believe that Israel might change long-held policies if—but *only* if—threatened with high costs: "Israel is forced to make concessions for peace only under the impact of military pressure and major setbacks.... A popular prejudice in Israel about the Arabs is that 'they only understand the language of force.' But this can just as well be said about the Israelis."⁹⁰ For example, he continued, it was "undisputable" that without "the undermining of Israel's myth of invincibility" in the early stages of the 1973 Israeli-Egyptian Sinai war, Israel would have refused to withdraw from the Sinai and there would have been no Israeli-Egyptian peace treaty.⁹¹ Similarly, "it took Israel's reverses in the first Intifada and the psychological effects of the Gulf War on the Israeli home front to force Yitzhak Rabin finally to realize that the Palestinian problem is susceptible only to a political solution."⁹² And it was only after the cost in Israeli casualties had become too high that Israel in 2000 ended its eighteen-year occupation of southern Lebanon.

Even the consequences of the second intifada are not without some ambiguities. For example, Avishai Margalit, a renowned philosophy professor at Hebrew University and Princeton's Institute for Advanced Studies, wrote that while the Palestinians never tried nonviolent resistance in a sustained manner, there was historical polling evidence that when Palestinian violence is greater, more Israelis were willing to accept a compromise settlement. In particular, he cites the fact that in March 2002, at the height of the intifada's violence, 70% of Israelis were willing to accept the consensus two-state settlement terms, but in May 2005, after a period of calm, only 44% were willing to do so.⁹³ The *Haaretz* columnist Doron Rosenblum has made the same point: "A survey conducted not too long ago proved what we do not dare say aloud: the Israeli public states nonchalantly obdurate opinions as long as it enjoys the luxury of relative quiet, but shows a willingness for far-reaching diplomatic compromise when the blood is flowing; for example, at the height of the intifada and terror."⁹⁴

These observations, however, may no longer be true, in light of recent surveys showing that rocket and suicide attacks have resulted in a marked drop in the Israeli public's support for a compromise two-state solution.⁹⁵ In particular, it would be lunacy to believe—if any Hamas people still so believe—that terrorism can lead to the destruction of Israel. Of course, nuclear terrorism might produce that result, but not without the Israeli retaliatory annihilation of the Palestinians themselves, if not the entire Arab world.

In short, the moral issue aside, Israel is both too strong and too ruthless for strategies based on armed violence, let alone terrorist armed violence, to work. The only

hope that remains for the Palestinian people is a long nonviolent struggle, reinforced by U.S. pressures on Israel.

Where Do We Go From Here?

I have argued that Palestinian rockets and suicide bombings are the consequence of over forty years of continued Israeli occupation, repression, assassinations and other killings; of the destruction of governmental, educational, public health and other societal institutions and infrastructures; and of the deliberate impoverishment and humiliation of the Palestinian people. Consequently, Israel is not engaged in “self defense” when it uses force to crush resistance to its repression—*and that holds true even when the form of resistance—terrorist attacks intended to kill civilians—is itself morally wrong.*

Moreover, Israel has refused to end its siege of Gaza, has broken a series of ceasefires with Hamas, and refused even to explore Hamas’ offers for a long-term settlement. Worse, its punitive attacks on the Palestinian civilian targets, as well as on other Arab peoples in the past, are not merely disproportionate or even indiscriminate, they are deliberate violations of the most important and widely accepted moral principle that seeks to minimize the destructiveness of warfare: that innocent civilians may never be the intended object of military attack. When they are, we call it terrorism.

How can Israel, a state founded not only to ensure the survival of the Jewish people but to serve as a moral exemplar to the world—“a light unto the nations”—have fallen into this moral abyss? The explanation is clear enough: the Israelis genuinely see themselves as victims, determined to do whatever is necessary to prevent a “new Holocaust” at the hands of the Palestinians and their Arab supporters.

That explains how the Israelis see the world, but it doesn’t follow that that’s the way the world really is.⁹⁶ Most Palestinians and all the leading Arab states support the international consensus two-state solution that is not only entirely consistent with, but is a *sine qua non* for, genuine Israeli security: the withdrawal of Israeli settlers and armed forces and the creation of a largely demilitarized Palestinian state in Gaza and the West Bank, sharing Jerusalem as its capital with Israel, with international peacekeeping forces providing additional guarantees that the agreement will be observed.⁹⁷ Thus, it is the Israelis rather than the Palestinians who today are the main obstacle to a settlement.

What if the Guarantees Fail?

It is reasonable to ask: Suppose a settlement is reached but afterwards the international guarantees fail and Hamas reverts to fanaticism and continues its struggle to destroy Israel? The fear is understandable, but the likelihood that this worst-possible-case scenario would happen is extremely small. First, there is a growing agreement in Israel, Palestine, Europe, and the Arab world that international peacekeeping forces—almost certainly including U.S. troops—should be sent to the region to back a settlement. Perhaps even more importantly, once a settlement is reached, Israel, the U.S., Europe, and the neighboring Arab states would have at their disposal an enormous range of

carrots and sticks to ensure continued compliance. In that context, the vast majority of the Palestinian people would surely oppose fanatical irredentism, for their lives in every way would be transformed by a compromise settlement, almost surely to be followed by major international economic and developmental assistance. Indeed, even *before* the benefits of a settlement have materialized, strong Palestinian majorities have continued to support a two-state solution⁹⁸ Finally, few if any Arab states would support a pointless, bloody, and dangerous war that would have no chance of defeating Israel, could devastate the entire Middle East, and would surely result in an even more draconic Israeli reoccupation of a defunct Palestinian state.

Another problem with imagining worst-case scenarios about Hamas is the fallacy that is inherent in all such thinking: it is typically overlooked that worst case scenarios run in both directions. Thus, it is not just changes in the status quo that might prove dangerous, for the status quo itself may be even more dangerous. In other words, what about the worst-case scenario if the Israeli-Palestinian conflict continues? I will return to this issue below.

Still, suppose the Israeli fears, however improbable, did materialize? In such circumstances, Israel would truly have the right of self-defense and would have no other choice but to take whatever steps were necessary to ensure not only its well-being but its very survival. Long before Islamic fundamentalists in Palestine could become a serious threat, the Israelis would surely—and rightly—move against them with irresistible force even, if necessary, reoccupying the Palestinian territories, ending the experiment of Palestinian statehood, and permanently destroying the fanatic organizations.

It is sometimes argued that the international community “would never allow” Israel to act in that manner. It is a most unpersuasive argument. First of all, if the basic national security of Israel, if not its very existence, was genuinely endangered, the attitudes of other states would be irrelevant. Indeed, the “international community” has repeatedly demonstrated it has neither the will nor the capacity to prevent Israel from acting *badly*; it would have even less motivation, capacity, or will to prevent Israel from acting in genuine self defense. In any case, in such circumstances the international community, including most Arab states, would explicitly or tacitly accept the need for Israel to put an end to real threats to its security or to its very existence.

The American Role

There is next to no chance that Israel, on its own, will agree to a two-state settlement—not even with Abbas and the Palestinian Authority, let alone with Hamas, without whose participation no settlement is possible. Even before the recent Israeli elections that will result in a rightwing coalition government, a majority of the Israeli Jewish population had moved into opposition to a compromise settlement with the Palestinians—or, at least, to the Israeli concessions that would be necessary to bring about such a settlement.

In Israel the political spectrum is defined by a willingness to withdraw from the occupied territories and allow the creation of a genuinely independent and viable Palestinian state, sharing Jerusalem with Israel: recent surveys show that 43 percent of Jewish Israelis consider themselves to be on the right, 24 percent in the center, and only 18 percent leftwing or even center-left.⁹⁹ But perhaps the most shocking statistic is this: Meretz, the only Israeli political party that continues to support major Israeli concessions, as well as the only party that after initially supporting the Israeli invasion of Gaza soon came to criticize it, got 3% of the vote in the elections. To again quote from a non-leftist mainstream Israeli analyst, on the eve of the elections Yossi Alpher wrote: “To complete this depressing picture, not a single Zionist party is suggesting that we contemplate offering to talk to Hamas in Gaza, despite the growing recognition that this is an inevitable development... No parties are suggesting we stop waging economic warfare against Gaza, even though this strategy has failed totally and can even be deemed counterproductive.”¹⁰⁰

In any case, even if the government and a majority of the Israeli population should come to support an agreement based on the end to Israeli settlements and a near-complete withdrawal from the West Bank, the settlers and maybe even the army would have a de facto veto. Many of the fanatic settlers and their supporters in the rest of Israel would violently resist an Israeli withdrawal, and it is far from certain that the armed forces—in which settlers are increasingly prominent, including in high level positions—could be relied on to crush violent resistance. In short, civil war would be a real possibility—even Shimon Peres, the current president of Israel, is said to fear it;¹⁰¹ no Israeli government can be expected to risk that.

The only realistic hope for a change in this desperate situation would be serious and sustained American pressures, accompanied by economic sanctions and the end of arms sales to Israel if that proved necessary. Indeed, not only would such U.S. action provide real muscle behind a diplomatic drive for a settlement, it would also provide an excuse and cover for an Israeli government to do what is necessary but internally risky.

More than ever, despairing Israeli journalists, academics, and intellectuals are publicly calling for such U.S. pressures; for example, Akiva Eldar recently said that when someone is standing on top of a cliff, a true friend must do whatever it can to save him, “including hitting him very hard on his head.”¹⁰² Will an Obama government be willing to take strong action? It would not seem likely, given the domestic political realities in the United States, and perhaps also because of Obama’s own genuine but uninformed sympathy for Israel.

In the short time since Obama’s election the signals have been mixed. On the one hand, during the campaign Obama continued the American political ritual of pandering to AIPAC and other rightwing Jewish organizations, and even after his election he had nothing to say about the Israeli invasion of Gaza. Indeed, in a July 2008 visit to Sderot (the Israeli town that has borne the brunt of the rocket attacks), he practically gave the Israeli government carte blanche for its subsequent attack on Gaza: “If somebody was sending rockets into my house... I’m going to do everything in my power to stop that...”

And I would expect Israelis to do the same thing.”¹⁰³ On the other hand, the appointment of George Mitchell as Obama’s chief Middle East adviser is a hopeful sign, because of Mitchell’s political and intellectual stature and his record as head of the Mitchell Commission, which investigated the onset of the Palestinian intifada in 2000 and was cautiously critical of Israel’s behavior during that period.¹⁰⁴

Even so, the only hope for a two-state settlement in the foreseeable future—which, despite increased talk of a “one-state solution,” is still the only kind of a settlement that could work—is that the Obama administration, Americans generally, and the American Jewish community in particular comes to understand that the national security of both Israel and the United States is gravely endangered by a continuation of the conflict. The moral issues aside, even if Israel succeeded in crushing all forms of resistance in the Palestinian territories, the battle against it almost certainly would continue from outside, and might even come to be led by al-Qaeda or other Arab or Muslim organizations—if not states—that are far more fanatical than Hamas. Still worse, sooner or later religious fanatics will, by one means or another, come into possession of weapons of mass destruction, particularly nuclear weapons. In that case, they may well use them against Israel and perhaps even against the United States itself, despite the near-certainty that states harboring them will be annihilated in return.

In sum, the continuing Israeli oppression of the Palestinians is not merely immoral, it is—no other words will do—almost unfathomably stupid, endangering not only themselves but the entire world.

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Footnotes:

¹The standard contemporary works on just war philosophy are Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977) and Walzer, *Arguing About War* (Yale University Press, 2004) .

²In an oft-quoted remark at the time of the Gaza “withdrawal,” Dov Weisglass, Ariel Sharon’s senior adviser, explained Sharon’s purposes: “The disengagement [from Gaza] is actually formaldehyde...necessary so that there will not be a political process with the Palestinians...the Palestinian state has been removed from our agenda indefinitely.” (Quoted in Johann Hari, “The True Story Behind This War Is Not the One Israel is Telling,” *The Independent* (of London), December 29, 2008. Many Israeli journalists, columnists, and academics have described the withdrawal as a means of retaining indirect control over Gaza while consolidating Israel’s hold on the West Bank, including Yossi Sarid, Akiva Eldar, Ze’ev Schiff, Gideon Levy, Baruch Kimmerling, Amira Hass, Danny Rubinstein, Meron Benvenisti, Avraham Burg, Zeev Sternhell, Nehemia and Tom Segev. See also Sara Roy: “Whatever else it claims to be, the Gaza Disengagement Plan is, at heart, an instrument for Israel’s continued annexation of West Bank land...what this is really about is obtaining international acceptance...of Israel’s full control over the West Bank—and eventually Jerusalem—while retaining control over the Strip in a different form.” (“A Dubai on the Mediterranean,” *London Review of Books*, Vol. 27 No. 21 dated 3 November 2005 |

³Human Rights Watch, *Israeli Government Still Holds Responsibility for Welfare of Civilians*, October 28, 2004. See also John Dugard, Report of Special Rapporteur on Human Rights in Palestinian Territories, January 29, 2007, in *Journal of Palestine Studies*, Spring 2007: “Israel remains in effective control of Gaza... its air and sea spaces, borders, and crossings... Gaza became a sealed off, imprisoned and occupied territory.” As well, two *New York Times* correspondents wrote that “Under international law, Israel is considered an occupying power in Gaza, even though it has removed its troops and settlers from the territory.” (Steven Erlanger and Helene Cooper, “Israel Pressures Hamas Ahead of Rice’s Arrival,” *New York Times*, September 20, 2007)

⁴“B’tselem: Israel Maintaining ‘Strangulation’ Policy in Gaza Strip,” *Haaretz*, March 29, 2005. A number of Israeli journalists, editorial writers, and human rights activists have also regularly used the metaphor of “prison” or “open air prison” to describe Israel’s continued control and repression over Gaza. See also the report by John Dugard in note 3, above.

⁵CF the UN’s John Dugard (a former South African anti-apartheid activist): “Although there are differences from apartheid in South Africa, “Israel’s laws and practices in the occupied territories certainly resemble aspects of apartheid.” Other South Africans go further. For example, Ronni Kasrils, also a former anti-apartheid activist and currently a government minister in South Africa, told *Haaretz* that “the Israeli occupation is worse than apartheid. The whites never shelled the black neighborhoods with tanks and artillery... It’s a monstrosity I’d never seen before... even for someone who grew up under apartheid... It’s a hundred times worse.” (Gideon Levy, “Cry the Beloved Country,” *Haaretz*, May 26, 2007). A year later 21 human rights activists from South Africa visited Israel, among them members of Nelson Mandela’s African National Congress, two South African Supreme Court judges, a former deputy minister, members of Parliament, attorneys, writers and journalists—about half of them Jewish. Most of them said that the Israeli occupation regime was worse than anything they knew under apartheid. According to a leading journalist in the group: “When you observe from afar you know that things are bad, but you do not know how bad. Nothing can prepare you for the evil we have seen here. In a certain sense, it is worse, worse, worse than everything we endured. The level of the apartheid, the racism and the brutality are worse than the worst period of apartheid.” (Gideon Levy, “Worse Than Apartheid,” *Haaretz*, July 11, 2008.)

⁶Article 33 of the Geneva Convention specifically outlaws collective punishment. It is now common for Israeli journalists, academicians, human rights organizations, and even former government officials to describe Israel policies in Gaza as “collective punishment.” Among the journalists are Akiva Eldar, Gideon Levy, and Amos Harel. Among the academics are Shlomo Avineri, who wrote that Israeli policy was denounced by the European Union and the United Nations as ‘collective punishment.’ (As quoted by Steven Erlanger, “Israel’s Experimental Pressure Backfires,” *New York Times*, January 27, 2008.) Among the human rights organizations are B’tselem, whose director, Jessica Montell, described the continuing Israeli control as “A Form of Collective Punishment.” (*bitterlemons*, July 17, 2006). Also, a number of Israeli human rights groups have joined forces to sue the government in the Israeli courts, charging that the policy of “collective punishment” is a violation of international law. (Steven Erlanger, “Weighing Crimes and Ethics in the Fog of Urban Warfare,” *New York Times*, January 17, 2009). Earlier, Erlanger, usually one of the *Times*’ more “pro-Israel” correspondents, wrote that Israel “wants to see that Hamas suffers, by making Gazans suffer, to impress on them that the best path lies in accommodation and negotiation...” “Under Siege, Life in Gaza Just Shrinks,” November 18, 2007. Even a former foreign minister of Israel, Shlomo Ben-Ami, has used the term: as quoted in Akiva Eldar, “Hammer Blows,” *Haaretz*, April 28, 2006.

⁷ Benvenisti, “An Explosive, Dangerous Balance,” *Haaretz*, February 29, 2008.

⁸Laor, “LRB Contributors React to Events in Gaza,” *London Review of Books*, January 15, 2009.

⁹As reported in Ethan Bronner and Sabrina Tavernise, “In Shattered Gaza Town, Roots of Seething Split,” *New York Times*, February 4, 2009, and Steven Erlanger, “Israel’s Dilemma in Response to Rockets,” *New York Times*, December 19, 2007.

Also, independent investigations by B'tselem and *Haaretz* concluded that during 2006 and 2007, Israeli forces killed 816 Palestinians, 360 of whom were civilians, and about 200 under age 18. See Barak Ravid, "Haaretz Probe: Half of Gazans Killed by IDF Not Involved in Terror," *Haaretz*, January 14, 2008, and the March 2008 statement by B'tselem that over half of the Palestinians killed in Gaza during recent Israeli attacks were civilians who were not taking part in the fighting: "Rights Groups: Close to Half of Palestinian Fatalities in IDF Operation Were Civilians," *Haaretz*, March 4, 2008.

Even the supposedly more precise Israeli "targeted assassinations" against Islamic Jihad or Hamas activists resulted in high civilian casualties. According to B'tselem, the IDF assassinated 232 "wanted" Palestinians between the start of the intifada and the end of October 2008, while also killing an additional 154 bystanders. (Uri Blau, "License to Kill," *Haaretz*, November 28, 2008.)

For a more detailed analysis of the comparative killings by both sides during the four years preceding the recent massive Israeli attack on Gaza, see the sectioned entitled "A Ceasefire," below.

¹⁰Reuven Pedatzur, "The War That Wasn't," *Haaretz*, January 25, 2009.

¹¹These are the consensus figures, now cited by most reports and news stories. See especially the Human Rights Watch Report, *Israel/Gaza: International Investigation Essential*, January 27, 2009.

¹²For many years the Shin Bet regularly tortured Palestinian prisoners. In 1999 the Israeli High Court banned torture as a form of interrogation, except in cases of "necessity" or "ticking bombs." While the use of torture has significantly declined since then, the Israeli human rights organization, Public Committee Against Torture, claims that the Shin Bet continued to use torture in about 20% of their cases, including those that did not fall into the High Court's exceptions; during 2005-2006 129 complaints of torture were lodged with the Attorney General. See Nir Hasson, "Attorney General Receives 40 Torture Complaints in Past Year," *Haaretz*, November 8, 2006; Sharar Ilan, "129 Accusations, No Investigations," *Haaretz*, March 27, 2007.

A *Haaretz* editorial, noting the frequency of detailed complaints, many of them initiated or supported by Israeli human rights activists, concluded that "the wholesale rejection of all the complaints must raise the question of a cover-up." ("Zero Investigations," *Haaretz*, April 1, 2007. See also a highly-detailed account of Shin Bet torturing by the Public Committee Against Torture, as reported by Gideon Levy, "Now You Are Paralyzed, As We Promised," *Haaretz*, June 14, 2007.

¹³ Sara Roy, "The Jewish Ethical Tradition Means Embracing Palestinians, Too," *Christian Science Monitor*, December 31, 2008. Roy, of Harvard University, is one of the leading experts on the economic effects of Israel's siege of Gaza.

¹⁴Concerning the small amount of aid that Israel allows to reach the Palestinians, John Holmes, the chief UN emergency relief director for Palestine, put it this way: "Enough will always be allowed in for people to exist, but not enough...for people to live." (Michael Slackman, "At a Border Crossing, Drivers and Truckloads of Aid for Gaza Go Nowhere," *New York Times*, January 28, 2009)

There have been a number of detailed reports on the economic effects of the Israeli siege of Gaza, including by UN, World Bank, and Israeli as well as international human rights organizations. Among them see the combined study of eight human rights organizations in 2008 ("Gaza: Humanitarian Situation Worst Since 1967," *Haaretz*, March 6, 2008); a July 2008 report by UNRRA ("UN Report: At 45%, Gaza Unemployment is Highest in the World," *Haaretz*, July 28, 2008); and two Red Cross reports ("Israel Worsening Palestinian Humanitarian Crisis," *Haaretz*, December 16, 2007; Donald MacIntyre, "Red Cross Says Diets of Those Living in the Impoverished Gaza Strip are Deteriorating," *Independent* (of London), November 15, 2008)

Although the Palestinians have received over \$2 billion in international assistance in the last few years, it has not kept up with the growing impoverishment of Gaza and most of it has gone for emergency relief rather than for development, as was the original purpose of most of that aid. See Steven Erlanger, "Aid to Palestinians Rose in '06," *New York Times*, March 20, 2007. In fact, what has occurred has been the "de-development" or "de-industrialization" of Gaza, as the situation has been termed.

¹⁵Ethan Bronner, "Amid the Destruction, a Return to Life in Gaza," *New York Times*, January 25, 2009. The Palestinian government in the West Bank makes similar estimates and provides more detail, assessing that among the property destroyed or severely damaged were twenty-five schools and universities; thirty-one security services structures; fifteen hundred factories, shops and workshops; and 80 percent of agricultural properties, including their infrastructures and crops. (Amira Hass, "Palestinian Estimates: Fighting Caused \$1.9 billion In Damage to Gaza Strip," *Haaretz*, January 20, 2009).

¹⁶There have been a number of detailed reports on the Israeli 2002 attack in the West Bank, especially in *Tikkun*, in particular the May 15, 2002 report by Jeff Halper and the analysis by Jessica Montell, "Operation Defensive Shield," July/August 2002. See also Amira Hass, "Operation Destroy the Data," *Haaretz*, April 24, 2002

¹⁷Ethan Bronner, "Parsing Gains of Gaza War," *New York Times*, January 19, 2009; Sabrina Tavernise and Taghreed El-Khodary, "Shocked and Grieving Gazans Find Bodies Under the Rubble of Homes," *New York Times*, January 19, 2009.

¹⁸Gideon Levy, "Shock Corridor," *Haaretz*, December 1, 2006.

¹⁹Richard Horton, "Palestinians: The Crisis in Medical Care," *New York Review*, March 15, 2007. For earlier stories on the impact of the Israeli siege and direct attacks, even before the recent invasion, see "At the Mercy of the Checkpoint," by Zvi Bentwich, a member of the directorate of the Israeli Physicians for Human Rights, *Haaretz*, June 16, 2005, and Steven Erlanger, "Funds Cut, Gaza Faces a Plague of Health Woes," *New York Times*, May 5, 2006.

²⁰According to the head of the Red Cross in Israel and the Palestinian territories, Israel repeatedly delayed ambulance access to the wounded and dying; moreover, as a result of the ban on spare parts as well as the direct destruction of ambulances, more than 50% of Palestinian ambulances were out of service. See Rashid Khalidi, "What You Don't Know About Gaza," *New York Times*, January 8, 2009.

Other stories included Amira Hass, "Human Rights Groups Demand Medical Access to Injured Palestinians," *Haaretz*, January 9, 2009; Hass wrote that eight Israeli human rights groups asked the Israeli High Court to order the Israeli army to provide for the safety of medical teams in Gaza and allow the injured to be evacuated to medical facilities. According to Physicians for Human Rights, one of those groups, the army had killed six members of medical teams in Gaza. The petition also provided details of a number of direct attacks on ambulances and medical teams.

²¹Akiva Eldar, "Gaza's Bleak Reality," *Haaretz*, November 27, 2007: quoting John Ging, the director of UNRWA's Palestine operations.

²²"Israel's Lies," *London Review of Books*, January 29, 2009.

²³On the history of the moderating influence of governance on radical movements, and its particular application to Hamas, see Avi Shlaim, "How Israel Brought Gaza to the Brink of Humanitarian Catastrophe," *Haaretz*, January 7, 2009.

²⁴Menachem Klein, "Olmert Will Converge: the Occupation Will Continue," *Yediot Ahronot*, March 26, 2006.

²⁵Arnon Regular, "Hamas Platform Mentions Armed Struggle, But Not Israel's Destruction," *Haaretz*, January 11, 2006.

²⁶Henry Siegman, "Hamas: The Last Chance for Peace?," *New York Review*, April 27, 2006. See also Akiva Eldar, "Hamas-Alas," *Haaretz*, January 25, 2006, interview with Matti Steinberg, adviser on Palestinian Affairs to Ami Ayalon and Avi Dichter, past directors of Shin Bet.

²⁷Barak Ravid, "In 2006 Letter to Bush, Haniyeh Offered Compromise With Israel," *Haaretz*, November 10, 2008.

²⁸Schiff, " Hamas Says Ready for Two-State Solution," *Haaretz*, April 7, 2006.

²⁹ Scott Atran, "Is Hamas Ready to Deal?," *New York Times*, August 17, 2006 (emphasis added)

³⁰Arnon Regular, " Hamas, Fatah Prisoners Agree to Two-State Solution in Joint Draft," *Haaretz*, May 11, 2006 (emphases added)

³¹ Avi Shlaim, "How Israel Brought Gaza to the Brink of Humanitarian Catastrophe."

³²Fatah is the largest group within the PLO confederation. *Vanity Fair* obtained the confidential documents describing the plot, later corroborated by U.S. sources; see David Rose, "The Gaza Bombshell," *Vanity Fair*, April 2008.

³³ Zvi Bar'el, "Meshal Declaration a Basic Shift in Hamas Position," *Haaretz*, January 11, 2007; Avi Issacharoff, "Meshal: Hamas Backs Palestinian State In '67 Borders," *Haaretz*, April 2, 2008; Barak Ravid, "Meshal Offers 10-Year Truce for Palestinian State On '67 Borders," *Haaretz*, April 21, 2008.

³⁴Danny Rubinstein, " Hamas PM Haniyeh: Retreat To 1967 borders Will Bring Peace," *Haaretz*, May 23, 2006.

A major story in the British news magazine, *Economist*, reported that "depending on circumstances on whom in Hamas you talk to" the truce "could be 18 months, ten years, or even 50." ("Will the relationship change? Yes it can," February 12th 2009.

³⁵The *Economist* assessment put it this way: "Some of the religious zealots may well believe in the obnoxious charter. Others, including Meshal and Haniyeh, try to brush it off and then, if pressed, dangle it as an item for negotiation, much as Fatah used the dropping of the PLO's charter, which equally rejected Israel's existence, as a bargaining tool."

³⁶Alpher is currently the co-editor of the Israeli online publication, *bitterlemons*; the quote is from his article, "Problematic Options," November 20, 2006.

³⁷Quoted by Hari, "The True Story Behind This War"

³⁸As early as 2006, Khaled Meshal said that Hamas could not oppose the unified Arab stance expressed in an Arab League summit conference, which offered Israel full recognition and normalized relations in exchange for a full Israel withdrawal from the occupied territories and a solution to the refugee problem. Danny Rubinstein, "Don't Boycott the Palestinians," *Haaretz*, February 13, 2006.

³⁹ Zeev Schiff, "Ex-Mossad Chief: Hamas Offered 30-Year Ceasefire in 1997," *Haaretz*, March 30, 2006

⁴⁰ Akiva Eldar, "Evacuate Jewish Hebron," *Haaretz*, November 3, 2008

⁴¹ Nehemia Shtrasler, "So What Have We Done to Them?" *Haaretz*, December 18, 2007.

⁴² *Haaretz*, January 17, 2006; Steven Erlanger, "Grandmother Blows Self Up in Suicide Attack on Israeli Forces," *New York Times*, November 24, 2006.

⁴³ Avi Issacharoff, "57 Unarmed Palestinian Minors Killed by IDF since June," *Haaretz*, November 8, 2006.

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- ⁴⁴ Steven Erlanger, "Grandmother Blows Self Up in Suicide Attack on Israeli Forces." Ahmed Yousef, "Palestinian Revenge Was Inevitable," *Haaretz*, February 12, 2008.
- ⁴⁵ Taghreed El-Khodary and Israel Kershner, "Gaza is Tense as it Tallies Casualties," *New York Times*, January 2, 2008.
- ⁴⁶ Ibid.
- ⁴⁷ Barak Ravid, "*Haaretz* Probe: Half of Gazans Killed by IDF Not Involved in Terror," January 14, 2008. Indeed, Ravid reported, these figures were not far off those admitted by the Shin Bet itself, which reported to the Israel cabinet that some 200 of the Palestinians killed by Israeli forces "were not clearly linked to terrorist organizations."
- ⁴⁸ Steven Erlanger, "Israel Closes All Gaza Border Crossings, Citing Palestinian Rocket Attacks," *New York Times*, January 19, 2008.
- ⁴⁹ "IDF Kills 20 Palestinians, Including 6 Children, in Gaza and West Bank," *Haaretz*, February 29, 2008.
- ⁵⁰ Gideon Levy, "'Restraint' is Deceitful, and 'Forbearance' is Vain," *Haaretz*, March 2, 2008; "Rights Group: Close to Half of Palestinian Fatalities in IDF Operation Were Civilians," *Haaretz*, March 4, 2008; Ethan Bronner, "Poll Shows Most Palestinians Favor Violence Over Talks," *New York Times*, March 19, 2008.
- ⁵¹ Amos Harel, " Hamas Response: Calculated Escalation," *Haaretz*, February 27, 2008.
- ⁵² Jack Khoury, "Meshal: Shalit Still Alive," *Haaretz*, April 1, 2008.
- ⁵³ Ethan Bronner, "Truce in Gaza Ends but May be Revived by Necessity," December 19, 2008.
- ⁵⁴ Isabel Kershner, "Rockets Hit Israel, Breaking Hamas Truce," *New York Times*, June 25, 2008.
- ⁵⁵ Alexander Jakobson, "Not Israel's policemen," *Haaretz*, July 14, 2008.
- ⁵⁶ Bronner, "Truce in Gaza Ends," December 19, 2008.
- ⁵⁷ John Mearsheimer, "Another War, Another Defeat," *American Conservative*, January 29, 2009.
- ⁵⁸ Ibid. See also Ethan Bronner and Taghreed El-Khodary, " Hamas Fires Rockets Into Israel," *New York Times*, November 15, 2008.
- ⁵⁹ Hari, "The True Story Behind This War."
- ⁶⁰ Eldar, "Jimmy Carter: Include Hamas in Israel-Palestinian Peace Talks," *Haaretz*, February 13, 2009.
- ⁶¹ "End Game in the Gaza War, January 4, 2009.
- ⁶² Barak Ravid, "Diskin: Hamas Will Resume Smuggling Arms Within Months," *Haaretz*, January 19, 2009
- ⁶³ Sabrina Tavernise, "As Israeli Bombing Stops, Gazans Get Busy Rebuilding Damaged Tunnels," *New York Times*, January 24, 2009; Amos Harel and Avi Issacharoff, "Loud Memo from Gaza," *Haaretz*, March 1, 2009.
- ⁶⁴ "Will the Relationship Change?" *Economist*, February 12, 2009.

⁶⁵Avi Issacharoff and Amos Harel, "Recognizing that Israel's Effort to Topple Hamas has Failed," *Haaretz*, January 27, 2009.

⁶⁶Isabel Kershner, "Israel Says It Will Unseal Gaza Only If Soldier Is Freed," *New York Times*, February 19, 2009.

⁶⁷*Haaretz*, "B'Tselem: Israeli Security Forces Killed 660 Palestinians During 2006," December 31, 2006; Taghreed El-Khodary and Israel Kershner, "Gaza is Tense as it Tallies Casualties;" Avi Issacharoff, "B'Tselem's End-Of-Year Report: Number of Palestinians Killed By IDF Dropped Sharply in '07," *Haaretz*, December 31, 2007.

⁶⁸ Amos Harel, "IDF Plans To Use Disproportionate Force In Next War," *Haaretz*, October 5, 2008.

⁶⁹ *Haaretz*, October 10, 2008.

⁷⁰ Amos Harel, "IDF officer: 'It will take many years to restore' bomb-wracked Gaza," *Haaretz*, January 7, 2009 (emphasis added). Two *New York Times* correspondents confirmed that "the guiding principle for a number of the operations [was] to avoid Israeli casualties at all cost." Ethan Bronner and Sabrina Tavernise, "In Shattered Gaza Town, Roots of Seething Split," February 4, 2009.

⁷¹ Amos Harel, "IDF Officer: 'It will take many years to restore' bomb-wracked Gaza," *Haaretz*, January 7, 2009. (emphasis added)

⁷²Reuven Pedatzur, "The Mistakes of Cast Lead," *Haaretz*, January 8, 2009. (emphasis added)

⁷³ Reuven Pedatzur, "The War That Wasn't," *Haaretz*, January 25, 2009. (emphasis added)

⁷⁴The literature on the expulsion of the Palestinians in 1947-48 is extensive. Among the most important works are Simha Flapan, *The Birth of Israel* (New York: Pantheon Books, 1987); David Hirst, *The Gun and the Olive Branch: The Roots of Violence in the Middle East* (London: Faber and Faber, 1977); Michael J. Cohen, *Palestine and the Great Powers* (Princeton University Press, 1982); Benny Morris, *The Birth of the Palestinian Refugee Problem, 1947-1949* (Cambridge University Press, 1987); Morris, *The Birth of the Palestinian Refugee Problem Revisited*, (Cambridge University Press, 2004); Ilan Pappé, *The Making of the Arab-Israeli Conflict, 1947-1951*, (New York: I.B.Tauris, 1992); Pappé, *The Ethnic Cleansing of Palestine*, (New York: Oneworld, 2006); Michael Palumbo, *The Palestinian Catastrophe* (London: Faber and Faber, 1987); Nur Masalha, *Expulsion of the Palestinians: The Concept of "Transfer" in Zionist Political Thought, 1882-1948* (Washington DC: Institute for Palestine Studies, 1992); Meron Benvenisti, *Sacred Landscape: The Buried History of the Holy Land Since 1948* (Berkeley: University of California Press, 2000)

Two reviews of this literature are particularly noteworthy. Joel Beinin, a leading U.S. scholar on the Israeli-Palestinian conflict, reviewed the documentary literature on the events of 1948 and concluded that "the majority of the Palestinian Arabs were ethnically cleansed." Beinin, "Forgetfulness for Memory: The Limits of the New Israeli History," *Journal of Palestine Studies*, vol. XXXIV, no. 2 (Winter 2005), p. 10. Similarly, in a review of Benny Morris' writing, Shlomo Ben-Ami, a professional historian as well as former Israeli foreign minister, concluded that Israel had indeed expelled large numbers of Palestinians, which "is not surprising, given that the idea of population transfers had a long and solid pedigree in Zionist thought." Moreover, Zionist forces "committed more massacres than the Arabs, deliberately killed far more civilians and prisoners of war, and committed more acts of rape." Ben Ami, "A War to Start All Wars; Will Israel Ever Seal the Victory of 1948?" *Foreign Affairs*, September/October 2008, pp. 150, 152.

⁷⁵Once again, the literature is extensive, far more than can be cited here. In recent years, Tom Segev, one of Israel's leading journalists and historians, has written a series of columns for *Haaretz*, summarizing the

history of deliberate Israeli attacks on Palestinian, Lebanese, Egyptian, and Jordanian civilians. See especially his “Maximum Territory, Minimum Arabs,” January 13, 2006; “The Spirit of the King David Hotel,” July 23, 2006; “Between Two Friends,” August 3, 2006; “If The Eye is Not Blind Nor the Heart Closed,” October 30, 2006; “The Makings of History: Golda Redux,” January 16, 2009; and “Cruel and Meaningless Wars,” January 23, 2009.

For two reviews of Ariel Sharon’s central role in many Israeli attacks on civilians, see Ze’ev Schiff, “The Sharon ‘Heritage,’” *Haaretz*, February 3, 2006; Amir Oren, “The 50-Year-Old Time Bomb,” *Haaretz*, June 30, 2006.

On the 2006 Israeli attacks on Lebanon, see a number of highly detailed reports by Amnesty International and Human Rights Watch, as well as Lisa Hajjar, “International Humanitarian Law and ‘Wars on Terror,’” *Journal of Palestine Studies*, Autumn 2006; Zeev Maoz, “Morality Is Not On Our Side,” *Haaretz*, July 25, 2006; Paul Salem, “The Future of Lebanon,” *Foreign Affairs*, November/December 2006; Avi Shlaim, “Israel’s Error, Then and Now,” *International Herald Tribune*, August 4, 2006; and my article, “On Michael Walzer, Gaza, and the Lebanon War,” *Dissent*, Winter 2007. The figures quoted on the civilian destruction in Israel’s 2006 attack on Lebanon are from the Salem article, p. 18.

⁷⁶Interview with Gur in the Israeli newspaper *Al Hamishar*, May 10, 1978.

⁷⁷*Haaretz*, May 15, 1978.

⁷⁸Amos Harel, “Israel Prepares for Widespread Escalation,” *Haaretz*, July 12, 2006.

⁷⁹Montell, “A Form of Collective Punishment,” *bitterlemons*, July 17, 2006.

⁸⁰*bitterlemons*, July 17, 2006.

⁸¹*bitterlemons*, January 28, 2009. Similarly, Zeev Schiff objected to Israel’s strategy of punishing the Lebanese population and “encouraging” them to flee from South Lebanon as “a strategic mistake.” Schiff, “A Strategic Mistake,” *Haaretz*, July 20, 2006.

⁸²Arens, “Too Much To Expect,” *Haaretz*, March 5, 2008

⁸³Indeed, ten months before the attack, Matan Vilnai, the Israeli Deputy Defense Minister, actually threatened the Palestinians that if the rocket attacks were intensified, they “will bring upon themselves a bigger shoah,” the Hebrew word for the Holocaust! (“MKs Call for Gaza Invasion in Wake of Escalation,” *Haaretz*, February 29, 2008)

At the time of this writing, a number of international organizations, including Amnesty International, Human Rights Watch, and two United Nations bodies, were conducting an investigation of possible war crimes committed by both sides in the recent Israeli-Hamas conflict. The announcement by Human Rights Watch clearly emphasized the “allegations” of war crimes committed by Israel, including “indiscriminate use of weapons such as heavy artillery in densely populated areas; firing on or otherwise preventing ambulances and emergency medical care from reaching persons in need; and targeting presumptively civilian installations such as police stations and government offices that were not legitimate military targets.” (“Israel/Gaza: International Investigation Essential,” *New York Times*, January 27, 2009. See also Neil MacFarquhar, “UN Chief Says Israel is Blocking Most Gaza Aid,” *New York Times*, February 11, 2009.

Also, Amnesty International is now calling for a freeze on all arms sales to Israel, on the grounds that U.S. arms were used in what “could constitute war crimes” in Gaza. (Amira Hass, “Amnesty International Urges Freeze On Arms Sales to Israel,” *Haaretz*, February 23, 2009.)

⁸⁴Barak’s startling admission has been widely quoted in Israel. For example, Uri Blau, “If I were a Palestinian,” *Haaretz*, January 5, 2007; Yossi Sarid, “If You (or I) Were Palestinian,” *Haaretz*, January 2, 2009.

⁸⁵Uri Blau, “If I were a Palestinian,” *Haaretz*, January 5, 2007, quoting Levy.

⁸⁶In fact, Abbas's security services have been working closely with Israeli forces to suppress not only armed Palestinian resistance but even (during the recent Israeli attack on Gaza), mass protest actions. Among other accounts, see Ethan Bronner, "U.S. Helps Palestinians Build Force for Security," *New York Times*, February 27, 2009.

⁸⁷To be sure, categorical moral or religious philosophies, such as Catholic moral doctrine, do not accept the idea that there can be different degrees of evil. Other moral systems, consequentialist rather than categorical, do allow for morally-relevant distinctions even among evils. That there can be lesser as well as greater evils is the underlying premise of the argument of this article.

⁸⁸Excerpts from the Dugard report are quoted in "UN Expert: Palestinian Terror 'Inevitable' Result of Occupation," *Haaretz*, February 27, 2008.

⁸⁹Two scholarly studies that have made that argument are Jeremy Pressman, "Israeli Unilateralism and Israel-Palestinian Relations, 2001-2006," *International Studies Perspective*, vol. 7, 2006; and Max Abrahms, "Why Terrorism Doesn't Work," *International Security*, Fall 2006. Both make the plausible argument that while Israelis exaggerated the extent of violence in the first intifada, even rock throwing was seen by large Israeli majorities as proving that the Palestinians were intent on destroying them, rather than just ending the occupation.

⁹⁰Ben-Ami, *Scars of War, Wounds of Peace: The Israeli-Arab Tragedy* (Oxford University Press 2006), pp. 188, 314.

⁹¹Ibid, p. 52

⁹²Ibid.

⁹³Margalit, "A Moral Witness to the 'Intricate Machine,'" *New York Review*, December 7, 2007.

⁹⁴*Haaretz*, November 16, 2007.

⁹⁵For example, a recent Israeli television station poll found that by a 51-32 percent majority, Israelis now opposed the establishment of an independent state in the occupied territories. (Israeli station *Maagar Mochot / Channel 2*, February 3, 2009)

⁹⁶A recent study of the Israeli mass psychology, conducted by the famous Tel-Aviv University psychologist Daniel Bar-Tal, argues (as summarized by Akiva Eldar) that "Israeli Jews' consciousness is characterized by a sense of victimization, a siege mentality, blind patriotism, belligerence, self-righteousness, dehumanization of the Palestinians and insensitivity to their suffering." (Eldar, "Is an Israeli Jewish Sense of Victimization Perpetuating the Conflict with Palestinians?" *Haaretz*, January 30, 2009.

⁹⁷To be sure, there continue to be differences, even between moderate Israelis and moderate Palestinians, over whether the Palestinian refugees or their families down through the generations since 1948 have a "right of return" to their former homes, cities, and villages in Israel. If Palestinian negotiators were truly demanding the literal implementation of that "right," which for a variety of reasons is wholly impractical and, indeed, a formula for continued conflict and violence, there would be no chance for a settlement. However, there have been many indications over the years that the Palestinians would not allow the refugee issue to torpedo a fair political compromise settlement if all the other issues were resolved, especially if the Israelis at least acknowledged and apologized for their central role in the creation of the refugee problem. Under those circumstances, it is highly probable that the Palestinians and their political leaders would agree to resolve the issue on the basis of the international consensus: some refugees may return, *but only with the consent of Israel*, while the vast majority would be resettled either in the new state of Palestine or

elsewhere in the world, and would receive large-scale economic compensation and assistance from the international community.

⁹⁸In March 2008 a poll showed that while Palestinian sentiment was shifting toward the use of violence rather than negotiations in the short run, over the longer term 66% of Palestinians continued to favor an end to the conflict if Israel returned all the land occupied after 1967 and allowed the establishment of a Palestinian state. (Ethan Bronner, “Poll Shows Most Palestinians Favor Violence Over Talks,” *New York Times*, March 19, 2008) Even after the recent Israeli attack, a poll showed that 57% of Palestinians continue to favor peace negotiations with Israel. (*Economist*, “Will the Relationship Change,” February 12, 2009)

⁹⁹ Shahar Ilan, “Entire Political System Shifting Rightward,” *Haaretz*, February 12, 2009.

¹⁰⁰*bitterlemons*, February 9, 2009.

¹⁰¹Michael Lerner, “Israel Settler Violence—Again—and its Danger,” *Tikkun email*, November 20, 2008, quoting from a recent remark Peres was reported to have made to members of the British parliament.

¹⁰²Telephone interview with Jeremy Ben-Ami, the executive director of J-Street, February 11, 2009.

¹⁰³Quoted in Ethan Bronner, “Truce in Gaza Ends,” *New York Times*, December 19, 2008.

¹⁰⁴The *Economist* reports that after Obama’s election a group of senior bipartisan foreign policy veterans—including Zbigniew Brzezinski, Brent Scowcroft, Sam Nunn, Lee Hamilton (former chairman of the House Committee on Foreign Affairs), Sam Nunn, Paul Volcker (now a member of the Obama administration), James Wolfensohn (former head of the World Bank), and Henry Siegman—sent a still-unpublished letter to Obama calling on him (as the *Economist* paraphrased it) to do three things: “appoint an even-handed special envoy with real clout....to spell out a clear vision for a Palestinian state, and...to draw Hamas into talks.” (February 12, 2009). The story concluded that the first was already done, the second was awaited, and the third was “not so easy.” The argument here is that “not so hard” would have been more accurate, in light of Hamas’s political evolution, as described above.