THE MISRULE OF GAZA
ISRAELI ASSAULTS IN A LAND UNDER SIEGE

by
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Abstract

This thesis explores the relationship between war, law and visuality. It focuses on Israel’s 23-day assault on Gaza that began in December 2008. The thesis has three main aims. First, to historicize the assault, and put forward the idea that Israel’s resort to violence takes not only militaristic but crucially also legalistic forms (chapter 2). Second, to problematize the relationship between war and law through a discussion of the post-assault discourses on the indeterminate legality of the war (chapters 3&5). I suggest that in the age of what commentators are calling lawfare, law has reached its maximal instrumentalization and has become a military tactic. Third, to interrogate the visual archives of the assault in order to explore the ways in which war is being fought through visual fields and visual tactics which I call imagefare (chapter 4). The turn toward the legal and the visual in Israeli military strategy presents political, ethical and pragmatic problems for resisting and opposing war and so in relation to the current situation in Gaza and the ambivalent status of international law I conclude by posing the question: ‘what now?’ (chapter 5).
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## Abbreviations

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<td>BBC</td>
<td>British Broadcast Corporation</td>
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<tr>
<td>DOD</td>
<td>Department of Defence</td>
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<tr>
<td>HCJ</td>
<td>Israeli High Court of Justice</td>
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<td>HRW</td>
<td>Human Rights Watch</td>
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<tr>
<td>IAF</td>
<td>Israel Air Force</td>
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<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
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<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<tr>
<td>IDF</td>
<td>Israel Defence Force</td>
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<tr>
<td>IDFSU</td>
<td>Israel Defence Force Spokesperson Unit</td>
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<tr>
<td>ILD</td>
<td>International Law Division</td>
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<td>INF</td>
<td>Israel Navy Force</td>
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<td>IHL</td>
<td>International Humanitarian Law</td>
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<tr>
<td>I(MFA)</td>
<td>(Israeli) Ministry of Foreign Affairs</td>
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<tr>
<td>JAG</td>
<td>Judge Advocate General</td>
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<tr>
<td>LOAC</td>
<td>Laws Of Armed Conflict</td>
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<tr>
<td>MAG</td>
<td>Military Advocate General</td>
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<tr>
<td>NGO</td>
<td>Non Governmental Organization</td>
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<tr>
<td>NID</td>
<td>National Information Directorate</td>
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<tr>
<td>PCHR</td>
<td>Palestinian Centre for Human Rights</td>
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<tr>
<td>PLO</td>
<td>Palestinian Liberation Organization</td>
</tr>
<tr>
<td>P(N)A</td>
<td>Palestinian (National) Authority</td>
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<tr>
<td>UAV</td>
<td>Unmanned aerial vehicle</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<td>UNRWA</td>
<td>United Nations Relief Works Agency</td>
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For the people of Gaza
Forward. Injunction to Destroy

On the morning of December 27 2008 Israel¹ launched “Operation Cast-Lead”, a fully-fledged military assault on the Gaza Strip. In the grand scale of things it was a brief onslaught lasting ‘only’ 22 days but the scale and extent violence and destruction visited upon Gaza was catastrophic. Around 1400 Palestinians were killed and Gaza was brought once again to the brink of collapse, its infrastructure devastated. Surveying the damage, the U.N. Relief Works Agency (UNRWA) warned that after three weeks of constant bombardment Gaza was on “life support”. The assault was a horrific display of violence, even by Israeli standards. All three components of the Israeli military, the Israel Defence Force (IDF), the Israel Air Force (IAF) and the Israel Navy Force (INF) were recruited to punish Hamas and the people of Gaza. Scores of civilians died, many of them children. Israel bombed U.N. buildings protected under international law as well as government infrastructure, targeting medical staff, police, Red Cross ambulances and killing whole families. The

¹ The use of ‘Israel’ and ‘Israeli’ denotes a collective and requires justification. I recognise that ‘Israel’ has many different meanings and that not all Israeli’s share the same opinion and ideas about how the state of Israel conducts its activities. When Israel as a category is invoked I have in mind the official state institutions and their spokespeople. In particular, and because of my focus on war, I refer to the Israeli Ministry of Foreign Affairs, the Israeli army umbrella (including the Israeli Defence Force, Navy Force and Air Force) and the army spokesperson, the IDF Spokesperson. I take official speeches, press briefings and documents of Prime Ministers’ and key politicians to be central to what I call the Israeli narrative. What I explicitly want to avoid is homogenising this narrative and Israeli’s in general. Throughout the thesis I acknowledge an internal Israeli politics and give voice to the marginal, but perhaps growing, dissenting voices in spaces such as, but not limited to: the academy; the boycott; journalism (especially Haaretz); the army (especially Breaking the Silence); the anti-occupation movement; activist politics and exile. It is critical to acknowledge that while there is a critical Left in Israel, the overwhelming political attitude supports the status quo of Occupation and has done so for a long time, as successive Rightist (and increasingly Rightest with today’s Likud Government under Netanyahu) Israeli governments bear testimony to. While the Israeli narrative is therefore concerned with Israeli politics, it is also necessarily much more than what Politicians say and do. As Eyal Weizmann has pointed, out there exists a statist imaginary within Israeli society, with Settlers’ for example, doing the work of the state, taking the law into their own hands and defending their “territory” (see his Hollowland (2008): London: Verso). The Line between official and non-official scripts, between public and private does is increasingly blurred and so when I refer to Israel and Israel’s I am referring to this blurred boundary rather than a solid and defined state as separate from its people. While not without problem, ‘Israel’ and ‘Israeli’ are useful descriptive categories that I shall continue to work with. These categories are not assumed and generalized uncritically, but are applied contextually and with qualification.
assault made headline news around the world as accusations of war crimes circulated amidst images of terrorised Palestinian civilians running away from Israel’s phosphorous bombs. The ceasefire could not come early enough and when the assault was brought to a close on January 17 2009, a new phase of suffering was about to begin for the people of the beleaguered Gaza Strip.

I was drawn to Gaza, as I am sure many were, during the worst violence of the assault. I knew only textbook stories about the history of Israel-Palestine up to the start of the assault that began as my friends and I were still celebrating Christmas and excitedly anticipating the New Year. I was outraged. In hindsight my outrage was justified – even if it was radically ignorant. Even the sanitised and censored scenes that made their way onto the BBC and the New York Times were grotesque. The scale and extent of destruction was laid bare; this was an all-out attack upon a defenceless civilian population. It is not surprising that this outraged me; it outraged many others too as thousands took to the streets in global protest. Yet as I became more familiar with the recent history of Israel-Palestine, I realised what is now obvious: the Gaza assault was but the most recent manifestation of a violent colonial occupation that in 2007 entered its fifth decade. I should have been outraged a long time ago.

Yet my outrage must pail into insignificance compared to those most directly affected by the assault and the ongoing occupation, and I cannot help but feel somewhat disconnected from Gaza. I have never been to the region, let alone to Gaza and I am not Palestinian nor Israeli, Arab or Jew. And yet

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I feel compelled by what happened and what continues to happen to write, to come to terms with the situation in Gaza. It is often said that there is no substitute for seeing it yourself, for going there and experiencing it. While remaining staunchly critical of view that one has to be there, that one has to see firsthand the subjects and objects of enquiry, I have learnt that ethnography holds a certain authority in relation to Israel-Palestine. In almost all of my exchanges about my research I am asked if I have been to Israel or Palestine. One day at the start of 2008 I met a girl in a coffee shop who noticed I was reading Eyal Weizmann’s Hollowland. We got talking and had a good conversation about Israel and the assault on Gaza. She was Jewish and although she had not lived in Israel she had recently been there on the Birthright visit, a state-sponsored visit every Jewish person living outside of Israel (under the age of 26) is entitled to take. She enthusiastically told me about her experience and shared how this had changed and shaped her views on the conflict. Politely she asked about my experience in the region: “where did you go when you were there?”... Had I somehow implied I had been there? Pausing for a moment I replied, “Oh I haven’t been there. My research is in the archives...” I stopped, realising that to go on would be fruitless. The conversation was over: I hadn’t been there. The tactic of ethnographic authority had silenced me. She told me to visit Israel. I agreed, “I intend to”. I returned to the pages of Hollowland and as I did the girl looked up, “because when you go then you’ll know what it’s really like”.

The idea that experience or field-work leads to the truth of something makes me sceptical of the view that one has to go somewhere to be qualified to even comment – let alone write about – some issue or place. Being there is used as a silencing tactic for those who are not there, and who have not been there. Does the fact that I have not been to Israel or Palestine disqualify me from being able to write a thesis about the assault on Gaza? Of course not. But does my not having been there render my views inferior to someone who has? Not necessarily. Expertise knowledge throughout the
history of the geographical tradition has relied on *being there*. One becomes an expert through spending long amounts of time in a particular place or region, often learning the language, (mis)learning the culture and immersing oneself in the daily disorder, chaos and unfamiliarity of the life, economy, environment and society of – let us be honest, more often than not – the colonized “foreign”. And it is no accident *why* the expert is there: the disorder of the Other demands it; research becomes an exercise in ordering. This is a brief, cynical view of my disciplinary tradition, a tradition that has suffered severe blows by a veritable explosion of feminist research methodologies (that pay attention to *situated* knowledges) over the last decades. Yet the sentiment remains: experience leads to truth. More experience; more truth. No experience; less truth. The comment “when you go, you’ll know what it’s *really* like” makes the assumption that my understanding of what ‘it is like’ is untrue and that my going there would reveal the reality, i.e. the truth. But what reality, and what truth? She mentioned the Hamas rockets that kill Israelis; the holes left in the ceiling above a child’s bed; the fear intrinsic to the daily life of every Israeli living near the border of Gaza; the constant efforts and renewed attempts at peace that all Israeli’s have offered. “You just don’t know what it is like; if you saw it you would understand”. I have not seen it, I do not know and yet I can believe these things are true – for her and for many others. Her truths though do not discount other truths. Israeli “truths” are not be placed above Palestinian “truths”: there are far more holes in the ceilings of Palestinian homes after the assault on Gaza, but what is true for many Palestinians is the reality whether they have a home at all.

But why dwell on the issue of being (or not being) there? I wish people would not be so quick to judge, because the passing of judgement precludes what I think is a fascinating and pressing conversation about Israel and Palestine merely because one has not been there. I hope to demonstrate that being or not being there is not a matter of truth or lies, fact or fiction; rather, different epistemologies (be it fieldwork or discourse analysis) lend themselves to different kinds of
knowledge and research. Approaches are not to be ranked according to their ability to produce “the truth” because I begin from the position that truth is subjective and that claims to the contrary are inherently ideological and invested in power.

Not being there means that most of my research has been internet based. I have found the electronic archive more stimulating and rich than I ever would have imagined. In seeking to address the critique that is always levelled at anyone who has anything to say about Israel-Palestine, I insist on using sources from ‘all sides’; that means Israeli, Palestinian, Jewish and Arab, as well as international sources. I insist on sticking arguably too close to Israeli sources and accounts. I have been charged with bias merely because my intention is to critique what happened in Gaza. This much I cannot avoid, and as Noam Chomsky long ago said, as soon as one enters the debate, half of your audience is your friend and the others’, your enemy. But what I am able to do is avoid the charge that my ‘bias’ emanates from the fact that I use only Palestinian or ‘anti-Israeli’ sources. I do not. This would be weak scholarship and important aspects of the story would be left untold if Israeli perspectives were omitted.

But there remains an altogether more crucial reason for understanding and investigating Israeli perspectives. In a conflict beset with polemic, I think it more important than ever to engage with everything that is being said. Too often what I hear is not a dialogue but two groups speaking past and over the top of one another. Rather than counter Israeli arguments with some ‘Palestinian perspective’ (as if the two are always and already irreconcilable), I have chosen to listen carefully to the logic and content of both their views and statements. This is important not only for the reason that we must ‘speak the language that power understands’ (for I only half believe that), but more because proximity with the Israeli narrative helps reveal the frame that constructs it. Like Judith Butler, my hope is to ‘frame the frame’, to question the Israeli framings, apprehensions and
understandings of the assault so that they are exposed and open to public, political and academic scrutiny. Such exposure is a prerequisite to an honest conversation about what happened in Gaza and one that I think must precede facile condemnation of anything and everything that Israel did and continues to do in Gaza.
Chapter 1. Operation Overkill

This introductory chapter has three main aims. The first aim is to establish the main themes of the thesis and outline my research interests. Part of this aim is to convey the way in which I have come to understand the assault on Gaza and in turn to demonstrate how I have come to focus on particular research questions and themes. The second aim is to contextualize the assault on Gaza and to provide a critical geography of Gaza that introduces the reader to the main contemporary geo-political contours and issues in the region. I begin with an overview of the major events of the assault before enquiring into how and why the assault broke out. I call this the ‘background’ of the thesis and I sketch the contemporary geo-political contours of Gaza to better situate what it is that really interests me in this thesis, which is the ‘foreground’ of the assault and the conversations that have taken place about it from December 2008 to October 2010. In this introductory chapter I familiarise the reader with the situation in Gaza while directing attention to what I regard as the most pressing questions that come from the assault. This chapter provides the reader with a detailed and necessary historical and geographical setting within which later arguments and subsequent chapters are developed.

1.1. Outlines
In this section I provide an overview of the thesis and introduce the primary themes of each section and chapter.
Law and war

At the broadest level I am interested in the theorization of the relationship between war and law. This topic has recently received renewed scholarly attention, much of it owing to the more flexible approach to law (both domestic and international) taken by the US since the terrorist attacks of September 11 2001, and the pursuance of what the Bush Administration called the 'Global War on Terror'. That legacy, in many ways, has and will continue to live on which is why a sustained engagement with the questions surrounding war and law remain paramount today. Many important works have already offered so much on matters as varied as habeas corpus, torture, extraordinary rendition, extrajudicial assassination, unmanned aerial vehicle (UAV) – or ‘drone’ – strikes, the USPATRIOT Act, civilian immunity, soldier protection and so forth. Of course, this breadth of work demonstrates multiple perspectives on a wide range of topics concerning the relationship between war and law. Many of them do, however, share a common aspiration in their problematization of the traditional relationship that posits law as the prohibition of violence. Readings such as that offered by David Kennedy, John Morrissey and Eyal Weizmann, among others, show us how the law is often deployed strategically in the name of furthering and legitimising violence, rather than preventing it. This body of work inspires my interest in international law in relation to the assault on Gaza.

Chapters 2 & 3 focus on a set of questions around the relationship between war and law. I hope to contribute to a literature which is both abstract (in that it relates to, for example the philosophical

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limits of war) and immediate (in that it deals with contemporary events and pays close attention to the empirical facts of the assault on Gaza). I review a series of reports, publications and statements from the most important post-assault voices, notably the UN ‘Fact-Finding Mission into events in Gaza’ headed by Richard Goldstone, as well as the Israeli state, and in so doing, demonstrate that the question of law has come to dominate the post-assault landscape. The assault on Gaza is, at every turn, thoroughly legalized: its aftermath has been a kind of extended trial. Competing legal claims have been made by almost all and every actor who has any kind of stake in the assault. I am interested in examining how these competing claims have come into dialogue with one another. Particular moments of exchange and contest avail themselves; Israel speaks to pre-empt the plaintiff while NGO’s are forced into dialogue by accusations of bias and misconduct. Interesting relationships between the state, the “enemy”, civil society and the media emerge as all vie for attention and legitimacy in the public imagination. The act of speaking or remaining silent are read as signs of guilt and/or vindication: Israel will not cooperate; what does it have to hide?; Hamas release a statement of innocence; if the facts are clear, is such a statement necessary?; Israel rushes to silence and censor journalists; why?; meanwhile NGO Monitor attack other Israeli NGO’s; what do they fear?

Such exchanges are interesting for at least two reasons. First, (in)actions and speeches/silences are brought to life through their very interaction with utterances and manoeuvres made by others. The archive, never static, is animated: the very circulation and sedimentation of the archives become performative movements that provoke and disable future responses and actions. These performances are important for another reason. The articulation of claims through the language of law demonstrates a secret solidarity between various actors on all sides of the Gaza fence. It turns out that the multiple – and ostensibly opposing – voices of war, diverse as they are, have in common a predilection for law,
framing their claims, accusations and defences in the very same lexicon. This is true for the 'humanitarians' and the anti-war contingent as it is for the very military generals of the Israeli Defence Force who planned and carried out the assault on Gaza. One might protest that these different actors pursue the law for different ends; one seeks prosecution while the other wants to avoid prosecution. We might also say that the means by which these ends are achieved are not the same; again, one employs diversionary tactics and rhetoric and another utilizes the technical elements of law and factual argument, for example. This is true, yet at a more fundamental level, David Kennedy has argued that the military strategist and the humanitarian are in solidarity because of the way in which they use law as strategy and tactic. This observation has profound implications for the discussion of the assault and I ask: at what cost does the humanitarian articulate his or her claim for justice in the language of law?; What is lost when the law becomes the dues ex machine of a politics of war? And furthermore, with the structures of international law as they are, are we not better to rearticulate our critique somehow beyond or prior to the law? Finally, for those of us who express dire cynicism or even antipathy for the failed promises of international law what, if anything, remains?

These questions take on a doubly intriguing form in relation to Gaza and for a number of reasons the assault provides an interesting place to explore the relationship between war and law:

1. The story of Israel and Palestine is inseparable from the war of 1947-8 and in turn that originary war was inseparable from law; the 1947 war was forged in the name of law, namely U.N. Resolution 181 and the severance of the British Mandate for Palestine. War and law are imbricate in the history and contemporary of Israel and Palestine: what was set in motion in 1947 has continued right through to the present with Israel invoking the “right to

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8 More commonly known as ‘the partition plan’.

9 | Page
self defence” enshrined in Article 51 of the Geneva Conventions;

2. In examining the legal history of Israel-Palestine, law has always been used as a tool of the powerful against the weaker Palestinians. In 2004 when the Palestinians appealed to the law over the construction of the separation wall they were told by the international community that this was ‘not helpful’;

3. Israel has a troubled relationship with international law, honouring it more often than not in the breech (see figure 13);

4. Fourth, Israel never signed the Additional Protocols of the Geneva Conventions which leaves it in an ambiguous position in relation to IHL and its willingness to abide by it. The two Additional Protocols of 1977 strengthen the protection of victims of international (Protocol I) and non-international (Protocol II) armed conflicts and place limits on the way wars are fought. Protocol II is particularly significant for in the Israeli-Palestinian conflict because it was the first-ever international treaty devoted exclusively to situations of non-international armed conflicts 9. The Geneva Conventions of 1949 applied only to states but changes in the way warfare was fought in the twenty years following the Conventions, especially the increase in anti-colonial wars of national liberation, meant that by and large the international community thought it necessary to extend IHL to non-state conflict and therefore also to non-state actors. 10Israel, along with the U.S and a handful of others refused to sign the Protocols because they do not want to be bound by a law which a, places extra responsibility on it to protect civilians and b, extends the laws of war to non-state actors such as Hamas and other groups fighting for their own state or to end occupation;

9 The only provision applicable to non-international armed conflicts before the adoption of Protocol II was Article 3 common to all four Geneva Conventions of 1949. This Article proved to be inadequate in view of the fact that about 80% of the victims of armed conflicts since 1945 have been victims of non-international conflicts. See ICRC, ‘Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977’, http://www.icrc.org/ihl.nsf/INTRO/475?OpenDocument
5. Palestine is not recognised as a state and therefore could not sign the Conventions and the Protocols, leaving it too in an ambiguous relation *vis-a-vis* IHL. This is of course a more general problem regarding the ‘new wars’ and non-state actors who cannot ratify or sign Conventions or Protocols;

6. Finally, law has become ever more important to Israel; their failures in Lebanon in 2006 explain why, two years later, Israel went to such great lengths to give their actions a wash of legality. It is more important because we are likely to see much more of it, especially of the variety that is currently being called ‘lawfare’, the tactical use of law in war, or to use Charles Dunlap’s definition ‘the use of law as a weapon of war’.

**War and visuality**

One of the main conclusions I reach in Chapter 3 is that opposing war in the name of law is deeply problematic. It is so on the account of Elizabeth Dauphinee’s charge that it excepts from the otherwise “legitimate” space of war, some violences - “crimes” - as *uniquely* abhorrent. Viewing only some acts of violence in war as *criminal acts* has the effect of normalizing the other violent – but “*non-criminal*” – acts of war. While I think this is true, it leaves us in a difficult place politically. The deconstruction of international law, and on a more fundamental level, the problematization of the very language of law in the Agambenian sense is unquestionably important, however it offers us very little in the way constructing a new critique and way forward. If the law is insufficient, how may we articulate a critique of war that circumnavigates at least some of the problems that it raises? This question preoccupies me in chapter 4 and I turn to the visual fields of Gaza in an attempt to evaluate the efficacy of visual forms in critiques of war.

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David Campbell has argued that visuality is a pivotal assemblage in the production of contemporary geopolitics.\textsuperscript{12} Visuality becomes essential because through images, visuals, videos and such authors make claims to reality. Visual imagery is of particular importance for geopolitics because, as Campbell claims, it is one of the principal ways in which news from distant places is brought home; and in the process the notion of ‘home’ is simultaneously constructed. In chapter 4. I argue that the visual is of central importance in the construction of legal assemblages. I reconsider Israel's legal arguments, visiting the terrain of lawfare and argue that what I call ‘imagefare’ has become decisive to both lawfare and warfare. The legal-rhetorical alchemy of turning grey into black and white – a metaphor lawyers seem to like as we shall see – is a production that is enabled only through the medium of visuality. Without satellite images of rocket launch sites, without leaflets, without the display of weapons and without the affective images of Israeli victims, Israel's legal arguments would make no sense. This is why image-fare is essential to lawfare, and why both become crucial to warfare. Images speak and area spoken for; they make claims and demands upon the visual and discursive fields of war. The war is won then, not on the battlefield alone, nor perhaps even primarily; our discussion of war becomes inseparable from the laws and visualities which sustain – but which may yet also hinder, if not halt – it.

1.2. Backgrounds

The violence of the military attack upon Gaza has been variously identified as ‘The War on Gaza’; ‘The Assault on Gaza’; ‘The Gaza Massacre’; ‘Operation Cast-Lead’ or even, ‘Israel’s war of self-defence’ and the ‘war of last-resort’. This thesis is about war and about war’s naming. It is about the political, rhetorical, legal and visual dimensions of what I shall henceforth call the assault on Gaza.\textsuperscript{13}

\textsuperscript{12} David Campbell ‘Geopolitics and visuality: Sighting the Darfur conflict’ \textit{Political Geography}, (2007) vol. 26 pp.57-82

\textsuperscript{13} I choose not to name what happened in Gaza a ‘war’ because it denotes a battle between two enemies and what happened in Gaza resembles more to an assault on a defenceless civilian population than it does a battle between two
The assault on Gaza

The events leading up to the assault on Gaza have been painstakingly documented\(^{14}\), as have the incidents and details of the assault itself. Of course, the 'facts' have been represented differently and one inevitably finds different accounts depending on where one looks and who is writing. Even some of the most general facts of the assault such as when it started, who was involved and who was killed have been the subject of bitter dispute. But the most fiercely debated are the normative dimensions of the assault, the distribution of ‘blame’ (‘who started it?’) and the question of responsibility. The ‘facts on the ground’, as ever, are political. There is no “truth”, there are no “facts”: in the alchemy of conflict, collateral damage meets murder; the combatant resembles the civilian; the police force become paramilitaries; resistance reads as terrorism; immunity confers on extra juridical assassination and white flags are splattered with the red blood of the innocent that \(\textit{might} – \text{just might} – \text{have been guilty. This is the fog of war. The contextualization of war, of its ‘basic’ contours has become a strategic and rhetorical strategy}\(^{15}\); the question of ‘what happened?’ has become crucial to the scripting of reality and the writing of history. Israel has learnt this strategy very well, it captures complex and contradictory narratives of war and conflict and renders them transparent: ‘these are the facts on the ground’ Israelis, Palestinians and international audiences are told. In lieu of Israel’s expertise in fictionalizing what successive Israeli governments have called ‘the

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\(^{15}\) Kennedy Of War and Law
facts on the ground’, I begin by contesting this narrative, by questioning the naturalness of those ‘facts’ as if they were established outside of politics, exterior to violence.

The assault on Gaza must be understood within the broader context of the conflict and so two timelines are provided; the first is a chronology of the assault and the second details the major events in Israeli-Palestinian history from 1917 to the present, emphasising the last ten years.

### Timeline of the assault on Gaza June 2008-January 2009

**June 19**: An Egyptian-brokered six-month ceasefire between Israel and Hamas comes into force.

**November 5**: Israel closes all of its crossings with Gaza.

**December 14**: Hamas political leader Khaled Meshaal announces the six-month ceasefire with Israel will not be extended.

**December 19**: Six-month ceasefire between Hamas and Israel officially expires.

**December 27**: Israel begins assault on Gaza, codenamed "Operation Cast Lead", by launching air raids that kill more than 225 Palestinians. One Israeli is killed and six others wounded in missile attacks by Palestinian fighters.

**December 28**: Israeli aircraft bomb the Islamic University in Gaza City and the length of the Gaza-Egypt border, taking out more than 40 tunnels used to smuggle vital goods to the strip.

**December 29**: Israeli air strikes hit the interior ministry in Gaza City as Israel declares a "closed military zone" around the Gaza strip.

**December 30**: Rockets fired from Palestinian positions kill three Israelis, taking the death toll from Palestinian rocket attacks to four since the beginning of the Israeli offensive. The European Union calls for "an unconditional halt to rocket attacks by Hamas on Israel and an end to Israeli military action".

**December 31**: Members of the UN Security Council end an emergency meeting on the crisis after failing to agree on the wording of a draft Resolution.

**January 3-4**: As Israel begins its ground offensive Gaza is cut in half and ground troops ring Gaza City itself as an Israeli soldier is killed in the ongoing offensive. An Israeli air strike hits two ambulances in Gaza, killing four paramedics.

**January 6**: An Israeli strike on a UN school in the northern town of Jabaliya kills 43 Palestinians and injures at least 100 who had taken refuge inside the school. Israeli strikes hit two other schools.

**January 7**: Violence continues after Israel temporarily halts attacks in Gaza City for three hours to provide a "humanitarian respite." The Israeli military drops leaflets warning thousands of people in the Rafah zone on the Egyptian border to leave their houses or face air strikes.

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January 8: The UN's refugee organisation in Gaza suspends all aid deliveries after an Israeli tank attacks a UN convoy, killing one Palestinian driver and injuring two other people. Israeli bulldozers cross into Gaza and destroy a number of houses. The UN Security Council passes resolution, with 14 votes in favour and only the US abstaining, that "stresses the urgency of and calls for an immediate, durable and fully respected ceasefire, leading to the full withdrawal of Israeli forces from Gaza".

January 10: Israel drops leaflets on Gaza City warning of a "new phase" in its two-week-old offensive. Khalid Mashaal, the exiled political leader of Hamas, says that Israel must halt the Gaza offensive and lift the blockade before Hamas agrees to a ceasefire deal.

January 11: Israel is accused of firing white phosphorous bombs.

January 12: The UN Human Rights Council adopts a non-binding resolution condemning Israel's military offensive. The resolution calls for an international mission to be immediately sent to Gaza to investigate Israel's actions.

January 13-14: Miguel d'Escoto Brockmann, the president of the UN General Assembly, says the killing of Palestinians in Gaza amounts to "genocide". Venezuela and Bolivia sever diplomatic ties with Israel. Bolivia pledges to get Israeli officials charged in the International Criminal Court with committing "genocide".

January 15: Israeli shells hit a UN warehouse setting fire to tonnes of food and medical... supplies, as well as three hospitals as troops advance into Gaza City.

January 16: The Strip experiences a relative lull in fighting as diplomatic efforts intensify.

January 17: More than 50 air strikes are carried out in Gaza and heavy explosions are heard south of Gaza City. The Israeli security cabinet votes in favour of a unilateral ceasefire in its 22-day-old war. Ehud Olmert, the Israeli prime minister, announces a unilateral end to military operations in the Gaza Strip, beginning at 0000 GMT but says troops will remain in the strip for the time being.

January 18: Israeli attacks continue in the Gaza Strip.

January 19: Palestinians living in the Gaza Strip venture out to assess the damage caused by Israel's war on the territory, as separate ceasefires called by Israel and Hamas take hold. Hamas says that its ability to fight Israel remains intact.

January 20-1: Amnesty International accuses Israel of war crimes. Ban Ki-moon demands a "full investigation" into Israel's bombing of a UN compound in Gaza City, calling the attack "outrageous" and "totally unacceptable".

Table 1. Timeline of the assault on Gaza, June 2008 - January 2009, source: Al Jazeera and Agencies
Timeline of key events in Israel and Palestine, 1917-2010

1917: Balfour Declaration. Britain's foreign secretary sends a letter to the president of the Zionist federation, stating the government's support for the establishment of "a national home for the Jewish people" in Palestine.

1922: The Ottoman Empire that ruled Greater Syria from 1517 collapses and The League of Nations gives Britain a mandate to administer Palestine.

1947: The United Nations general assembly passes a partition plan dividing the British Mandate of Palestine into two states. Accepted by the Jewish leadership, rejected by the Arab leadership.


1947-1949: Al Nabka, meaning "catastrophe" in Arabic. Up to 900,000 Palestinians flee or are expelled from their homes in the part of the land that becomes the state of Israel.

1964: The Palestine Liberation Organisation (PLO) is founded by the Arab League.

1967 June: Six Day war. Israel launches a preemptive attack on Egypt, Syria and Jordan. Israel captures Sinai Peninsula and Gaza Strip from Egypt, the Golan Heights from Syria and the West Bank and East Jerusalem from Jordan. Israel begins settlement program in areas captured during the war.

1968-1970: War of Attrition. Limited war fought between Egypt and Israel in which Egypt attempts to regain the Sinai Peninsula lost in the Six Day war. The war ended with the same frontiers as at the start.

1969: Yasser Arafat appointed chairman of the PLO.

1973: Yom Kippur war. In a surprise attack Egypt and Syria retake the areas in Sinai and the Golan Heights that were lost in the Six Day war. Despite initial gains they are soon forced to retreat by Israeli forces.

1982: Israel invades Lebanon to remove PLO fighters who it says are threatening its border. PLO relocates to Tunis as it is driven out of Lebanon by Israel during the six-month invasion of the country.


1993: Oslo declaration of principles. PLO and Israel agree to recognise each other.

1996: Yasser Arafat wins the first-ever elections held by Palestinians.

2000 July: The Camp David summit between Barak and Arafat aimed at reaching a "final status" agreement ends after Arafat refuses to accept a proposal drafted by US and Israeli negotiators.

September: The Al-Aqsa or ‘Second initifada’ begins

2001: Sharon is elected the leader of Likud and refuses to continue negotiations with Arafat. As the intifada takes hold the firing of rockets and mortars from Gaza into Israel begins. Israeli sources report that 3,455 rockets and 3,742 mortar shells were fired into Israel from Gaza until mid-June 2008

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2002: Israeli launches ‘Operation Defensive Shield’, the country's biggest military operation in the West Bank since the Six Day war in 1967. Israel begins construction of separation barrier between the West Bank and Israel, but for some of its length it serves to annex large areas of Palestinian land.

2004 July: International Court of Justice rules that the Israeli separation barrier violates international law.

2005 January: Arafat is succeeded by Mahmoud Abbas as President of the Palestinian National Authority

September: The “disengagement plan” adopted by the Israeli Cabinet on June 6 2004 is completed. Israeli security forces and Israeli civilians living in settlements are unilaterally removed from Gaza. Israel declared that “there will be no basis for claiming that the Gaza Strip is occupied territory”. However, Israel’s occupation continues since Israel retains control of Gaza’s airspace, sea space and borders.

2006 January: Hamas wins a majority of seats in the Palestinian legislative elections. The US, Israel and several European countries cut off aid to the Palestinians and refuse to recognize Hamas claiming that Hamas rejects Israel's right to exist.

February: Israel withholds millions of dollars of tax revenue owed to the PA.

March – Ehud Olmert elected prime minister.

June: Palestinians cross the border from the Gaza Strip and capture Corporal Gilad Shalit

July-August: Israel launches air and land offensive against Lebanon aiming for with the armed wing of Lebanese group Hezbollah. At least 1,200 people in Lebanon and 157 Israelis were killed

October: Negotiations on Palestinian unity government collapse. Relations between Fatah and Hamas continue to deteriorate.

November: Palestinian President Abbas and Israeli PM Olmert agree to a ceasefire, ending a five-month-long series of Israeli military incursions into the Gaza Strip that claimed the lives of more than 457

2007 March: New Palestinian National Unity government sworn in, headed by Hamas member Ismail Haniyeh, and with a cabinet comprising Fatah, Hamas and independent and left-wing MPs.

June: Hamas seizes control of Gaza after Fatah is ordered to abandon its posts. Abbas disbands the unity government and declares a state of emergency.

April: The US gives Abbas $60m to boost his presidential guard and for other “security expenses”

December: Israel's High Court rules that limiting fuel and electricity supplies to Gaza is in accordance with Israeli law.

2008 January: Israel steps up military actions on Gaza and Hamas, killing seven Palestinians. Olmert vows to hit back after Hamas rocket attacks in Israel. Israel continues powerful incursion on Gaza, and in response to the blockade 700,000 Gazans break through the Rafah border crossing into Egypt, to get food and fuel. Underground tunnels along the Gaza-Egypt border used to smuggle goods and weapons into Gaza now also being used to bring in other supplies such as food and medication.

June: Hamas and Israel agree to an Egyptian-brokered ceasefire, which calls on militants to stop firing rockets into Israel in exchange for Israel easing its blockade of the territory, and halting targeted assassinations in Gaza.

November: Israel seals all border crossings into Gaza after an Israeli military incursion in Gaza prompts Palestinian militants to resume daily rocket-fire into Israeli towns. Five-month ceasefire had been largely holding. Humanitarian aid and staff prohibited from entering Gaza. UN officials warn of a worsening humanitarian crisis.

December: UNRWA is forced to suspend food distribution services in Gaza due to continued border closures. Six-month truce ends as rocket-fire continues from Gaza. Hamas says Israel failed to ease its blockade of the territory and continued
targeted assassinations. Food, fuel, medical supplies and other basic necessities dangerously low in Gaza, according to UN agencies.

**December 27 – January 19 2009** - Israel launches Operation Cast Lead


**March**: Benjamin Netanyahu becomes Israeli prime minister and head of new coalition government.

**April**: 150,000 Gazans still lack tap water as a result of Operation Cast Lead.

**May**: US President Barack Obama meets Netanyahu and calls for Palestinian statehood and a curb on West Bank settlements.

**June**: The International Committee of the Red Cross (ICRC) and aid agencies say the Israeli blockade is preventing the reconstruction of Gaza. Israeli officials say the easing of the blockade depends on progress towards the release of the Israeli soldier held by militants in the Gaza Strip since 2006.

**June**: Eighteen months after Israel’s 23-day offensive in the Gaza Strip, three-quarters of damaged homes, buildings and infrastructure remain un repaired.

**June**: Nine pro-Palestinian activists killed by Israeli naval forces in international waters while trying to sail to Gaza aboard a flotilla of six ships carrying 10,000 tons of goods in an effort to break the blockade.

**July**: Israel announces intent to ease the Gaza blockade and publishes an official list of items prohibited from entering Gaza. The UN says only the complete lifting of the blockade can address the humanitarian crisis.

**Today**: About 1.1 million Palestinian refugees in Gaza receive UNRWA services; 61 percent of Gaza’s population is food insecure; and unemployment is nearly 40 percent, according to the UN.

*Table 2. Timeline of key events in Israel and Palestine, 1917-2010, source: Al Jazeera*
On the morning of December 27, 2008, Israel launched “Operation Cast-Lead”, a fully-fledged military assault on the Gaza Strip. The assault began with a week-long air attack until January 3, 2009. At 11:30 on the first morning of the assault, Israel unleashed massive, coordinated airstrikes against 50 targets in less than four minutes. Once the rubble was cleared, around 300 lay dead. In the days that followed, the IAF targeted and hit controversial sites including: 37 houses; 67 security and training sites; 20 workshops; 25 public and private institutions; seven mosques; and three educational institutions. In the opening days, a police parade was targeted, killing 99 policemen and 9 members of the public. On January 15, the United Nations Relief and Works Agency (UNRWA) compound housing 600-700 civilians was struck by highly explosive shells and phosphorous bombs. On the same day, the Al Quads hospital (one of Gaza’s largest hospitals) was struck repeatedly without warning. The next day, the Al-Wafa hospital was hit. By the end of the operation, between 2,300 and 3,000 sorties were flown. On January 3rd, ground troops entered Gaza from the north and east with the objective of separating Gaza into two parts, i.e. to fragment it with Nitzarim, constituting the midpoint (see figure 1). The Golani, Givati and Paratrooper Brigades and five Armoured Corps Brigades were involved. Assaults on three fronts with combined armour and infantry brigades were also augmented by specialist Arabic-language, intelligence and combat engineer troops. Forward elements of these attack formations relied on direct support from the IAF to call air strikes and to direct them. The navy was used throughout operations to shell the Gaza coast and to offer further ground-troop protection. On 15 January, the ground troops began withdrawing. As they did, they systematically demolished a large number of structures, including houses, water installations and agricultural land. A renewed aerial phase in Rafah was also conducted.

18 The public institutions that were bombarded include: the compound of ministries, the building of the Palestinian Legislative Council, the building of the cabinet in Gaza City; the buildings of the agricultural control department and the Municipality of Bani Suhaila in Khan Yunis; the buildings of Rafah Municipality and Governorate. The air strikes have targeted also four money exchange shops, a clinic, three fishing harbours, the Islamic University and two schools, see The Goldstone Report, pp. 87.
in the last few days of the military operations. The last few days saw an increase in the number of strikes with several hundred targets hit, causing not only very substantial damage to buildings but also underground structural damage. On January 18th Israel declared a unilateral cease-fire, and the next day, Hamas did the same⁹.
Figure 1 Israeli operations in the Gaza Strip as of January 15th 2009, source: STRATFOR²⁰

By any account it was a horrific attack that surely cannot be captured nor grasped with figures of lives lost, homes destroyed and suchlike. But the inability of numbers to communicate the incommunicable neither means we can ignore them nor take them lightly. Numbers do matter, even if the temptation to reduce war to statistics and body counts must be resisted. Statistics about

Palestinians who lost their lives during the military operations vary. Based on extensive field research, non-governmental organizations (NGO’s) place the overall number of persons killed between 1,387 and 1,417. The Gaza Authorities report 1,444 fatalities. The Government of Israel provided a significantly lower figure of 1,166 and reported that 60% of these casualties were members of “Hamas and other armed groups”\textsuperscript{21}. Some 5300 were injured. Over 300 children (persons under 18) died and according to the Palestinian Centre for Human Rights (PCHR) 1,600 more were wounded, children constituting 30% of the total number of the wounded\textsuperscript{22}. During the fighting there were four Israeli fatalities in southern Israel, of whom three were civilians and one soldier, killed by rocket and mortar attacks by Palestinian armed groups. In addition, nine Israeli soldiers were killed during the fighting inside the Gaza strip, four as a result of friendly fire\textsuperscript{23}. The razing and destruction of houses, property and land was a central part of the operation and the United Nations Development Programme reported 3,354 houses completely destroyed and 11,112 partially damaged. The destruction left tens of thousands homeless. In addition a number of schools, hospitals – many of them U.N. operated – and government buildings were bombed and severely damaged. Water treatment plants and food-production facilities were also hit.

\textbf{Why did Israel attack Gaza?}

The invasion of Gaza has proved to be another public-relations disaster for Israel, not unlike its failures in the Lebanon wars of 1982 and 2006, and more recently the Mavi Marmara fiasco. The civilian death tally and the widespread destruction were so glaringly evident that criticism of the assault crept even into the mainstream media\textsuperscript{24}. Why then was Israel so eager to prosecute an attack

\begin{footnotes}
\item[23] The Goldstone Report
\item[24] Finkelstein Too Far, pp. 29
\end{footnotes}
against “a helpless population and a weak, ragged organization”\textsuperscript{25} that would inevitably result in
negative publicity abroad?

Many at the time rushed to conclude that the forthcoming Israeli elections (due to be held in
February 2009) sparked the impetus for the attack. It is true that war on Palestine and its people has
a certain political expediency in Israeli politics. The iron fist approach toward Palestine and Hamas is
popular amongst Israeli’s: in a poll taken just days after Israel launched its first attack up to 90\% of
the public in Israel supported the attack on Gaza\textsuperscript{26}. But as Israeli journalist Gideon Levy pointed out
“Israel went through a very similar war...two-and-a-half years ago [in Lebanon], when there were no
elections”\textsuperscript{27} so the looming election does not wholly explain why the attack was launched and why it
was launched when it was. It was far too risky an attack to be reduced solely to political calculation.
The main motives for the Gaza invasion were to be found not in the election cycle but, first, in the
need to restore Israel’s “deterrence capacity,” and, second, in the need to counter the threat posed
by a new Palestinian “peace offensive.”\textsuperscript{28} I briefly examine each in turn.

Israel’s main concern in Operation Cast Lead, \textit{New York Times} Ethan Bronner reported, quoting
Israeli sources, was to “re-establish Israeli deterrence,” because “its enemies are less afraid of it than
they once were, or should be.” Preserving its deterrence capacity has always loomed large in Israeli
military doctrine. In fact it was a primary impetus behind Israel’s first strike against Egypt in 1967
that resulted in the six-day war and Israel’s subsequent occupation of Gaza and the West Bank.

\textsuperscript{26} Ethan Bronner ‘In Israel, A Consensus That Gaza War Is a Just One,’ \textit{New York Times}, 13 January
\textsuperscript{28} \textit{Ibid.}, \textit{Too Far}, pp. 29.
that...the walls are closing in...much as they felt in early June 1967” but Israel did not face an existential threat, not then and not now. The 1967 war demonstrated that Israel was far stronger than its enemies: the so called six day war was all but over in a matter of six hours following a devastating and widespread aerial bombing campaign which effectively incapacitated the enemy. And today Hamas has neither the capacity nor the political backing and will to launch anything in the way of a war which threatens Israel’s existence. The old trope that the Arabs want to drive every Israeli into the sea might still be true for a handful of extremists but it is not a plausible fear. AS Hamas member and Parliament speaker Abdul-Aziz Duwaik has pointed out: “So many Israelis have said for so many years, "they are going to throw us into the sea." What sea? We do not even have access to the sea. We do not even have the ability to import medical supplies”. Israel has one of the most powerful armies in the world; its technological sophistication and skills – to say nothing of its nuclear weapons – far exceeding that of its enemies.

But while Israel did not launch the assault out of existential necessity, might it not be claimed that very serious security considerations underwrote the decision to launch the assault? Certainly this was

29 Quoted in ibid., pp.30
30 Morris Righteous Victims pp. 311-346 makes this claim and claims, “The six-day war began on June 5th 1967 at 7:45am and Morris tells us that “By 9:00A.M the picture was clear. The IAF had scored a victory of historic proportions....At about 10 o’clock Weizmann [former IAF commander] telephoned his wife and told her: “we have won the war”” pp. 318
31 Gideon Levy ‘The Punishment of Gaza’, paper given at the University of British Columbia, September 26 2010, Levy was asked by a member of the audience what he thought about the supply of arsenal to Hamas from Iran. In response he pointed out that the supply is virtually non-existent despite media claims to the contrary: the Hamas “arsenal” consists of improvised grad missiles and if Iran really was supplying them with serious weaponry we would have seen Hamas use it.
33 Israel has been the largest cumulative recipient of aid since the Second World War – between 1949 and 2001 – it received between $90 and $100 billion – and air to Israel now accounts for around 30% of the total U.S. foreign aid budget, Derek Gregory The Colonial Present (2004) Blackwell: London. Pp. 78
34 Israel has always been ambivalent over whether it has nuclear capabilities, not denying but neither confirming it. In May 2010 The Guardian broke the story that as early at 1975 Israel not only had nuclear capacity, but had in-fact offered to sell nuclear warheads - “in three sizes” - to the South African apartheid regime. This was the first official documentary evidence that Israel does posses nuclear weapons and if the reports are true, its arsenal is of significant size and capacity, see Chris McGreal ‘How Israel offered to sell South Africa nuclear weapons’, The Guardian May 24 2010, http://www.guardian.co.uk/world/2010/may/23/israel-south-africa-nuclear-weapons
the message from Israel: “The main objective of Operation Cast Lead was to bring about conditions for the creation of a better security situation in southern Israel - namely, the long-term cessation of rocket and mortar fire and all terrorist attacks from the Gaza Strip”. The Israeli Ministry of Foreign Affairs (MFA) is very quick to point out that Israel was bombarded by 12,000 rockets and mortar shells between 2000 and 2008, including nearly 3,000 rockets and mortar shells in 2008. No doubt Israel wanted to destroy Hamas’s capacity to launch rockets, but this does not explain why Israel choose to launch an attack on the scale that it, with such disregard for civilians and the infrastructure of Gaza that had very little to do with Hamas’s “terrorist infrastructure”. And if Israel had been “bombarded” for eight years, why wait until December 2008?

As military strategists know very well, spectacular displays of force send the enemy a message: Israel is strong. Presumably this is precisely what IDF Spokesperson Major Avital Leibowitz had in mind when she said that “It [should be] possible to destroy Gaza, so they will understand not to mess with us”. Indeed, as the military correspondent for Israel Channel 10 News commented, “Israel isn’t trying to hide the fact that it reacts disproportionately.” The prevention of rocket-fire from Gaza was a pretext for Israeli to assert its power over the enemy. But like the school bully, a profound sense of insecurity underwrites Israel’s aggression. The memory of the 2006 Lebanon war and the embarrassing defeat the IDF suffered looms large in such insecurity discourses, as does the loss of control of Lebanon in 2000. Memories of defeat haunt the IDF and when it comes to discussing why Israel launched its attack on Gaza, one might do well to “Remember, [Israeli Defence Minister

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36 Ibid., pp. 1
37 Finkelstein claims that Hezbollah’s ejection of the Israeli occupying army from Lebanon in May 2000 proved such a humiliating defeat, one celebrated throughout the Arab world, that another war was all but inevitable. Such a claim seems fair given that Israel almost immediately began planning for the next round (see Matthew Kalman, “Israel Set War Plan More Than a Year Ago,” San Francisco Chronicle 21 July 2006), and in summer 2006 found a pretext when Hezbollah captured two Israeli soldiers
Ehud Barak’s real foe is not Hamas. It is the memory of 2006. As one commentator put “Gaza is to Lebanon as the second sitting for an exam is to the first—a second chance to get it right.” Gaza was an opportunity to apply the operational lessons of the Lebanon war. The assault certainly proved Israel’s “defence” capacity and dispelled any myths that Israel is weak. They certainly showed em’. And regarding Israel’s offensive capacity, Ynet News’ Guy Bechor notes triumphantly: “There will no longer be anyone in the Arab world who can claim that Israel is weak...The images of the past two weeks have been etched in the collective consciousness for years to come.”

Aside from restoring its deterrence capacity, Finkelstein notes that Israel’s other main goal in the Gaza invasion was to fend off the latest threat posed by “Palestinian pragmatism.” What Finkelstein means is that Israel is scared by actually existing attempts by Palestinians to negotiate and talk about a resolution to the conflict. Why would Israel want to fend off peace talks? Haaretz journalist Amira Hass cuts straight to the reason why Israel would launch an attack as a means of stymieing meaningful peace talks when she writes of Israelis as “people...incapable of imagining themselves departing from the privileges that this system confers”. The current system is based on a series of particularly violent historical episodes that began as soon as Israel started to annex land outside of the borders agreed upon in the U.N. Resolution of 1947 (see figure 10). Israel does not recognise the borders of 1947 and neither is it willing to accept the 1967 borders. Israel wants to keep the land it seized in the 1967 “six-day” war, and even more than keeping the settlements in the West Bank, today Israel openly declares its plans to build more and more illegal settlements. The problem with the pragmatic Palestinian peace talks is that they are based on a settlement of the

38 ICG Ending the war in Gaza, pp. 18  
http://www.crisisgroup.org/~/media/Files/Middle%20East%20North%20Africa/Israel%20Palestine/b26_ending_the_war_in_gaza.ashx pp. 18
39 Quoted in Finkelstein Too Far, pp. 36
41 Finkelstein Too Far, Pp. 40
42 Foundation for Middle East Peace ‘A settlement freeze or more of the same?’, FMEP, vol 19 (4): July-August 2009
conflict based on a full Israeli withdrawal to its June 1967 borders, and a “just resolution” of the refugee question based on the right of return and compensation. The international community (apart from Israel and the U.S.) support this settlement and have done so for a long time. The U.N. General Assembly annually votes on a resolution titled “Peaceful Settlement of the Question of Palestine”. The recorded votes on the resolution for recent years can be seen in figure 2: every year Israel and the U.S. along with one or two others cast a negative vote. The resolution always includes the following tenets for “achieving a two-State solution of Israel and Palestine”:

1. “Affirming the principle of the inadmissibility of the acquisition of territory by war”;
2. “Reaffirming the illegality of the Israeli settlements in the Palestinian territory occupied since 1967, including East Jerusalem”
3. “Stresses the need for: (a) The withdrawal of Israel from the Palestinian territory occupied since 1967, including East Jerusalem; (b) The realization of the inalienable rights of the Palestinian people, primarily the right to self-determination and the right to their independent State”;
4. “Also stresses the need for resolving the problem of the Palestine refugees in conformity with its resolution 194 (III) of 11 December 1948.”

Israel and the U.S. find these demands intolerable because they disrupt the status quo and question the power of Israel to do as it wishes. But the majority of the international community thinks that the demands are perfectly reasonable, and they are supported by historical and legal foundations. The tenets of the resolution are all based upon elements of international law. The acquisition of territory by force is covered by International Humanitarian Law (IHL) for example, while the right to self determination is inscribed in International Human Rights Law and all of the tenets are convened upon in successive U.N. Resolutions (see figures 2 &13). I return to international law later on, but presently it is worth teasing out what the above vote means. The Hamas position and their demands for the basis of peace are actually quite normal and moderate when read alongside the

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44 Taken from *ibid.*, pp 40-1
votes cast in the U.N. resolution (figure 2). Historically speaking the whole international community (again, barring Israel and the U.S.) agree with the proposals put forward by Hamas today and since 2006. In fact, Israeli and U.S. opposition to the above resolution bear testimony to the fact they are the ones in the minority; they hold the extreme position; they are the ones who don’t want to talk about peace. Who, it is worth asking, are the extremists in this conflict?
In July 2009 Khaled Meshaal Chief of Hamas said that his organization would accept a Palestinian state based on 1967 borders as part of a broader peace agreement with Israel—provided Israeli

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Figure 2. Votes cast on UN Resolution\(^{45}\) “Peaceful Settlement of the Question of Palestine” from 1997-2009, source: Finklestein

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\(^{45}\) Ibid., pp. 41. For further information on the Resolution see UNHCR Refworld ‘Peaceful settlement of the question of Palestine : resolution / adopted by the General Assembly’ at, http://www.unhcr.org/refworld/country,,,RESOLUTION,PSE,4562d8ef2,49894f8a2,0.html
negotiators accept the right of return for millions of Palestinian refugees and the establishment of a capital for the Palestinian state in East Jerusalem. In Israeli public discourse Hamas are constantly represented only as a “terrorist organization” that “still seeks the destruction of Israel”. Unsurprisingly, the reason cited for the refusal of Israel, the U.S. and the E.U. to recognise Hamas is that Hamas do not recognise Israel. To be sure, the militant wing of Hamas remains violent and many refuse to acknowledge the existence of the Jewish state. However, both today and when Hamas were elected in 2006 the organization offered to recognise Israel. But recognition must have some parameters as Hamas member and Parliament speaker Abdul-Aziz Duwaik points out: “Which Israel do you want us to recognise? I am ready. Which Israel, just tell me, with what borders?”

The kind of peace that Palestinian pragmatists and moderate Hamas members want to talk about is not the kind of peace Israel has in mind. Their version of peace upsets the status quo in Israel; it would mean an end to the privileges of the present situation that Amira Hass talks about. The willingness of Palestinians (including Hamas) to negotiate is threatening to Israel because Israel does not want to be seen to be the one who perpetuates the ongoing situation by not engaging in peace talks. In early December 2008 Israeli Foreign Minister Tzipi Livni stated that although Israel wanted to create a temporary period of calm with Hamas, an extended truce “harms the Israeli strategic goal, empowers Hamas, and gives the impression that Israel recognizes the movement.”

48 Many of the original Hamas documents, including its charter, political memoranda and communiqués are undeniably racist and dogmatic. But as Roy (pp. 294-308) argues, since the mid-1990’s the documentation has been less doctrinaire and the struggle is depicted as a form of resistance to an occupying power – as a struggle over land and the main question asked is how to end the occupation.
49 Solomon and Barnes-Dacey, W’sf
tacitly admits that a long-term ceasefire would highlight Hamas’s pragmatism which would put pressure on Israel to reach a diplomatic settlement which in-turn would undermine Israeli “strategic goals” to retain valuable parts of the West Bank annexed illegally since 1967 and retain control over the population of Gaza. Israel had wanted to attack Hamas as far back as March 2007 and only acquiesced in the June 2008 truce (see timeline) because “the Israeli army needed time to prepare”.

Mainstream media in the US and Israel places the blame for Operation Cast-Lead squarely on Hamas. Former Israeli Prime Minister Ehud Olmert at the time framed the fact that Hamas was responsible in terms of an apology: “On behalf of the government of Israel, I wish to convey my regret for the harming of uninvolved civilians, for the pain we caused them, for the suffering they and their families suffered as a result of the intolerable situation created by Hamas”. It seems a strange act to apologise for that which is apparently out of Israel’s control; nevertheless, if we are to believe Israeli statistics there were a significant increase of Palestinian rockets were fired into Israel in November and December 2008 (the months leading up to the assault). While rocket fire did increase the Israeli ‘they started it’ narrative leaves out crucial facts such as why Palestinian rockets escalated. A recent analysis carried out by the Huffington Post and using Israeli statistics found that “it is overwhelmingly Israel, not Palestine, that kills first following a lull”. In the breakdown of the ceasefire prior to the assault in December 2008 International Crisis Group notes that in “hindsight, the agreement collapsed approximately six weeks before its expiration, on 4 November. On that day, Israel launched an attack...”, an event that was followed by a volley of mortars fired from Gaza. Immediately after

54 see ICG Ending the war in Gaza
that, an Israeli air strike killed six more Palestinians. Then a massive barrage of rockets was unleashed, leading to the end of the ceasefire and ultimately to the assault on Gaza.

![Monthly distribution of rocket fire demonstrating a lull during the four months in which the cease fire was in effect in 2008, source Israeli Consulate, New York](http://www.israelpolitik.org/wp-content/uploads/2008/12/gaza_fact_sheet.pdf)

Figure 3 Monthly distribution of rocket fire demonstrating a lull during the four months in which the cease fire was in effect in 2008, source Israeli Consulate, New York

Yet even this broader perspective that examines Israeli provocations is insufficient to capture and contextualise the reasons why Hamas rocket fire increased and why the assault eventually broke out.

To really get to these issues one has to look at the ‘facts on the ground’; to focus, that is, on the siege of Gaza and Israel’s punishing blockade since 2006. The ceasefire reached in June 2008 was premised upon a promise by Israel to lift the blockade of Gaza and open the borders to goods, movement and trade. Hamas promised to cease rocket fire, a promise it adhered to fairly closely, as even Israel’s statistics claim (see figure 3). But Israel breached its promise; the blockade of Gaza continued: “the siege” according to International Crisis group “never was lifted...undermining its [Hamas] hopes of ruling Gaza”.

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A brief geography of Gaza in the lead up to the assault

The pragmatic demands made by Khaled Meshal in July 2009 were dismissed out of hand by Israel and ever since Hamas came to power in 2006 Israel has blockaded Gaza, preventing the movement of goods and people as a means of pressuring the people of Gaza to abandon their support of Hamas. The blockade is essential to understanding the situation in Gaza today for it helps explain why Hamas resorts to violence and how Israel leaves Hamas and the people of Gaza with little other option. In face of the punishing blockade imposed upon Gaza by Israel since 2006, Hamas has been forced to choose between “starvation and fighting”\textsuperscript{56}. Doomed by the blockade if they don’t fight and faced with the prospect of an even tighter blockade and rounds of violence if they do, it is no wonder that even the likes of U.K. Conservative Prime Minister David Cameron describes Gaza as a “prison camp”. But before we examine the contours of the blockade and the ways in which it has structured the conflict over the past few years it is first necessary to understand the geo-political severing of Gaza from the West Bank.

\textit{The isolation of Gaza}

The blockade of Gaza which we shall come to in a moment is not a recent policy but pre-dates the accession to power of Hamas in June 2007. There have long been economic sanctions against Gaza which reach far back and which began in earnest with the first intifada (which began in 1989) when Israel prohibited nearly all Gazans from working in Israel, work which over 50\% of the workforce depended on\textsuperscript{57}. The failure of the Camp David talks in 2000 which precipitated the rise of the Second (or ‘Al-Aqṣa’) Intifada (2002) brought on renewed sanctions and hailed in a new round of infrastructural mechanisms which would change and fragment Gaza ever further. Despite its “disengagement” Israel has continued to establish “buffer zones”: in northern and eastern Gaza.

\textsuperscript{56} ICG \textit{Ending the war in Gaza}, pp. 3
The separation wall annexed large tracts of Palestine’s most fertile land and confiscated freshwater sources and underground aquifers as well as physically segregating ever more people and territory. The policy of closure is not new and neither is it caused only (nor even primarily) by Hamas and their alleged “terrorist activities”. Rather, it plays a long-standing and pivotal role in Israel’s strategy of marginalizing Hamas, Gaza and its people.

The two pieces of land that comprise contemporary Palestine – the Gaza Strip and the West Bank – are under the rule of two different parties, but this has not always been the case. From 1994, following the Oslo Accords, Palestine was governed by the Palestinian National Authority (PNA or PA) and before that by the Palestinian Liberation Organization (PLO), a multi-party confederation in which Fatah enjoyed a majority from 1969 to 2006. Yasser Arafat served as chairman of the PLO, as president of the PA and leader of Fatah (a party which he founded in 1969) until he died in 2004.

Up until 1991 the PLO was considered a terrorist organization by both Israel and the U.S. but following the Madrid Conference (1991) and the Oslo Accords (1993) Israel officially recognized the PLO as the representative of the Palestinian people. Such recognition did not come without a price though. In 1993 Yasser Arafat, having fought for many years for Palestinian autonomy based on the 1967 borders, changed approach, accepting U.N. Resolutions 181, 242 and 338, and rejecting violence and terrorism; this was seen by many as a new era of reconciliation, but was viewed by others as collusion with the enemy.

The Oslo Accords signed by Arafat and Yitzhak Rabin explicitly recognized the territorial unity of the Gaza Strip and the West Bank and provided for a “safe passage” between them, but the accords were in fact the starting point of a policy of separation that Israel has pursued ever since. The euphoria of Oslo soon disappeared. Rabin insisted that Israel would not dismantle any of its

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59 Tanya Reinhart Israel-Palestine, London: Seven Stories, pp. 13
settlements in Gaza, at least during a five-year ‘interim period’. Just a month after the symbolic White House ceremony Rabin revealed the actual maps for Gaza; they showed not just a refusal to relinquish settlements, but demonstrated Israeli designs on maintaining complete control over Gaza. The settlements were to be grouped in three blocs that would also include the lands between the settlements and combined with the rich network of bypass roads these blocks amounted to one-third of the land of the Gaza Strip. This was the beginning of what many have called the ‘cantonization of Gaza’. Israel never intended to hand control over to Arafat and the P.A., but rather sought a new means of control; sovereignty by proxy, or ‘invisible control’ as Eyal Weizman has called it. Thus for example, the P.A. were given autonomy to control the checkpoints but behind one-way mirrors Israeli authorities watched every movement, vetted every case and ran security checks on every person that moved through the border. The structure of control had not changed, Oslo “allowed Israel to control on a case-by-case basis who would be allowed to pass through the terminal...and to keep ‘the responsibility for security throughout the passage’, but for Palestinians to run the terminal building, and for Palestinian national emblems to be the only ones visible on the ground”. In what transpired immediately after Oslo, a security belt was placed around the Gaza Strip. The rights of residents of Gaza to obtain exit permits was revoked and since Oslo the residents of Gaza have not been allowed even to visit their relatives in the West Bank, except for persons to whom the military authorities granted permits.

The mechanisms of invisible control put in place following Oslo were further extended during the 1990s and by 2000 Israel was still in full control over Gaza and the West Bank. What began in Gaza later came to the West Bank and by September 2000 the Palestinian’s areas were already split into

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60 Ibid., pp 15-17
61 Eyal Weizmann ‘checkpoint: the split sovereign and the one-way mirror’ in Eyal Weizmann (Ed.) Hollow Land, (2008), London: Verso, pp. 139
62 Ibid., pp. 139
four separated enclaves – surrounded by Israeli settlement, military posts and bypass roads\textsuperscript{64} (see figures 11 & 12). Throughout these years Israel maintained that the arrangements were temporary, that an ‘interim’ period was necessary in the transition to the realization of a Palestinian state. But if anything “the Oslo process actually worsened the situation in the territories” Shlaim concludes, “and confounded Palestinian aspirations for a state of their own”\textsuperscript{65}. Things got worse when the Second Intifada broke out in September 2000, Camilla Mansour points out, as it provided a pretext to consolidate and tighten the restrictions in already in place.

\textsuperscript{64} Reinhardt \textit{Israel-Palestine}

\textsuperscript{65} Quoted in Gregory \textit{Colonial Present}, pp. 101
But it was not until the summer of 2005, when Israel pulled its military forces out of the Strip and dismantled the Gaza settlements under its unilateral “disengagement plan” (see above), that a significant threshold was crossed. According to Mansour, disengagement plan was intended from the start to “create additional conditions apt to facilitate Gaza’s removal from what Israelis call the “envelope”—the line, controlled by the Israeli military, border police, and customs officials, that
since 1967 has surrounded the entire Israel-West Bank-Gaza geographic entity”. If Israel could remove Gaza from the ‘envelope, it could convert the line separating Gaza from Israel into an international border and “thus reduce the Palestinian-Israeli demographic imbalance by a million and a half Gazans, while simultaneously facilitating the further settlement of the West Bank and rendering impossible the creation of a Palestinian state”\(^{66}\). In what Mansour calls the “Gaza Egypt Strategy” Israel tightened the military belt around Gaza, further asserting its invisible control over the sea, air, land and subterranean spaces of Gaza\(^{67}\), but with one notable exception: it would relax the southern border with Egypt. Areal Sharon ordered the evacuation of the Philadeph Corridor, risking an intensification of smuggling, but it was worth while he thought because it would encourage the people of Gaza to stop looking to the West Bank (which had already been out of bounds for the overwhelming majority of the population for at least a decade), and to look instead to Egypt\(^{68}\). Gaza, further estranged from the West Bank, would become Egypt’s problem. The strategy was thwarted by Mahmud Abbas who realised that if the border crossing at Eretz (into Egypt) was placed under the authority of the P.A., Israel would claim that it had ceded legal responsibility for Gaza while continuing to control the borders by proxy. But this did not stop Israel from making the claim and treating the crossing as a \textit{de facto} international border.

Today Gaza is isolated from the rest of the world by the blockade, but perhaps more worryingly Palestine has been divided, the West Bank and Gaza isolated from one another. While the gap between the Fatah-led West Bank and the Hamas-led Gaza is widely recognized, less appreciated is that Fatah itself, which the West trains and helps, is so internally torn that it is scarcely able to


\(^{67}\) For an investigation which combines both empirics and a theoretical engagemen

\(^{68}\) Weizmann Hollowland, and his short but biting ‘Politics of verticality’ \textit{Open


\(^{68}\) Mansour, \textit{Reflections}, pp. 92
negotiate or govern. Hamas have capitalised on this fact by accusing Fatah of colluding with the enemy and certainly by the end of Arafat’s life Fatah had become a puppet regime. But there is also internal problems with Hamas, many of its members disagreeing over the extent to which the party should be defined by its armed wing, the Izzedine al-Qassam brigades. Under the contingencies and pressures of an unevenly-handed occupation, national unity remains elusive; the two peoples divided. The division today results primarily from the fact that the two parties disagree in their approach to Israel and the Occupation. Fatah have been far more willing to enter into negotiations with Israel. Mahmood Abbas has entered into multiple “peace talks” first with Areal Sharon (until early 2006) then Ehud Olmert (2006-2009) and most recently, Benjamin Netanyahu (2009-today), keeping alive the approach taken by Yasser Arafat and the Palestinian Authority until his death in 2004. Hamas, who gained widespread support precisely because of the failures of the peace talks and the soft approach taken by Fatah and the P.A, are willing enter into talks with Israel but as I demonstrated earlier, the kind of peace offered by Hamas threatens the status quo in Israel and so Israel prefers to boycott both Hamas and their peace offerings and in return offers only a punishing blockade.

The rupture between Fatah and Hamas runs deep, as a tragic recent example demonstrates. In September 2009 the U.N. published its Fact-Finding Mission into the Gaza conflict (also known as

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69 See Reinhard  *Israel/Palestine* pp 13-59 for an account how the Camp David talks and Oslo Accords transformed Yasser Arafat from a leader of a national liberation movement into a collaborationist.

70 Rami Almeghar ‘National unity remains elusive under occupation’  *Electronic Intifada*, June 24 2010 http://electronicintifada.net/v2/article11354.shtml. The division signals a particularly worrisome situation in Palestine today. Under the two intifadas nationalism and unity were comparatively robust and for this reason Palestinians gained a reputation of resilience and solidarity. If lines of disunity, especially between Gaza and the West Bank deepen, this is likely going to have a weakening effect not only on ‘resistance’, but on Palestinian society as a whole.

71 Arafat was involved in a series of the most important negotiations between Israel and Palestine (and other Arab countries) in the last 20 years. These included the Madrid Conference of 1991, the 1993 Oslo Accords and the 2000 Camp David Summit.
the Goldstone Report after its principal author, Justice Richard Goldstone). In October 2009 the U.N. Human Rights Council were due to take a vote to have the report sent to the U.N. General Assembly for possible action (including referral to the U.N. Security Council). At the last minute President Abbas of Fatah withdrew Palestinian support for the vote. With the Palestinians out of the picture, the council set the report aside for six months. Such a vote would have been a first of many steps toward possible war crimes tribunals and as such Fatah’s deferral was seen by many as a missed opportunity. The people of Gaza felt understandably betrayed and Hamas called the decision by Fatah "a serious crime against our people, a betrayal of the blood of our martyrs and collaboration with the Zionist enemy." Gaza was obliterated by bombs, troops and machines, and the officially recognised Palestinian leadership requested the international community to delay an investigation into the systematic killing of its own civilians. It seems perverse. As senior member of Hamas, Mahmoud al-Zahar told Al-Jazeera, the decision effectively encourage[s] the Israeli military leaders to attack Gaza, to kill Hamas, and to kill people because they voted for Hamas.” Abbas’ decision to delay the vote is symptomatic of the attitude displayed by the West Bank toward the assault on Gaza. Fatah prohibited street demonstrations against the assault and where exceptions were made they were attended by small crowds often less than 100 people. In Ramallah, at one of the early demonstrations, a Fatah supporter who raised a Hamas flag in what he intended as a gesture of solidarity was immediately set upon by the police. Fatah said they merely wanted to “maintain public order”, but the censorship points to the fact that solidarity with the Gazans has been outlawed by Fatah. The association with Hamas has, politically speaking, become too risky and in this sense Israel has succeeded in severing one people into two.

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72 For much more on this see ‘Goldstone and the humanitarians’ this thesis
“Disengagement” and blockade

The transformation of Gaza into the world’s largest prison did not happen overnight. It is the product of an unfolding process which has witnessed the increasing isolation and strangulation of Gaza since at least the early 1990s. But today the strangulation of Gaza takes evermore extreme manifestations.

Figure 5. IDF “3D animation illustrating the complex battlefield in the Gaza Strip,” 22 April 2009, screen grab, source: IDF

In September 2005 Israel initiated what it called its ‘disengagement plan’. The IDF withdrew its forces from Gaza and evacuated all the settlements in the Gaza strip and three settlements in Samaria. The withdrawal was accompanied by a statement in which Israel declared it was no longer responsible for the functioning of Gaza – it argued that “effective control” was extinguished when its permanent military presence ceased – and this remains Israel’s official position (figure 5). The contention behind Israel’s “withdrawal” is designed to relieve it of its legal obligations as an occupying power. The claim is based on defining “effective control”, the legal test for occupation in


international law, as dependent on a permanent ground troop presence in the territory. But in a legal analysis of the disengagement, Gisha, a legal centre in Israel found that “Israel has not relinquished control over Gaza but rather removed some elements of control while tightening other significant controls.” Their report, ‘Disengaged Occupation’, points to the fact that Israel maintains control over Gaza’s air, water and land borders as well as the transfer of people and goods, Gaza’s residents’ registry, customs and thereby the ability of public institutions to receive foreign donations and salaries of civil servants through taxation as all indicate Israel’s continuing control of Gaza. The Israeli Supreme Court in 2008 held otherwise, adding that the primary obligation regarding Gaza derives from the state of armed conflict between Israel and Hamas and not an obligation as occupying power.

79 Ibid., pp. 8
Figure 6. The Gaza Strip 2007, source: PASSIA
In the aftermath of the “disengagement” there was an “appreciable improvement in the freedom of movement of Palestinians within the Strip,”\(^81\) and Palestinians with identity cards were able to move in and out of the Strip via the Rafah crossing when it was open. However, under the disengagement plan Israel retained ultimate control over the border between Gaza and Egypt and is able to close the crossing at will. This power has been extensively used, and since June 2007 Israel has kept the Rafah crossing “almost permanently closed.”\(^82\) There may not be Israeli troops in Gaza and the territory may not be occupied in the military sense. But as far as the population is concerned, Gaza remains occupied; Israel has sovereign power over almost every facet of their life even if its power remains somewhat difficult to see sometimes. Palestinians are not in control of their own destiny; Israel is. The Israeli rhetoric of disengagement serves to legitimise the suffering of Palestinians, and in-turn their suffering becomes unattributable to Israel. If their suffering is not attributable to Israel, then we might ask: to whom is it attributable? Who, if not those who control virtually every facet of Palestinian life, is responsible for the intolerable situation? The Israeli answer is of course is Hamas.

Since 2007, Israel’s policy toward Gaza has been one of “economic warfare”\(^83\) – allowing in what is deemed to be the minimum for the survival of the civilian population, while banning access and movement required to facilitate dignified work and normal life. What Israel had in mind according to Dov Weisglass, the government’s chief advisor in 2006 was to put Palestinians in Gaza "on a diet, but not make them die of hunger."\(^84\) It seems to have worked: for most of the three years since Hamas were elected in Gaza, its 1.5 million inhabitants have relied on less than a quarter of the

volume of imported supplies they received in December 2005. In the years prior to the closure, 10,400 trucks would enter Gaza per month but since June 2007 Israel has allowed in only 2,500 trucks in per month. In June 2007 Israel’s Defence Ministry reduced its list of humanitarian items allowed to enter Gaza to 34 – flour but not yeast, sugar but not coffee or tea etc. Pasta now requires the personal intervention of Hiliary Clinton: when John Kerry asked why a number of trucks loaded with pasta were not permitted entry to Gaza he was told by UN aid officials that "Israel does not define pasta as part of humanitarian aid - only rice shipments". Where blockade and isolation have become the rule, arbitrariness and uncertainty have become the norm (see figure 7). Israel has a list of dual-use items such as steel pipes and fertiliser which it says could be used to manufacture weapons. These are not allowed in, with the exception of "special humanitarian cases" which are decided on by a case-by-case basis. The blockade includes restrictions not only on the goods that can be imported into Gaza but also on the movement of people and services. Fuel and electricity are cut off sometimes for days and weeks at a time. Gaza’s economy is further affected by the reduction of the fishing zone open to Palestinian fishermen and the establishment of a buffer zone along the border between Gaza and Israel, which reduces the land available for agriculture and industry. In addition to creating an emergency situation, the blockade has significantly weakened the capacities of the population and of the health, water and other public sectors to respond to the emergency created by the military operations. But Israel maintains that “The limitation on the

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transfer of goods is a central pillar in the means at the disposal of the State of Israel in the armed conflict between it and Hamas.” The blockade is war by other means.

Figure 7. The arbitrary blockade, source: GISHA 2010

In 2007, in response to the blockade, Gazans began constructing an underground network of tunnels. The network has grown into what some are calling the “tunnel economy”. The tunnel economy has become the lifeblood of Gaza and according to the World Bank 80 per cent of Gaza’s imports – at least before the assault on Gaza – came through the tunnels. One of the key objectives in Operation Cast Lead was to destroy the underground network of tunnels because Israel claims that they were being used by Hamas (under the auspices Iran) to import and export weapons. I am not about to argue that the tunnels were not used for this purpose but it seems only fair to point out that under circumstances of the blockade, life in Gaza would be much worse off without them.


91 Pelham Diary, pp. 26-7

92 See Intelligence and Terrorism Information Center, ‘Hamas has lately regulated the flourishing tunnel industry in the Gaza Strip’, 28 October 2008, http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/ct_e009.pdf; IMFA Investigation, pp. 23
Following the international backlash over Israel's illegal raid on the Mavi Marmara Freedom Flotilla in July 2010, Israel agreed to ease the blockade. Gazans are yet to see what tangible effects this will have. The list of items, no doubt, has been expanded, but even if many items are no longer officially prohibited, they still have to find their way into Gaza. Israel controls the border-crossing points and determines how many trucks are allowed in. Currently, even with the ‘easing’, the number remains radically insufficient according to Amnesty International and a number of aid organizations (see figure 8). Moreover, the ban is expected to remain on items such as cement and steel desperately needed to build and repair the thousands of homes destroyed by the assault 18 months ago. I am wary even of the current humanitarian claims that say this is a step in the right direction because above all else this as a diversionary tactic. The easing of the blockade merely begins to undo what should never have been done in the first place but now the Israeli ‘concession’ is framed as a humanitarian act. “IDF Continues Transferring Humanitarian Aid into Gaza Strip” reads one IDF announcement, while another proclaims, “Significant efforts were made to ease the plight of civilian population”. The easing changes nothing structurally. Few are asking about what the easing means for Palestinian exports, because under the current restrictions only imports are allowed; Gaza cannot begin to repair itself if it cannot export its goods. Few are asking how much construction material and investment is needed to repair the economy of despair and the economy in despair. Few are

96 Ibid.
asking what this means for sovereignty: Israel is still in control. So while Gazans may now be able to marinade their kibbeh with extra coriander, the real question we should be asking is why doesn’t everybody have enough food. Or more to the point, why is Israel – the power that claims no responsibility for Gaza and its population – the one that decides on the calorie count of another people? The blockade continues, its shape less easily identifiable under the load of humanitarian sugars and spices that Israel hope will sweeten the pill.

![Goods - Needs Vs. Supply (October 2009 - September 2010)](image)

Figure 8. The strangulation of Gaza from October 2009 to September 2010, source: Gaza Gateway (Gisha)

1.3. Foregrounds

Thus far I have traced a brief geography of Gaza in the lead up to the assault Israel launched upon Gaza in December 2008. I have discussed why Israel launched the assault and I have contextualised the assault (and Israel’s justifications for launching it) within the broader geo-political manoeuvres in Israel and Palestine over the last 20 years. The particular contours I have traced (the blockade, the “disengagement”, the isolation of Gaza) form the background against which this thesis is written.
and, as shall become clear, they help explain and situate the assault on Gaza both geographically and historically. In this section I bring the assault on Gaza to the fore and in doing so wish to draw attention to the debates that have raged since the end of the assault, focusing particularly on the claim that Israel committed war crimes.

**Post-assault conversations**

Recall for a moment Israeli commentator Guy Bechor’s remark that “The images of the past two weeks [during the assault on Gaza] have been etched in the collective consciousness for years to come”. Thinking back to what happened in Gaza Bechor might well be correct, but what images did Bechor have in mind, what narratives have been etched in whose collective consciousness?

A number of controversial images are worth noting, not only because they set the tone for much of the coverage of the assault but crucially also because they later formed the backbone of the accusation that Israel had committed war crimes. On January 9th 2009, Navi Pillay, the U.N.’s most senior human rights official made a statement to the BBC claiming that Israel may have committed war crimes. That day Israel had shelled a house where IDF troops had told approximately 110 civilians to take shelter. Pillay told the BBC that the incident “appears to have all the elements of war crimes”\(^a\). From the offset the killing of civilians had been controversial; so many had died within the first few minutes alone. Civilian casualties, of course, are never an easy subject but to some extent publics have come to accept “collateral damage” as an inevitable – if undesirable – product of war\(^b\). However, it was in fact the incidents which killed comparatively few that turned out to be the most controversial. Israel fired upon U.N. schools, hospitals and administrative buildings as well as Red Cross and Palestinian ambulances and hospitals. The Gaza police forces and government...

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\(^b\) See Steven Rockel and Rick Halpern *Inventing Collateral Damage: Civilian Casualties, War and Empire*, (2009), London: Between The Lines
buildings were systematically targeted. Reports that Israel shot dead a number of civilians carrying the white flag were also later confirmed. Civilian and industrial infrastructure was destroyed on an extraordinary scale. White phosphorous was used in built-up areas, as were flechette missiles; while neither of these weapons are prohibited tout court by IHL, their indiscriminate use is considered illegal. Israeli soldiers were suspected of using Palestinians as human-shields. The provision of humanitarian aid all but ceased and those that Israel held as prisoners suffered deprivation of their liberties\textsuperscript{100}.

This is quite the shopping-list of controversial actions. But “controversial” is frankly an understatement. What etched these incidents in the collective consciousness of the Arab world and beyond was the charge that Israeli actions may amount to crimes of war. I discuss the issue of the il/legality of the assault in much greater length in chapter 2. What matters is not the legal technicalities of whether Israeli actions did or did not constitute war crimes; far more important in the post-assault discourses has been the allegation itself and the political-rhetorical weight that it carries. The scale and extent of destruction and death put Gaza on the front page, but it was the possibility that the attack(s) were illegal that sold the papers – so to speak. Almost everything that has been written – in the media; by human rights groups; by way of investigation; from NGO’s to government statements and press releases – since the assault has in one way or another been concerned with the question of legality. \textit{The assault on Gaza is at every turn thoroughly legalized.}

\textit{Goldstone}

By far the most important investigation into Gaza was the ‘\textit{Report of the United Nations Fact-Finding Mission on the Gaza Conflict}, more commonly known as the Goldstone Report after its primary author Mr. Justice Richard Goldstone. The report’s mandate “to investigate all violations of international

\textsuperscript{100} See B’Tselem ‘Israel held many Gaza prisoners in harsh and humiliating conditions and threatened their lives and their health’ \textit{B’Tselem Press Release}, 28 January 2009, \url{http://www.btselem.org/English/Press_Releases/20090128.asp}
human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza” responded to the many complaints and accusations made against both Israel and Hamas. A plethora of organizations are responsible for the groundwork that made the Goldstone investigation possible. Reports such as Amnesty International’s ‘22 days of death and destruction’; Human Rights Watch’s ‘Precisely Wrong’ and the Palestinian Centre for Human Rights’ (PHCR) ‘Targeted Civilians’ documented the majority of the evidence that served as the basis of the Goldstone Report and as such were instrumental in bringing about the international investigation. Published in September 2009 the Report was highly critical of both sides but the crux of the focus was – as one would expect – on Israeli actions. I say “expect” though with extreme caution. Israel has claimed that it has come to ‘expect’ UN bias against it, the report thus being further evidence of a U.N. that is obsessed with hating Israel101. On the other hand, I would expect the one who commits the overwhelming violence to be the one that is the object of closest scrutiny. Nevertheless, the Israeli government refused to cooperate with the investigation, citing “Israel’s reluctance to cooperate with or give legitimacy to a Mission mandated to investigate the lawful use of force by a State to protect its citizens, yet required to ignore the illegal use of force by terrorist groups which made such action necessary”102. The act of refusal signalled the beginning of a warring relationship between the investigation and Israel; yet of course, the friction between the U.N. and Israel is much older. To the charge that the report was too harsh of Israel, Goldstone responded “had Israel provided us with credible information to respond to the allegations we received, they would have been given appropriate consideration and could potentially

101 Gabriela Shalev, in her address to the U.N. General Assembly, told the council “[the report] is the product of the Human Rights Council in Geneva, a body whose obsession with Israel has led it to pass more resolutions against Israel than on all other U.N. Member States put together. She added that “The report before you was conceived in hate and executed in sin”, quoted in ‘Statement by Shalev to the UN General Assembly on report of the Human Rights Council’, IMF A November 4 2009, http://www.mfa.gov.il/MFA/Foreign+Relations/Israel+and+the+UN/Speeches+-+statements/Statement_Amb_Shalev_UN_General_Assembly_4-Nov-2009.htm.

102 Letter from Israeli Ambassador Aharon Leshno Yaar to Sir Justice Goldstone, July 2 2009, Appended to The Goldstone Report, pp. 446-8
have influenced our findings.” He added “I only wish that the energy that the government of Israel and its supporters had put into discrediting the report had been invested in cooperating with our mission.”

**Israel’s response**

Pre-empting the report, in July 2009 the government of Israel released its version of what happened in a report not incidentally entitled ‘The Operation in Gaza: Factual and Legal Aspects’. The report notes Israel’s “right and obligation to take military action” claiming that the Israeli forces abided by IHL and the principles of distinction and proportionality enshrined therein. It is an impressive document that defends every stage of the assault while outlining the procedures and precautions taken to conduct what they call a legal and legitimate operation. All internal investigations had produced only exonerations. But then an IDF Givati Brigade soldier made a confession. What did he confess to? He was indicted on the charge of stealing a credit card! In January 2010 Israel released an ‘update report’ promising that of the 150 reported incidents 36 were being referred for criminal investigation. Two months later on March 11th 2010 the IDF indicted two soldiers for “unauthorised conduct”. In early July military advocate general, Avichai Mendelblit claimed he was indicting “a number” of officers and soldiers for their conduct during the operation, including a sniper who allegedly shot a Palestinian woman who was waving a white flag. One soldier was also issued a warning for violating IDF procedures by using a Palestinian as a human shield. On July 6th the IDF confirmed that of the 30 cases referred to it by the Goldstone Report, four are facing judicial or

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103 Richard Goldstone ‘My mandate on Gaza was even-handed, my loyalty is to justice’, The Guardian, May 5 2010, http://www.guardian.co.uk/commentisfree/2010/may/05/richard-goldstone-united-nations
104 Ibid.
disciplinary actions\textsuperscript{108}. These indictments are the latest news we have from Israel in relation to the Gaza assault. More investigations are pending and the U.N. General Assembly with a vote of 98 (for) to 7 (against) (with 31 abstentions and 56 not participating) in March gave Palestine and Israel five months to complete “independent, credible and in conformity with international standards” investigations\textsuperscript{109}. That five month period is now over, but still the international community are waiting for the investigations to be published. If the U.N. is not satisfied with the findings it has said that it will open a vote to refer the parties to the International Criminal Court (ICC). What is made of that promise remains to be seen but with veto-power in the U.N. as it is, it seems fairly significant that the U.S. has already promised that it will vote against the action\textsuperscript{110}. In terms of prosecutions the Goldstone Report has been ineffective, but its value, together with the humanitarian claims that Israel committed war crimes, should not be limited to the purely judicial realm. Rather, the efficacy of the report might be measured by international (and domestic) public opinion, both political and public.


\textsuperscript{109} Quoted in \textit{Al Arabiya}, ‘UN assembly urges more Gaza war investigations’, February 27 2010, http://www.alarabiya.net/articles/2010/02/27/101625.html

Chapter 2. Law in Ruins

2.1. Beneath the ruins

How might we begin to make sense of the assault on Gaza and its aftermath? I approach this question with caution, aware of the profound implications that our words and understandings have upon the historical present. In this chapter I trace how multiple actors have, since January 2009 to September 2010, articulated their responses to the assault on Gaza. This might sound easy enough, but where should I begin?

Beginning here or there, then or now, is inescapably political. Do we start from the Israeli account of things - or the Palestinian? The victims or the perpetrators – and who is who? War’s absolute victims cannot speak. Who may speak as her or his proxy, and who will issue permission and on what terms? Do we start with the physicians' reports that detail the mangled, punctured, wounded and dead bodies? Or do we begin with the brave soldiers? Whose soldiers? Are we even clear on what a soldier is? We might start with those who planned the assault, but why them? The assault was only ever possible precisely because everyone – politicians; artillery men; spokeswomen; children and civilians – have become enlisted in the drama of war. Do we then begin with the authoritative, the maligned or the emotive? And who might fall into what category? Should international law guide us, or international relations, or just war theory, or religious morality? Which version of international law: International Humanitarian Law?; the 'laws of armed conflict'?; International Human Rights Law?; or International Criminal Law? When is war 'just'? Whose religion is right? When do we begin? 1948? 1967? 2007? And finally, where might we begin? Such questions could go on indefinitely.
But better that they are asked than avoided completely. Some would have us circumlocute these questions. Moshe Halbertal, NYU Professor of Law and the man responsible for co-drafting the ethical code for the IDF regards them as superfluous to the contemporary debates about the assault on Gaza. In a recent article provocatively titled *The Goldstone Illusion* he poses a question [regarding Goldstone and the U.N. fact-finding mission] “Why should a committee with a mandate to inquire into the operation in Gaza deal with the Israeli-Palestinian conflict at large?” He charges such inquiry with being “nothing if not political”.

Halbertal views the “political” with disdain, as the “weakest, the most biased, and the most outrageous” part of the U.N. investigation – and wishes to deal only with the “facts”. Dealing with the “facts” of course is a typical Israeli gesture, hence the appeal of successive governments to the ‘facts on the ground’ in relation to the occupation. But are those ‘facts’ of the occupation not political too? I begin with the above questions to respond to those like Halbertal who seek to radically disassociate the assault on Gaza from Israel’s historically violent Occupation, to separate war from politics and therefore death from critique. I intend to historicise Israel’s assault precisely to discredit those who want to talk only about the “facts” of the most recent assault as if the past is not alive in the present and as if those “facts” have been forgotten by those displaced by them. We cannot decontextualise the assault on Gaza from the longest occupation in history, just as we cannot understand the assault without knowing something of the context of the conflict at large. Quite deliberately and *politically* this section provides such a window through which we may view the assault.

Gaza remains in ruins, both literally and metaphorically. War, by many other means, goes on. The

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blockade continues, UNRWA claiming that “Gaza...is on life support”\textsuperscript{112}. A year and a half on and hope is buried beneath the concrete ruins of a city and people all but totally destroyed. “We sit and envy the dead. They are the ones who are at rest”\textsuperscript{113} a survivor admits. Alongside these corporeal ruins though, Gaza has been touched by the ruins of law and today the assault on Gaza remains partially indecipherable because of it. A legal battle has raged ever since the assault began.\textsuperscript{114} Competing legal claims have been made by almost every actor who has any kind of stake in the assault. On the one side Israel maintains its absolute adherence to the rule of law, arguing that the war was legal and legitimate. While on the other side, a number of organizations have called the war illegal, citing a number of crimes ranging the destruction of property to crimes against humanity. I review a series of reports, influential publications and statements from Goldstone and the Israeli state, and in so doing, demonstrate that the question of law has come to dominate the post-assault landscape. So fierce, personal and polemic has the legal debate become that we may have lost sight of the extra-legal facts of the war; we have forgotten that law does not exhaust the question. This obsession with legality gestures toward what Giorgio Agamben has called a language “contaminated by law”\textsuperscript{115}. But moreover, the law becomes a shared language as David Kennedy has cogently argued\textsuperscript{116}, shared that is, by both the military who wage war and the humanitarians who oppose it. Kennedy’s argument has important ramifications for how we might articulate our response and opposition to the assault on Gaza, not least because to “oppose war in the name of law...is to misunderstand the delicate

\textsuperscript{114} Defence Minister Ehud Barak had given orders to the IDF to prepare for the assault over six months before it began. Those preparations involved “intelligence-gathering”, of information about permanent bases, weapon silos, training camps, the homes of senior officials and coordinates for other facilities. These strategic preparations were necessarily legal preparations too. See Barak Ravid ‘Disinformation, secrecy and lies: how the Gaza offensive came about’ Haaretz, 27 December 2008, http://www.haaretz.com/news/disinformation-secrecy-and-lies-how-the-gaza-offensive-came-about-1.260347
\textsuperscript{115} Pp. 18, Giorgio Agamben Remnants of Auschwitz, Zone Books: New York, 1999
\textsuperscript{116} Kennedy Of war and law
partnership of war and law”\footnote{Ibid pp. 167}. If we are to begin to understand the assault on Gaza, to exhume it from the physical ruin we must first exhume the debate from the ruins of law.

This section on ‘law’ includes chapters 2 which entitled ‘law’ includes has three main aims, all of which work to understand what happened in, and since, Gaza. The first aim is to trace how law has shaped relations between Israel-Palestine historically. International law and Israeli national law have always been at the forefront of Occupation. *The story of occupation is inseparable from the story of law*. I demonstrate that law has not just appeared on the scene in *response* to the assault, but has been actively shaping the *de facto* and *de jure* realities of the conflict ever since it began. Historicizing Gaza in this way helps to reveal the fact that law has always been used as a tool by Israel the occupier – against Palestine and Palestinians – the occupied. Simultaneously, the legal history (especially recent chapters such as the Second Lebanon War in 2006) also helps explain the contemporary obsession with law. The turn to history is not mute *vis-a-vis* the present; both enliven one another in fascinating ways: the archive is alive.

The second aim is to illustrate the extent to which the law has come to dominate the post-assault dialogues. I counterpose what we might call the humanitarian critique of the assault (of which Goldstone and his U.N. report are the leitmotif) with Israel’s legal deployments. *The assault on Gaza is, at every turn, thoroughly legalized*. It turns out that the multiple – and ostensibly opposing – voices of war have in common a predilection for law, framing their claims, accusations and defences in the very same lexicon. This is true for the ‘humanitarians’ and the anti-war contingent as it is for the very military generals of the Israeli Defence Force who planned and carried out the assault on Gaza.

The final aim is to problematise these legalistic articulations on two fronts. The first of these
involves a general critique on the dangers of utilizing the language of law and celebrating it as the *dues ex machina* of a politics of war. Two points are particularly important to this critique. First, we must understand that the relationship between law and war is not characterised solely through prohibition: law does not stand outside of violence, but constitutes it, channeling, facilitating and permitting it. Second, in utilizing the vocabulary of law, and especially IHL, we legitimise a set of rules which are at best problematic, at worst, murderous. IHL, by definition, is a *restrictive* legal regime; its *raison d'être* is never to stop war. As Elizabeth Dauphinee shows us, “law authorizes and legitimates war by exceptionalizing certain behaviors in war as uniquely abhorrent”.

Viewing only some acts of violence in war as *criminal* acts has the effect of normalizing the other violent – but “*non-criminal*” – acts of war. The law does not (always nor even primarily) intervene in war, but extends its logic, compelling and authorising further violence. These concerns might not be reason enough to give-up on law, but recognising its limits is becoming ever more crucial.

**Law and occupation**

Legal scholars Orna Ben-Naftali, Aeyal M. Gross and Keren Michaeli begin their essay on the legal architecture of occupation with the claim: “The fabric of life under an occupation is tailor-made by law to fit the design of any particular occupation regime”. Israel has abolished, made, re-made and reneged on all kinds of laws. *But to say that Israel uses law against Palestinians is not enough*. We must go further to enquire into the *how* of law, the *method* of Israeli tactics and the ways in which Israel has *utilized* law to certain *ends* by particular *means*. Neither can we simply claim that Israel breaks the law because it obscures the fact that ‘tailor-making’ law involves reshaping and re-making law: what yesterday might have been deemed illegal is now accepted, normalized and even legalized. The

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120 Pp. 31, Ben-Naftali *et al*, *Fabric of law*
history of law in Israel reveals a history of strategy entailing, precisely, the constant attempt to render legitimate the barriers and prohibitions of yesterday. In this section I demonstrate that Israel has utilized, manipulated and re-worked law to the extent that it is barely possible to determine fact from fiction, law from norm, occupation from war, temporary from permanent and, ultimately, life from death. So while it is true that law has always been central to Israel’s strategy and occupation, it is a kind of law distinguished by its own indistinction. This zone of indistinction has functioned to obfuscate the rule of law, more often than not to Israel’s advantage.
Birth by law

Figure 9. Palestine under the British Mandate, 1923-1948, source: PASSIA
In one way or another, the story of Palestine and Israel is a story about law. Palestine was born under the writ of international law, the British Mandate delineating the two administrative territories of Palestine (which would fall under British rule) and autonomous Transjordan (see figure 9). That was in 1923. Nothing in the terms of the Mandate ruled out the establishment of a Jewish State in all of Palestine; that was to come in 1948 (see figure 10). The U.N. Partition plan (General Assembly Resolution 181) birthed another state and on May 14th 1948 Zionists awoke to their own nation in the land of Israel. Intervening in the growing conflict between two competing nationalist movements (Zionism and Arab nationalism) and attempting to address the Jewish question, the resolution terminated the British Mandate and partitioned the territory between the two peoples. Jerusalem was put under a corpus seperatum, a separated jurisdiction. David Ben-Gurion, the devout Zionist leader who ten-years earlier had proclaimed “I am for compulsory transfer; I do not see anything immoral in it”121 along with the Jewish community welcomed the plan while the Palestinians (supported by the states of the Arab League) refused, walking out of the talks and declaring the resolution invalid. They could not fathom, Israeli Historian Benny Morris would later write, “why 37 percent of the population had been given 55 percent of the land (of which they only owned 7 percent)”122. The Arab delegates promised that any attempt to implement the resolution would result in war. Meanwhile, Ben-Gurion noted that future borders “will be determined by force and not by the partition resolution”123. The first Arab-Israel war broke out soon after. The adoption of the U.N. resolution symbolises the authorization and legitimization of the Israeli state, the formal legalization of a Jewish homeland. For Israel, 1948 marks independence. For the Palestinians 1948 marks Al-Nakba – the catastrophe. The violence that ensued is inseparable from the legal partition of Palestine and the legal story I am about to tell is inseparable from 1948. Indeed, Israel’s military

121 David Ben-Gurion to the Jewish Agency Executive, June 1938, quoted in Pappe, Ethnic Cleansing, pp. xi
122 Pp.186 Morris Righteous Victims
123 Ibid pp. 186
occupation, like all military occupation, Benny Morris writes “was founded on brute force, repression and fear, collaboration and treachery, beatings and torture chambers, and daily intimidation, humiliation and manipulation”¹²⁴ Law marked the originary violent moment and has been intrinsic to what Ilan Pappe has called the ethnic cleansing of Palestine.

¹²⁴ Benny Morris quoted in Gregory, *Colonial Present*, pp. 90
International law is only part of the story. Local, domestic law as well as colonial law (reaching back to the Ottoman Empire) are all part of the fabric of Israeli-Palestinian history. Consider, for example, the process of early Jewish settlement in the area that would later become Palestine. During the 1920s Jewish migration to the region flourished, causing some friction between Jews and Arabs because Jews were buying up large sects of land. How was the land transferred? It was secured legally, just as it is now, via legal land and property contract. The Ottoman Land Code of 1858 required land owners to register ownership. Invented to increase state control over rural lands and to increase tax revenue for the Ottoman Empire, the Land Code became an essential law for the
Zionist movement as David Ben-Gurion had realised as early as the early 1920s. His second-in-command, Moshe Sharett – ‘foreign minister’ of the Jewish community in Mandatory Palestine – put his finger on the importance of local law when, in a lecture to employees of the Zionist Organization, he boasted about his new achievement in buying up 2500 dunam\textsuperscript{125} of land in the Baysan Valley in Eastern Palestine:

The purchase was accompanied, interestingly, by transfer of population [unsure of his audience's familiarity with the term, he repeated it in English]. There is a tribe that resides west of the Jordan river (sic) and the purchase will include paying the tribe to move east of the river; by this [act] we will reduce the number of Arabs [in Palestine]\textsuperscript{126}

The settlement of Jewish communities, secured by contract and litigation was – and still is – inseparable from the dispossession of indigenous Palestinians. Today Ottoman land laws are still used to expropriate Palestinian land. A network of local laws put in place by the Ottoman Empire and approved in Ankara, including unfair taxation and the prohibition of land-purchase worked against Jewish migrants, so I do not claim that the law was always – nor even primarily – on the side of the Zionists. Nevertheless, law has long had a hand at both the local, domestic as well as international scales in Israel-Palestine; from very early on there were certain gains to be had in utilizing law strategically. Law would become inseparable from the interests of those wielding it.

\textbf{Illegal occupation?}

But let us now track forward to the regime of occupation for it is the legal apparatus inscribed therein that has proved so forceful in shaping the present conflict.

\textsuperscript{125} 1 dunam = 1000sq meters
\textsuperscript{126} Moshe Sharett quoted in Pappe \textit{Ethnic Cleansing}, pp. 24
The ‘Occupied Palestinian Territory’ as it is known and recognised internationally refers to the areas annexed by Israel in the 1967 war and over which Israel exercises effective control. This includes the West Bank, the Gaza Strip and East Jerusalem. Occupation is a legal status and has its own laws as inscribed by the Fourth Geneva Convention (1949) and the First Additional Protocols (1977) of the Geneva Conventions. Some of these laws are normative, meaning that as soon as occupation commences certain humanitarian principles apply. Other laws concern sovereignty, and in particular the principle of the inalienability of sovereignty. Ben-Neftali et al demonstrate how this principle is the fundamental tenet of the law of occupation in three senses. First, occupation does not confer title; second, occupation is exceptional because it deviates from the normal order of sovereign states insofar as it reflects the suspension of the link between sovereignty and effective control; third, occupation is exceptional in that it is temporally limited. The laws of occupation are far from straightforward and entail a number of different and evolving legal practices, resolutions and rulings over many years. In one sense this is certainly progress; the laws have developed and as they have they have encompassed a greater and far more complex understanding of occupation and its various facets. Yet these developments and complexities obscure a perhaps altogether more fundamental truth: the number of laws concerning occupation attests to the fact that occupation is not, prima facia, illegal.

In 2002, in his report on the violation of human rights in the Occupied Territories, John Dugard, the then special rapporteur of the UN Commission of Human Rights, concluded “violations of human rights are a necessary consequence of military occupation.” Dugard’s statement was not legally

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127 Israel refers to Gaza and the West Bank as “disputed territories”, a title which has been rejected by the U.N. and its party members
binding; there were no legal repercussions or consequences that followed the remark. However, Israel was displeased with the language of the U.N. Commission because it understood it to imply that “while military occupation may not itself be inherently illegal, it necessarily leads to violations of human rights and so presumably must be illegal, if not directly then, at least, indirectly.”

Israel lamented Dugard’s observation as “an attempt to rewrite international law”, a “remarkable legal thesis” that “contravenes the entire body of humanitarian law dealing with belligerent occupation, which establishes standards to be maintained by States that find themselves in a situation of occupying territory”. What is missing from Dugard’s charge is the way in which Israel has found a plethora of ways in which law can be used to further its interests against the interests – and rights – of Palestinians. It is not simply that Israel flouts and breaks the law; it bends and produces it too, making it ever harder to determine the lines between the legal and the illegal, the permissible and the prohibited.

**Indeterminate occupation**

At the heart of the occupation is an “indeterminacy that functions to legitimize what would otherwise be clearly illegal: obfuscating the boundaries between occupation and nonoccupation, between annexation and nonannexation, between the temporary and the indefinite and, indeed, between the rule and the exception”. Indeterminacy is the law of Israel’s occupation; ironic under a law of occupation, which requires that occupation be temporally and spatially determinate. So if indistinction marks, according to Ben-Naftali et al, the “defining feature” of the occupation, how is it manifest and what are its contours? The construction of the separation wall; the settlement program; the two-tiered legal system based on national and racial lines; the indefinite time-period of

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129 Quoted in ibid., pp. 37
130 Ibid. pp. 37, see also note 35 on pp. 71 in ibid.
131 Ibid., pp
occupation; the denial of the right to self-determination, and the annexation of territory via settlement – all of these things function in a kind of legal indistinction. Rather than focus on all of these in detail I limit myself to the broad legal arguments Israel has been making in relation to occupation.

Where and when does occupation begin and end? According to the Government of Israel, as we saw in section 1, the occupation of Gaza ended in 2005 with the withdrawal of troops and dismantlement of some settlements. But the situation today is far from black and white. The contention behind Israel’s “withdrawal” is designed to relieve it of its legal obligations as an occupying power. The claim is based on defining “effective control”, the legal test for occupation in international law, as dependent on a permanent ground troop presence in the territory. Notice that in this definition the focus is on the territory and not the population. It is the slippage between territory and population that enables Israel to claim that it has withdrawn physically from Gaza (no troops are stationed there), even though it continues to control its population via a series of remote and quasi-invisible strategies which as Stuart Elden claims, serves to “undermine... the territorial sovereignty” of Gaza. But as Elden also shows, this tactic of relinquishing responsibility while maintaining de facto sovereignty was not unique to Gaza; it was also used when Israel withdrew from South Lebanon in 2000 after occupying it since 1982. Throughout this period Israel maintained that the Sheeba Farms land seized from Lebanon in 1968 (and formally annexed in 1981) and the Golan Heights seized from Syria at the same time were not under occupation because the territory did not previously belong to Syria or Lebanon. Since 1967 Israel has sought to justify its "inadmissible

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132 Gisha Disengaged Occupiers, pp. 8
134 On this issue Sara Roy has claimed that “[U]nder the terms of disengagement, Israel’s occupation is assured. Gazans will be contained and sealed within the electrified borders of the Strip, while West Bankers, their lands dismembered by relentless Israeli settlement, will be penned into fragmented spaces, isolated behind and between walls and barriers (2005:17) “A Dubai on the Mediterranean”: On Gaza’s future. London Review of Books, November 3.
acquisition of territory by force" (enshrined in Article 49 of the Geneva Conventions and UN 
Resolution 242) by claiming that Gaza and the West Bank were also not "occupied" since they had 
never been part of the sovereign territory of Egypt or Jordan. This fact, Israel claimed, relieved it 
of its responsibilities under the Geneva Conventions since they did not apply; "Israel was thus an 
"administer" not an occupier, and the territories were accordingly deemed "administered territories" 
whose final status had yet to be determined[136].

Yet recent legal discussions have moved away from synonymising effective control with ground 
troop presence, focusing instead on determining the parameters of obligation that a governmental 
authority should take vis-a-vis people who are affected by its actions (regardless of military 
presence); i.e. there has been a shift away from territory per se toward the population within the 
territory. Such parameters depend on: the de-facto relations of power; the context of the specific 
power relations (geographical, cultural, economic, historical and political) and the need to avoid a 
vacuum in humanitarian protection to the subjects of power[137]. Gisha, a legal centre in Israel, 
examined the legal status of the disengagement and found that “Israel has not relinquished control 
over Gaza but rather removed some elements of control while tightening other significant 
controls”[138]. Their report, ‘Disengaged Occupation’, points to the fact that Israel maintains control 
over Gaza’s air, water and land borders as well as the transfer of people and goods, Gaza’s residents’ 
registry, customs and thereby the ability of public institutions to receive foreign donations and 
salaries of civil servants through taxation as all indicate Israel’s continuing control of Gaza. Israel is 
in charge of the population; it regulates the body by allowing it to move only through certain spaces

[135] See Gregory Colonial Present, pp. 90
[136] Ibid pp. 90
[137] See Ben-Naftali et al Fabric of Law, pp. 33.
[138] Pp. 8, Gisha Disengaged Occupiers'
in particular ways and it mandates the health and wellbeing of these bodies by census data and calorie counts. The control of Gaza by Israel is not merely or primarily geopolitical; it is biopolitical.\(^{139}\)

Of significance is not who is right or wrong but rather that the very terms and language of occupation are still up for debate. The debate marks the indeterminate legality of the entire occupation. Whether Israel admits it or not, this indeterminate legality has a violent function: Israel renounces its responsibility and consequently the rights of Palestinians are not upheld, but are honoured in the breech. This has prompted Stuart Elden to summarise the ruse of Israel's disengagement thus:

“Even when Israel declares a unilateral withdrawal...it never quite finishes the job. Rather than allow a nominally or putatively independent neighbouring entity the full rights and responsibilities of statehood, it [Israel] continually undermines that basis, while then bemoaning its capacity to live up to implied obligations. A vicious cycle: the failure supposedly legitimates the challenge; which takes away any possibility of transcending the problem.”\(^{140}\)

Israel’s intention has always been to occupy these territories, but it has sought to do so invisibly. Israel explicitly stated its intention very early on according to military reports published after the 1976 war: the aim was to implement “a policy of normalization” through the encouragement of self-rule, which would “allow the population of the areas to carry on their life and activities has as they had been used to until the 5th July 1967” Or as Defence Minister Moshe Dayan once put it, Israel wanted to make the “occupation invisible”\(^{141}\) The Israeli rhetoric of disengagement together with the apparatus of invisible occupation serve to legitimise the suffering of Palestinians, and in-turn their suffering becomes independent of (and therefore unattributable to) Israel. This is the

\(^{139}\) For an analysis of the biopolitical dimensions of Israel’s occupation together with a historical account of their development see Neve Gordon Israel’s Occupation, (2008), Berkeley: University of California Press

\(^{140}\) Elden Terror and territory, pp. 833

\(^{141}\) Quoted at pp. 49 Neve Gordon ‘The Invisible Occupation’ (pps. 48-69) in Gordon Israel’s Occupation
backdrop against which every facet of the occupation must be read. If their suffering is not attributable to
Israel, then we might ask: to whom is it attributable? Who, if not those who control virtually every
facet of Palestinian life, is responsible for the intolerable situation?

The Jewish-Israeli settlement program has been a permanent feature of the occupation. In 1978 the
Likud government transformed the settlement project from an improvised undertaking into a fully-
fledged state project. Throughout the 1970s the Israeli High Court of Justice (HCJ) handled the
conflicts regarding the settlements, whether they involved Palestinian landowners, settler
organizations or military and government ministries. Access to land is the foundation upon which
settlement depends but the problem was – is – that the Hague Regulations of 1907 stipulate that an
occupying power may only undertake physical transformation in occupied territory if such acts serve
one or both of two purposes: ‘urgent military necessity’ or ‘the benefit to the local population’. Article 49 of the Fourth Geneva Convention explicitly states that, "The Occupying Power shall not
deport or transfer parts of its own civilian population into the territory it occupies." Different
Israeli governments and courts have used varying strategies to deal with these rulings. The most
controversial of these is Israel’s official position that IHL is not fully binding on its actions in the
Occupied Territories. The position was established in 1971 by then Attorney General Meir Shamgar.
According to Shamgar, humanitarian law does not apply to the West Bank and the Gaza Strip
because their annexation by Jordan and Egypt never received international recognition. Thus, the
land occupied was not "the territory of a High Contracting Party," a requirement for application of
the Geneva Convention. Therefore, Israel argued, it was not obliged to comply with the Fourth

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142 Pp. 111 Weizmann Hollow Land. Israeli architectural historian Zvi Efrat called this the “Israel Project”, a state-centric
masterplan that he described as “one of the most comprehensive, controlled and efficient architectural experiments in
the modern era” quoted in ibid., pp. 88
143 Ibid., pp. 97; Yehezkel Lein and Eyal Weizmann ‘Land grab’, B’Tselem Publication, May 2002,
Geneva: International Committee of the Red Cross, pp. 283
Geneva Convention. If the law did not apply, then Israel could not be said to be held in breach of it.

However, according to B’tselem, Israel’s position has never gained any support in the international arena. The International Red Cross, the UN, and the vast majority of states and international law experts have often stated that the Fourth Geneva Convention is binding on Israel in its activity in the Occupied Territories. But this has not put an end to the settlement question. From early on, Israel realised that an occupying power could legally requisition land temporarily for the use of military forces and administrative units. As Eyal Weizmann notes, “requisition is distinct from land expropriation or seizure in that it does not change the title of ownership over the land, but rather constitutes only the temporary right to its use”. But when the vague concept of ‘temporariness’ has no time prescribed, requisition easily blurs into seizure. As Ben-Neftali et al has noted, the time between the “temporary” and the “permanent” is inhabited by the “indefinite”. The spatiality of the settlements as shown in figure 11 undercuts the claim that they are temporary. The same arguments work in relation to the spiralling temporalities of the whole infrastructure of control, be it the wall (see the disfigured spatiality of which in figure 12), the checkpoints, the blockade or, indeed, the very occupation itself. Legal terminology becomes just one more convenient way in which the transfer of land is continued by other means.

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146 Weizmann Hollow Land, pp. 97
Figure 11. Settlements in the West Bank 2001, source: Jeff Halper
Figure 12. West Bank wall 2006, source: PASSIA
Legal measures can be tolerated if they are temporary. This has been the dogma of successive Israeli governments in their appeals to requisition land for the purpose of building the separation barrier – a ‘temporary security measure’. Yet the wall is but the most extreme manifestation of a repertoire of security measures that have swept the occupied territories over the last decades. Checkpoints, curfews, I-D checks, imprisonment and the prohibition of travel are just some of the mechanisms Israel has employed in the name of security \(^{147}\). Again, none of these measures, including the wall, are \emph{prima facie} illegal according to the government of Israel. Yet both Israel’s HCJ and the International Court of Justice (ICJ) have ruled that some features of the wall are in fact in breach of the law. Israel’s HJC has issued orders to re-route the wall on four separate occasions, stating that the ‘security needs’ are not proportional to the adverse effects on Palestinian livelihoods. One might read the rulings of the HCJ and the ICJ as humanitarian concessions; legal spanners in the works of an encroaching frontier geography. But are they really so humanitarian in their intent and effect? The court rulings coupled with the government and military actions of re-routing the wall detract from the fact that above all else, the wall is still being constructed. The principle of separation embodied by the wall is left unscathed by the idea that its architects are compassionately taking into account the lives of Palestinians by re-routing a tiny section here or there. But as Eyal Weizmann is careful to point out, by amending segments of the route and balancing human-rights against security concerns, the HJC effectively \emph{participated in the design of the wall}. The wall is only ever diverted, never stopped and in this sense the courts become one of the wall’s many architects.

The adoption of the language of international law by Israel signals a key, contradictory moment in Israel’s approach to occupation. First, Israel argues that the West Bank and Gaza are not occupied territories, and then the state’s attorneys justify Israel’s actions that restrict the rights of Palestinians

\(^{147}\) For brilliant accounts of life under occupation see Saree Makdisi \emph{Palestine Inside Out} (2008), New York: Norton and; Sara Roy \emph{Failing Peace} (2005) London: Pluto Press
in those territories on the basis of the law of occupation. The HCJ denied the applicability of the Fourth Geneva Convention and then decided to adopt the language inscribed therein to demonstrate the ways in which Israel’s actions as ‘belligerent occupier’ is lawful and legitimate. And now the Supreme Court claims to apply the convention’s humanitarian provisions on the basis of the “willingness of the state – rather than its legal obligation”. The legal preparation of occupation has, in many ways been the prerequisite to the more recent legal preparation of the battlefield. As early as the 1960s, the military advocate general (MAG) and the chief justice of the Israeli Supreme Court had designed a legal framework within which the IDF were to exercise their power as an occupier. Indeed by 1967 there was a “cadre of trained military lawyers accompanying the forces”. The objective according to chief Justice Meir Shamgar was to guarantee respect for the legal rights of the population in the occupied territory. To achieve such respect a legal transparency mechanism was put into place whereby IFD actions were made subject to judicial review. Palestinians were permitted to appeal to the highest judicial authority in Israel, the High Court of Justice. Today they retain that right. Yet what that translates to is ever open to interpretation.

Over 99% of Palestinian petitions to the court have been rejected.

Examples such as these demonstrate that Israel’s relationship with law, and specifically international law is more complex than we might have first thought. It remains true that Israel has broken successive U.N. Resolutions, be they pertaining to the wall, settlement, the annexation of land

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149 Quoted in ibid., pp. 44
150 Ibid., pp. 44
152 Ben-Naftali et al. Fabric of Law, pp. 46
beyond the designated borders of “area A” or the denial of self-determination to Palestinians (figure 13). Yet right from the start Israel has understood the importance of law for achieving its goals, and over the years has developed a sophisticated understanding of the rhetorical force that law carries. Israel never only breaks the law. It is more accurate to say that Israel has come very close to breaking the law, more than occasionally over-stepping the boundaries of the legitimate. But whether or not Israel has broken the law or not remains only ever part of the historical question. At precisely the point where Israel approaches the border of the legitimate/illegitimate we witness the figure of the lawyer and the space of the court, or as David Kennedy puts it, “The lawyer who carries the briefcase of rules and restrictions has long been replaced by military lawyers who participate in discussions of strategy and tactics”\textsuperscript{153}. It is not about breaking the law, but working away at it, contesting its borders. Of course, we cannot reduce the whole corpus of domestic and international law to a mere tool of the Israeli state; but what we can do is unearth the many ways in which law has been instrumentalised by the state.

\begin{table}[h]
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\begin{tabular}{|l|}
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UN Resolutions Against Israel, 1955-1992\textsuperscript{154} \\
\hline
1. Resolution 106: "...‘condemns’ Israel for Gaza raid"
2. Resolution 111: "...‘condemns’ Israel for raid on Syria that killed fifty-six people"
3. Resolution 127: "...‘recommends’ Israel suspend its ‘no-man’s zone’ in Jerusalem"
4. Resolution 162: "...‘urges’ Israel to comply with UN decisions"
5. Resolution 171: "...determines flagrant violations’ by Israel in its attack on Syria"
6. Resolution 228: "...‘censures’ Israel for its attack on Samu in the West Bank, then under Jordanian control"
7. Resolution 237: "...‘urges’ Israel to allow return of new 1967 Palestinian refugees"
8. Resolution 248: "...‘condemns’ Israel for its massive attack on Karameh in Jordan"
9. Resolution 250: "...‘calls’ on Israel to refrain from holding military parade in Jerusalem"Resolution 251: "...‘deeply deplores’ Israeli military parade in Jerusalem in defiance of Resolution 250"
10. Resolution 252: "...‘declares invalid’ Israel’s acts to unify Jerusalem as Jewish capital"
11. Resolution 256: "...‘condemns’ Israeli raids on Jordan as ‘flagrant violation’"
12. Resolution 259: "...‘deplores’ Israel’s refusal to accept UN mission to probe occupation"
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\end{tabular}
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\textsuperscript{153} Kennedy War and Law, pp. 170
\textsuperscript{154} From: pp. 192-4 Paul Findley Diliberate Deceptions (1995), New York: Amer Educational Trust
13. Resolution 262: "...‘condemns’ Israel for attack on Beirut airport"
14. Resolution 265: "...‘condemns’ Israel for air attacks for Salt in Jordan"
15. Resolution 267: "...‘censures’ Israel for administrative acts to change the status of Jerusalem"
16. Resolution 270: "...‘condemns’ Israel for air attacks on villages in southern Lebanon"
17. Resolution 271: "...‘condemns’ Israel’s failure to obey UN resolutions on Jerusalem"
18. Resolution 279: "...‘demands’ withdrawal of Israeli forces from Lebanon"
19. Resolution 280: "...‘condemns’ Israel’s attacks against Lebanon"
20. Resolution 285: "...‘demands’ immediate Israeli withdrawal from Lebanon"
21. Resolution 298: "...‘deplores’ Israel’s changing of the status of Jerusalem"
22. Resolution 313: "...‘demands’ that Israel stop attacks against Lebanon"
23. Resolution 316: "...‘condemns’ Israel for repeated attacks on Lebanon"
24. Resolution 317: "...‘deplores’ Israel’s refusal to release Arabs abducted in Lebanon"
25. Resolution 332: "...‘condemns’ Israel’s repeated attacks against Lebanon"
26. Resolution 337: "...‘condemns’ Israel for violating Lebanon’s sovereignty"
27. Resolution 347: "...‘condemns’ Israeli attacks on Lebanon"
28. Resolution 425: "...‘calls’ on Israel to withdraw its forces from Lebanon"
29. Resolution 427: "...‘calls’ on Israel to complete its withdrawal from Lebanon"
30. Resolution 465: "...‘deplores’ Israel’s settlements and asks all member states not to assist Israel’s settlements program"
31. Resolution 467: "...‘strongly deplores’ Israel’s military intervention in Lebanon"
32. Resolution 468: "...‘calls’ on Israel to rescind illegal expulsions of two Palestinian mayors and a judge and to facilitate their return"
33. Resolution 471: "...‘expresses deep concern’ at Israel’s failure to abide by the Fourth Geneva Convention"
34. Resolution 476: "...‘reiterates’ that Israel’s claims to Jerusalem are ‘null and void’"
35. Resolution 484: "...‘declares it imperative’ that Israel re-admit two deported Palestinian mayors"
36. Resolution 497: "...‘calls’ on Israel to withdraw and return its forces forthwith and unconditionally from Lebanon"
37. Resolution 498: "...‘calls’ on Israel to rescind illegal expulsions of two Palestinian mayors and a judge and to facilitate their return"
38. Resolution 487: "...‘demands’ that Israel lift its siege of Beirut and allow food supplies to be brought in"
48. Resolution 517: "...‘censures’ Israel for failing to obey UN resolutions and demands that Israel withdraw its forces from Lebanon"
49. Resolution 518: "...‘demands’ that Israel cooperate fully with UN forces in Lebanon"
50. Resolution 520: "...‘condemns’ Israel’s attack into West Beirut"
51. Resolution 573: "...‘condemns’ Israel ‘vigorously’ for bombing Tunisia in attack on PLO headquarters
52. Resolution 587: "...‘takes note’ of previous calls on Israel to withdraw its forces from Lebanon and urges all parties to withdraw"
53. Resolution 592: "...‘strongly deplores’ the killing of Palestinian students at Bir Zeit University by Israeli troops"
54. Resolution 605: "...‘strongly deplores’ Israel’s policies and practices denying the human rights of Palestinians
55. Resolution 607: "...‘calls’ on Israel not to deport Palestinians and strongly requests it to abide by the Fourth Geneva Convention
56. Resolution 608: "...‘deeply regrets’ that Israel has defied the United Nations and deported Palestinian civilians"
57. Resolution 636: "...‘deeply regrets’ Israeli deportation of Palestinian civilians
58. Resolution 641: "...‘deplores’ Israel’s continuing deportation of Palestinians
59. Resolution 672: "...‘condemns’ Israel for violence against Palestinians at the Haram al-Sharif/Temple Mount
60. Resolution 673: "...‘deplores’ Israel’s refusal to cooperate with the United Nations
61. Resolution 681: "...‘deplores’ Israel’s resumption of the deportation of Palestinians
62. Resolution 694: "...‘deplores’ Israel’s deportation of Palestinians and calls on it to ensure their safe and immediate return
63. Resolution 726: "...‘strongly condemns’ Israel’s deportation of Palestinians
64. Resolution 799: "...‘strongly condemns’ Israel’s deportation of 413 Palestinians and calls for their immediate return.

Figure 13. UN resolutions against Israel, 1955-1992, source Paul Findley

Although the move to adopt the language of international law is not entirely new, I suspect that today it takes on ever more dangerous forms. Where once we might have been able to easily condemn Israel for not abiding by the Geneva Conventions, or for building its first settlements outside of the newly defined U.N. borders, today we are met not with the facile argument that “the law does not apply” (which amounts to a rejection of the law). Rather, Israel’s army of juridical lawyers-cum-soldiers take us into a zone of indistinction where contingency of the law is the rule: It does and does not apply. Certain contexts require exemption while others demand rigid application and the full force of law. This is the language of ‘military necessity’, where absolutes melt into
contextual interpretations. Awkward questions about wrong and right, legal or illegal are met with balanced responses: death is talked about in relational terms of ‘proportionality’ and ‘distinction’; human rights are balanced against ‘security considerations’ and excessive violence is negated by ‘due-restraint’ and ‘adequate planning’.

This is the state of things today which is why I have repeatedly insisted on differentiating between breaking the law and bending the law. If Israel’s relationship with law over time reveals anything, it is that law has about it a certain ‘elastic limit’ that is easily stretched and contorted. Law is constantly rewritten and updated. ‘And necessarily so’ we are told by the proponents of what are being heralded as the “new wars”. Israel has – and continues – to participate in this re-writing, realising that law often imitates practice; what is prohibited today, might, if reiterated, be lawful tomorrow. We must resist the temptation to think that the ever-expanding scope of law is always a good thing. When we read the history of the ways in which Israel has utilized law to its own ends, we see that law becomes a means to – and a means of – violence. The expanding elastic limits are, probably nearly always, something we must treat with militant scepticism. The “Anarchic geography of the frontier” is a dangerous place to dwell.

2.2. Memories of Lebanon

In the following chapter I detail the extensive measures Israel took to give Gaza a wash of legality, but before I get there it is worth looking back to the 2006 Lebanon War. Israel’s obsession with law

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155 On the remarkable capability of militaries to adopt and put into practice post-modern/post-structural understandings of war see Eyal Weizmann’s stunning essay ‘Urban warfare: walking through walls’ in Hollow Land, pps. 185-220
158 Eyal Weizmann Hollow Land, pp 7.
has its roots in the memory and failures of Lebanon. In Gaza Israel wanted to avoid the accusations of crimes that had plagued them in 2006 and so tried to conduct their planning and execution of the attack in such a way that would not invite criminal investigation. But Lebanon is instructive for another reason. The failures in Lebanon also help to explain why Israel went to such extraordinary efforts to manage the ‘image’ of the assault on Gaza. In September 2006, just one month after the war had finished, the Israeli government commissioned an enquiry to investigate the events of the war in a bid to ‘learn lessons’ from what may have gone wrong. The following September, the Winograd Commission (named after its primary author Eliyahu Winograd) released a report recommending that Israel organise an information and propaganda unit to coordinate public relations across a wide spectrum of activities, including traditional and new media and diplomacy.

From the lessons of Lebanon the links between the legal and the visual become perceptible. War is not won through brute force. But neither is it won through sophisticated PR campaigns alone. In Lebanon Israel learnt that it would have to fight on multiple fronts and this would mean putting into operation not only a military and PR apparatus but also a legal-visual one that is capable of making legal and rhetorical claims in a broader battle for legitimacy. We saw this new apparatus in its full force for the first time in Gaza just two years later.

For most Israelis the 2006 Lebanon war against Hezbollah was a disaster. As the war began, the big Israeli newspapers handed out bumper stickers for cars reading “Israel is Strong!!” and “We’ll Win”. It is as if Israeli’s had to be reassured that they would prevail. On the opening day of the war, following the successful bombing of Hezbollah’s long-range Zelal rockets, Israeli chief of Staff

159 Only one chapter of which, Chapter 14 ‘The conduct of Israel in international law’, is available in English: http://www.adh-geneva.ch/RULAC/pdf_state/Winograd-report-chap-14-1-.pdf
161 Pp. Vii Amos Harel and Avi Issacharoff 34 Days: Israel, Hezbollah and the war in Lebanon (2008), New York: Palgrave
Dan Halutz proclaimed “We’ve won the war”\textsuperscript{162}. This was the same man who also promised to “turn Lebanon’s clock back twenty years”\textsuperscript{163}. But just 34 days later, when the war was over, many drivers scratched off their stickers, their hopes dashed and moral destroyed. Israel sustained 116 military casualties and nearly 50 civilian losses\textsuperscript{164}. Over 4000 rockets bombarded northern Israel and Hezbollah retained their bombing capacity well after the war had come to an end. I am certainly not about to go into the multiple failures on Israel’s behalf. What interests me are the consequences of these failures and what they might have meant for Gaza.

Commentators like Antony Cordesman tell us that many lessons should be learnt from the war, but two in-particular are relevant to Gaza. In late July Israeli forces killed a number of civilians in Qana. Prime Minister Ehud Olmert later told the Winograd Commission: “The fact is, if Qana hadn’t happened, there is good reason to believe that we would have been in a very good position to complete the process [i.e. to end the war]”\textsuperscript{165}. The implications of his words are instructive. Qana has symbolic importance because Israeli shells killed many civilians there ten years before in a similar incident. The new deaths created a furore, and Prime Minister Fouad Siniora of Lebanon had to ask US Secretary of State Condoleezza Rice to cancel her diplomatic visit to Beirut\textsuperscript{166}. The war became a disaster from this point unto the end. The first lesson that the incident symbolises is a military-legal one; Israel cannot just kill civilians (over 500 of them in total) and escape further repercussions. The next war should avoid unnecessary civilian casualties. The second lesson is that Israel should be

\textsuperscript{162} Quoted on pp. 172 Patrick Porter ‘Hizballa, Israel and the 2006 ‘July War’: The Divine Victory’ (pp. 171-190) in his \textit{Military Orientalism: Eastern War through Western Eyes}, (2009), London: Hurst
\textsuperscript{163} CNN ‘Israel authorizes ‘severe’ response to abductions’, July 13 2006, no longer available online
\textsuperscript{164} Porter \textit{Military Orientalism} pp. 173
\textsuperscript{166} Ibid.
more careful to manage the perception of war, making sure that when ‘unfortunate but necessary’ incidents such as this do occur, they do not become detrimental to the military’s fighting efforts. The second lesson is convenient because it partially negates lesson one; if one can construe civilian deaths as something else (or hide them completely) one can still kill civilians.

Israel sustained not just corporeal injuries but injuries to its image and perception. Because the results of the war were inconclusive (there were no clear ‘winners’ and ‘losers’), the battle over image became central. All the same allegations that were levelled at Israel over Lebanon, especially the charge that the attack was disproportionate, were later to be repeated in relation to Gaza. Porter notes that the war shattered the mystique of Israel’s military. Tim Stevens adds that Israel suffered a “significant loss in the sphere of public relations and propaganda”. According to these accounts, Israel underestimated the extent to which Hezbollah was able to “shape the image of the war” and as a result Hezbollah succeeded in launching a media campaign “principally intended to portray Hezbollah as freedom fighters and Israel as murderers of civilians”. When Hezbollah declared the war a ‘divine victory’, Israel’s self-image as well as its international reputation had sunk to an all time low.

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167 The findings of the Winograd Commission display this blase attitude: “The Second Lebanon War caused severe damage in loss of life, dislocation of people from their homes and vast destruction, in both states. The Government of Israel expressed sorrow for the harm inflicted on the citizens of Lebanon and we share this sorrow. However, such damage occurs in war”, pp. 3 in ‘Chapter Fourteen: The Conduct of Israel in Light of International Law’ [Trans. ICRC, non-official], http://www.adh-geneva.ch/RULAC/pdf_state/Winograd-report-chap-14-1.pdf
169 Porter, Military Orientalism, pp. 173
170 Stevens Cyberspace, pp. 3.
Israel faced an enemy that fought on two fronts: on the battlefield and in the field of perception. In the latter space Hezbollah are said to have been the victors. Israel’s so-called Electronic Information (EI) warfare attempts at taking down the enemy’s news and radio channels had failed. Hezbollah remained in contact with its ground troops. Television stations such as al-Manar continued to broadcast propaganda and endless streams of speeches by Hezbollah leader Shaikh Hassan Hasrallah. Hezbollah effectively controlled the mass media, and a torrent of images with a critical take on Israel actions were published during the war. But most crucially, Lebanon’s suffering found a sympathetic ear in the international press; even if some of the war’s most iconic images were allegedly doctored or staged. Porter claims that Hezbollah also “benefited from well-placed shapers of opinion, predisposed to reinforce their message” and while this itself sounds like Israeli hasbara (propaganda), he supports the claim with one or two anecdotes, one of which involved Hezbollah hiring Beirut advertising agency ‘Idea Creation’ to market their message. In a particularly memorable image, Hezbollah erected big red signs in front of destroyed buildings that read ‘Made in USA. The Divine Victory’ (figure 14). Such images were powerful, and written purposefully in English, they made their way to international audiences via distributors as prominent as Life.

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171 Supra note. 66, according to the Winograd Commission, Lebanon, “was the most widely filmed and media-covered war the state (and perhaps the entire world) has known; this refers not only to the coverage of the war, but also to the intensive and focused use of the media during the war”. Although again this is probably overstated, it does demonstrate that Israel has become sensitive to media representations.

172 There is a seemingly endless stream of blogs about the forgery of images during and after the war. How much truth is in them it is difficult to say, but ‘zombietime’, in his/her ‘a taxonomy of fraud’ documents at least some cases where photo captions were incorrect or images had been edited. Most of the examples s/he condemns to fraudulent status seem perfectly legitimate and it is clear that there is at least as many faux claims and accusations as there were faux images. See: http://zombietime.com/reuters_photo_fraud/

173 Porter Military Orientalism, pp 187. See also Kevin Peraino ‘Winning the hearts and minds: the new war in Lebanon is a propaganda battle, and Hizballa is coming out on top. Some tips from a master’, Newsweek, October 2 2006, at: http://www.msnbc.msn.com/id/14973492/site/newsweek/
If Hezbollah were successful in portraying their own narrative, then in the realm of media strategy Israel's attempts were ultimately poorly managed and unproductive\(^\text{174}\). Just one example of their failure was the so-called ‘psy-ops’ (psychological operations). Seventeen million leaflets were purportedly dropped over the skies of southern Lebanon (figure 15), not all of them the traditional warnings of imminent bombardment (more on this later). The leaflets were propaganda exercises, some of them depicting the head of Sheik Nasrallah as a snake or a puppet (figure 15). In addition, text messages and phone calls were made, urging local residents to abandon Hezbollah and blaming them for the current violence (figure 16). These messages were designed to undermine the support base for Hezbollah, but as Porter has noted they were rather naive in their aim and intent. Indeed,

without explicitly acknowledging the irony of it all he reminds us “Although powers conducting bombing raids may wish to coerce a population psychologically and politically into rejecting its own government...civilians historically have perceived the bomber as the prime aggressor”\textsuperscript{175}. Another lesson learnt perhaps?

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{Figure_15.png}
\caption{Leaflet dropped over the skies of Southern Lebanon depicting Sheik Nashrallah as a snake, source: Psywar.org}
\end{figure}

\textsuperscript{175} Porter, \textit{Military Orientalism}, pp. 186
The accumulation of failures has necessitated the attitude that, as Lt. Gen. Dan Halutz admonished: “We must read the picture and learn our lessons.” Israel made sure that as Gaza loomed it would be more prepared. Evidence suggests that both military and propaganda preparation began over six months before the first bombs were dropped. I explore the question of how successful Israel was in ‘learning its lessons’ later on, but for now I wish only to have set the backdrop of Lebanon against which Gaza took place.

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Chapter 3. Language of Law

3.1. Goldstone and the humanitarians

On 3 April 2009, the U.N. Human Rights Council established the U.N. Fact Finding Mission on the Gaza Conflict with the mandate “to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza”. On September 15th 2009 the findings were presented in a 575-page report entitled: ‘Human Rights in Palestine and other Occupied Arab Territories: Report of the United Nations Fact-Finding Mission on the Gaza Conflict’. The report quickly became known as the Goldstone Report.

The Mission convened for the first time in Geneva between 4 and 8 May 2009. Fieldwork was carried out in the Gaza Strip and several staff of the Mission’s secretariat were deployed in Gaza during the investigation. Public hearings were held in Gaza (June 2009) and in Geneva (July 2009). The Mission met with Palestinian Authority officials, but expressed no desire or evidence of talking with Hamas officials. The Mission was unable to visit Israel as part of the investigation as Israel refused to cooperate with it. Access to Gaza was granted by Egypt via the Rafah crossing. Information-gathering methods included: the review of reports from different sources; interviews with victims, witnesses and other persons having relevant information; site visits to specific locations in Gaza where incidents had occurred; the analysis of video and photographic images, including satellite imagery; the review of medical reports about injuries to victims; forensic analysis of weapons and ammunition remnants collected at incident sites; meetings with a variety of interlocutors;

178 The Goldstone Report, pp. 13
invitations to provide information relating to the Mission’s investigation requirements; the wide circulation of a public call for written submissions; public hearings in Gaza and in Geneva. The investigation conducted 188 individual interviews and reviewed more than 300 reports, submissions and other documentation, amounting to more than 10,000 pages, over 30 videos and 1,200 photographs.\(^{179}\)

International jurisprudence makes a distinction between laws governing the resort to force (\textit{jus ad bellum}) and laws regulating conduct in war (\textit{jus in bello}). The Mission was mandated to investigate only the latter, re-affirming the primacy of Israel’s right to self defence.\(^{180}\) It focuses on the incidents brought before it that may have constituted violations of both human rights and international humanitarian law. The crux of the report is organized according to geographical region: Gaza\(^{181}\), the West Bank (including East Jerusalem)\(^{182}\) and Israel\(^{183}\). The report is not exhaustive in documenting all of the incidents that occurred during the period of its mandate. It focuses on 36 incidents which, it claims, are “illustrative of the main patterns of violations”\(^{184}\). Each of these incidents are investigated under categorized violations. For example, under ‘Attacks on the foundations of civilian life in Gaza’, the report investigates the destruction of a flour mill; chicken farms; water and sewage instillations; and housing. In another chapter ‘The use of certain weapons’, Israel’s alleged use of white phosphorous, flechette and depleted and non-depleted uranium are investigated\(^{185}\). Each chapter presents the cases of each incident and couples them with a ‘factual’ and ‘legal’ analysis. In each of the cases, the report considers the factual findings alongside Israel’s stated military objectives.

\(^{179}\) Ibid. pp 7-9
\(^{180}\) For a critique of the Mandate see chapter 5
\(^{181}\) \textit{The Goldstone Report}, pp. 82-291
\(^{182}\) Ibid., pp. 292-344
\(^{183}\) Ibid., pp. 346-379
\(^{184}\) Ibid., pp. 14
\(^{185}\) For an overview of the chapters and the individual cases investigated by The Mission, the report is available in full at: http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/docs/UNFFMGC_Report.PDF
and ‘operational necessities’ to reach factual and legal conclusions. The chapters focusing on incidents that took place during the assault are prefaced by a survey of the relevant and applicable law and a historical and contemporary contextualization of events. The penultimate section focuses on ‘accountability and judicial remedies’, discussing both Palestinian and Israeli investigations; the question of universal jurisdiction; and reparations. The findings are summarized in a final chapter that provides both conclusions and recommendations.

The most important legal findings relating to Gaza\textsuperscript{186} are summarized below.

1. **Precautions in launching attacks**

   The Mission finds that in a number of cases Israel failed to take feasible precautions required by customary law reflected in article 57 (2) (a) (ii) of Additional Protocol I to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects.

   The Mission finds that the different kinds of warnings issued by Israel in Gaza cannot be considered as sufficiently effective in the circumstances to comply with customary law as reflected in Additional Protocol I, article 57 (2) (c).

2. **Incidents involving the killing of civilians**

   The Mission found numerous instances of deliberate attacks on civilians and civilian objects (individuals, whole families, houses, mosques) in violation of the fundamental international humanitarian law principle of distinction, resulting in deaths and serious injuries. In these cases the Mission found that the protected status of civilians was not respected and the attacks were intentional, in clear violation of customary law reflected in article 51 (2) and 75 of Additional Protocol I, article 27 of the Fourth Geneva Convention.

   The Mission also concludes that Israel, by deliberately attacking police stations and killing large numbers of policemen (99 in the incidents investigated by the Mission) during the first minutes of the military operations, failed to respect the principle of proportionality between the military advantage anticipated by killing some policemen who might have been members of Palestinian armed groups and the loss of civilian life (the majority of policemen and members of the public present in the police stations or nearby during the attack).

\textsuperscript{186} Ibid., quoting directly from pp. 413-417
3. **Certain weapons used by the Israeli armed forces**

In relation to the weapons used by the Israeli armed forces during military operations, the Mission accepts that white phosphorous, flechettes and heavy metal (such as tungsten) are not currently proscribed under international law. Their use is, however, restricted or even prohibited in certain circumstances by virtue of the principles of proportionality and precautions necessary in the attack. Flechettes, as an area weapon, are particularly unsuitable for use in urban settings, while, in the Mission's view, the use of white phosphorous as an obscurant at least should be banned because of the number and variety of hazards that attach to the use of such a pyrophoric chemical.

4. **Treatment of Palestinians in the hands of the Israeli armed forces**

The Mission investigated several incidents in which the Israeli armed forces used local Palestinian residents to enter houses which might be booby-trapped or harbour enemy combatants (this practice, known in the West Bank as “neighbour procedure”, was called “Johnnie procedure” during the military operations in Gaza). The Mission found that the practice constitutes the use of human shields prohibited by international humanitarian law.

The questioning of Palestinian civilians under threat of death or injury to extract information about Hamas and Palestinian combatants and tunnels constitutes a violation of article 31 of the Fourth Geneva Convention, which prohibits physical or moral coercion against protected persons.

The Mission found that the Israeli armed forces in Gaza rounded up and detained large groups of persons protected under the Fourth Geneva Convention. The Mission finds that their detention cannot be justified either as detention of “unlawful combatants” or as internment of civilians for imperative reasons of security. The Mission considers that the severe beatings, constant humiliating and degrading treatment and detention in foul conditions allegedly suffered by individuals in the Gaza Strip under the control of the Israeli armed forces and in detention in Israel, constitute a failure to treat protected persons humanely in violation of article 27 of the Fourth Geneva Convention.

5. **Destruction of property**

The Mission finds that the attacks against the Palestinian Legislative Council building and the main prison in Gaza constituted deliberate attacks on civilian objects in violation of the rule of customary international humanitarian law whereby attacks must be strictly limited to military objectives. 1929. The Mission also finds that the Israeli armed forces unlawfully and wantonly attacked and destroyed without military necessity a number of food production or food processing objects and facilities (including mills, land and greenhouses), drinking-water installations, farms and animals in violation of the principle of distinction.
6. Impact of the blockade and the military operations on the Gaza population
The Mission concludes that the blockade policies implemented by Israel against the Gaza Strip, in particular the closure of or restrictions imposed on border crossings in the immediate period before the military operations, subjected the local population to extreme hardship and deprivations that amounted to a violation of Israel’s obligations as an occupying Power under the Fourth Geneva Convention.

Israel has violated its specific obligations under the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, including the rights to peace and security, free movement, livelihood and health.

7. Grave breaches of the Geneva Conventions and acts raising individual criminal responsibility under international criminal law
From the facts gathered, the Mission found that the following grave breaches of the Fourth Geneva Convention were committed by the Israeli armed forces in Gaza: wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health, and extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly. As grave breaches these acts give rise to individual criminal responsibility. The Mission notes that the use of human shields also constitutes a war crime under the Rome Statute of the International Criminal Court.

The Mission further considers that the series of acts that deprive Palestinians in the Gaza Strip of their means of subsistence, employment, housing and water, that deny their freedom of movement and their right to leave and enter their own country, that limit their rights to access a court of law and an effective remedy, could lead a competent court to find that the crime of persecution, a crime against humanity, has been committed.

These conclusions convey the breadth and scope of the investigation and demonstrate the condemnatory legal tone that runs throughout. The Goldstone Report was the most important document to have come out of the assault on Gaza. It is worth noting how clear-cut the conclusions of the report appear to be; actions refer to specific laws and articles, and in cases where they are breached, it is explicitly stated. The Geneva Conventions and the Additional Protocols are repeatedly invoked while crucial IHL principles are referred to: “distinction”; “proportionality”; “military advantage”; “feasible precaution”. The language is at times forceful and does not shy-away from accusing Israel of “deliberate attacks”; “severe beatings”; “wilful killing”; “causing great
suffering or serious injury to body or health”, all of which are “not justified by military necessity and carried out unlawfully and wantonly”\textsuperscript{187}. The conclusions on grave breaches are particularly significant and the report indicates that crimes against humanity may have been committed\textsuperscript{188}. Grave breaches and crimes against humanity constitute, in the hierarchy of international law, the worst crimes. Their superlatively abhorrent status imparts upon U.N. member states not a right but an\textit{obligation} to seek proper investigation and, if required, prosecution where such accusations are raised. It is significant then that the report uses this language.

On the first day of the assault on Gaza, U.N. Secretary General Ban Ki-moon's spokesmen issued a statement reiterating “Israel's obligation to uphold international humanitarian and human rights law." The statement specifically also noted that he "condemns \textit{excessive use of force} leading to the killing and injuring of civilians”\textsuperscript{189}. The sentiment re-emerged just over a week later, on January 9th 2009, when U.N. human rights official Navi Pillay made a statement to the BBC claiming that Israel may have committed war crimes. That day Israel had shelled a house where IDF troops had told approximately 110 civilians to take shelter. Pillay told the BBC that the incident “appears to have all the elements of war crimes”\textsuperscript{190}. French President Nicolas Sarkozy also condemned Israel's "disproportionate use of force," while demanding an end to rocket attacks on Israel. Brazil joined the chorus, criticizing Israel's "disproportionate response"\textsuperscript{191} and Hugo Chavez asked on Venezuelan

\textsuperscript{187} Ibid., pp. 17
\textsuperscript{188} Ibid. Pp. 26, 32, 284, 366, 421, 423
\textsuperscript{191} Dore Gold ‘Did Israel use “disproportionate force” in Gaza?’, \textit{Jerusalem Centre for Public Affairs}, vol. 8 (16), December 28 2008, http://www.jcpa.org/JCPA/Templates/ShowPage.asp?DBID=1&LNGID=1&TMID=111&FID=378&PID=0&IID=2808. It is worth noting the date of this piece, just one day after the assault began. Prefabricated arguments are deployed by Gold absolving Israel of any guilt even before events taken place. The answer to the question he poses in his disingenuous title, is, presumably not 'no they didn't', but 'no they won't'. Why? Because Hamas is the “aggressor” while Israel the victim “trying to defeat the aggression”.

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T.V. "How far will this barbarism go? [...] The president of Israel should be taken before an international court". Britain couldn’t muster the courage to use any such language but at least when Gordon Brown called the assault on Gaza a “dangerous moment” he tacitly admitted that bombs and armies do tend to cause harm.

If, following the U.N.’s lead, the international press were the first to popularize the possibility that Israeli aggression in Gaza was illegal then it was the international human rights and humanitarian community that gave credence and weight to the claim. In the weeks and months immediately following the war a series of reports was published by human rights groups, both internationally and in Israel and Palestine. There is considerable differences between the reports, not least in terms of their thematic focus: PCHR focus on “human shield” abuses; Human Rights Watch (HRW) focuses on civilians killed by drones and UAV’s; another PHCR report attends to the

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193 Quoted in Sheera Frenkel and Micheal Evans 'Israel reins fire on Gaza with phosphorous shells' The Times, January 5th 2009, http://www.timesonline.co.uk/tol/news/world/middle_east/article5447590.ece
gender-specific consequences of the assault; meanwhile, reports from Amnesty, B’Tselem and al-Mezan are more general. These reports, alongside public statements and press releases made by the human rights community were integral to the establishment of the U.N. Mission. The painstaking documentation of events, as witnessed by a number of groups ‘on the ground’ both during and immediately after the assault, was a prerequisite to such a serious investigation. The humanitarians were some of the first to make the accusation of war crimes and to put Israeli actions on the public record. These allegations then gained currency in global media outlets which in-turn informs publics that Israel may have committed crimes. Only once the possibility of crime is realised can an investigation take place, and in this sense the Goldstone Report is indebted to the foundational work of human rights/humanitarian groups.

**The terms of legal critique**

These reports, read independently and together, constitute an extensive legal offensive against Israeli actions, its rules of engagement and the methods of combat employed in Gaza. It is significant that all of these reports focus so acutely on questions surrounding the (il)legality of the assault; they are preoccupied with law and written in its lexicon. In their different ways each report frames its findings in terms of the law; references to IHL and the Geneva Conventions are made, legal evidence is presented and evaluated alongside the applicable laws:

“According to Article 147 of the Fourth Geneva Convention, “extensive destruction and appropriation


198 This might seem a simplistic rendering of the circulation of news and one might easily protest that more coverage does not equate with an increase in public understanding. Moreover, one might argue that many news outlets take the view that Israel did not – would not – commit war crimes and that, therefore, in such cases, more coverage actually decreases the level of public understanding. This much is true, but I would argue that any coverage of the assault, whether it denies or reaffirms war crimes charges, is still concerned with the possibility of war crimes. It is this very possibility which then makes any investigation possible.
of property, not justified by military necessity and carried out unlawfully and wantonly” is a grave breach of the Convention, and hence, a war crime. Direct attacks on civilian objects are war crimes;\(^{199}\)

“Intentionally launching a disproportionate attack is a war crime. Launching an indiscriminate attack resulting in loss of life or injury to civilians or damage to civilian objects is also a war crime. In addition, the extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly is a war crime;\(^{200}\)

Links are then drawn between these abstract laws and the ‘facts on the ground’ during the assault:

“During the offensive, Israeli Occupation Forces (IOF) deliberately targeted the water and sewage infrastructure; for example, water tanks and wells were damaged or destroyed, which in turn negatively affected the daily life of civilians in the Gaza Strip, violating their civil, political, economic, social and cultural rights. Over the course of the offensive, IOF violated numerous provisions of international humanitarian law, including articles 33 and 53 of the Fourth Geneva Convention related to the prohibition of collective punishment, and the protection of civilian property;\(^{201}\)

“In endangering the lives of civilian men, women and children through systematically using them as human shields, the IOF is committing crimes tantamount to war crimes and crimes against humanity according to IHL;\(^{202}\)

“It is evident that these crimes demand judicial redress. If the law is to be respected – if it is to prove capable of protecting civilian populations – it must be enforced; victims’ rights to the equal protection of the law and effective judicial remedy must be upheld. Those responsible for committing such crimes must be investigated, tried and prosecuted;\(^{203}\)

“The high number of people killed and injured during the operation, and particularly given that there were cases in which many civilians were killed in a single attack, necessitates an inquiry as to whether the military respected the principle of proportionality;\(^{204}\)

“Individuals who have committed violations of the laws of war with criminal intent—that is, intentionally or recklessly—are responsible for war crimes. The laws of war governing unmanned

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\(^{199}\) Amnesty 22 days, pp. 74

\(^{200}\) Ibid., pp. 93


\(^{202}\) al-Mezan Palestinian Civilians as Human Shields, pp.3

\(^{203}\) PCHR 23 Days of War, pp. 6

\(^{204}\) BT’Selem Guidelines for Investigation, pp. 7
aerial drones such as those used by the IDF treat them the same as other weapons systems. Military or civilian personnel found responsible for committing or ordering unlawful drone attacks should be disciplined or prosecuted as appropriate.”

These quotes are typical of many of the humanitarian reports on the assault on Gaza. It is no exaggeration to claim that the reports are overwhelmingly concerned with the question of whether Israel (and Hamas) committed war crimes. Establishing this fact is essential to understanding post-war discourses on Gaza given that the assault is understood principally through the frames of war-crimes and law. But exactly how are ‘war crimes’ determined? I have already alluded to ‘proportionality’ and ‘distinction’, the foundational principles of IHL, but it is worth teasing-out exactly what they mean, especially as the legal debate around Gaza – and war in general – revolves almost exclusively around them and their adjacent couplet, the civilian and the combatant.

The extracts from Goldstone and the humanitarian reports assume a distinction between a permissible target or object of violence, named as a combatant, and an impermissible target or object of violence, named as a civilian. The principles of distinction and proportionality are both designed to protect civilians not participating in hostilities, and also to protect civilian property. The principle of distinction states: “The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.”

In addition, under the Statute of the ICC, “intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities” constitutes a war crime. A second facet of the principle of distinction requires: “The parties to the conflict must at all times distinguish between civilian objects and military objectives.

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206 HRW Precisely Wrong, pp. 11
Attacks may only be directed against military objectives... The principle of proportionality states: “Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.” According to the International Committee of the Red Cross (ICRC), transgressions of these principles are impermissible because they are at once illegitimate and unlawful. They are illegitimate because the only “legitimate object” of war is to “weaken” the military forces of the enemy. They are unlawful because they violate the distinction of combatant and civilian, the “foundation on which the codification of the laws and customs of war rests.” Thus, the distinction of combatant and civilian determines the difference between impermissible and permissible, legitimate and illegitimate, lawful and unlawful acts of war. To be “identified as combatant or as civilian is to be privy to the rights, respect, and protection offered to each under IHL.” War crimes then amount to the forsaking of either one of these principles, although that forsaking may take many forms, as demonstrated by the multiple accusations made against Israel.

IHL and the above conversations about (il)legality have a certain allure. The principles and the whole corpus of IHL are a modern legal institutionalization – which began in 1899 and 1907 with the Hague Regulations – of a long-existing desire to limit and restrain destruction in war. Indeed, as Jocknick and Normand observe “War has long been limited largely by factors independent of the

209 Ibid., Vol. I, Rule 14, pp. 46
212 Ibid., pp. 162
law.” The factors they have in mind are economic efficiency and geo-political calculation but surely morality, ethics and religion – and Helen Kinsella shows me that we should add gender to this list – have played as much, if not a far greater, role in guiding war. The appeal to the law seems so obvious as to appear self-evident: law implies order and restraint; war epitomises the absence of both. If law is brought to war then the aspiration for a more ‘humane’ violence might just be realisable.

These are the assumptions that underpin the humanitarian responses to the Gaza assault. Their investigation of alleged crimes, the appeals for “justice” and the calls to prosecute all impart a belief and certain reliance upon the possibility of law to intervene in violence. Yet as I must now show, the relationship between law and violence is not so straightforward. I now turn to problematizing the relationship between law and violence. I begin this by examining the Israeli response and legal manoeuvres in relation to the above humanitarian claims before moving to a more abstract deconstruction and critique of the relationship.

3.2. **Israel’s legal assault: defensive and offensive**

Israel prides itself on having the “most moral army in the world” and so the legal onslaught spearheaded by Goldstone has been met with righteous indignation. Three interlinked manoeuvres characterise Israel’s response; an offence, a defence and a combination of the two.

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214 Ibid., they write “...gratuitous violence wastes resources, provokes retaliation, invites moral condemnation, and impeded post-war relations with the enemy nation”, pp 53-4.


216 On the 29th February 2010 the MFA submitted a report, ‘Gaza Operation Investigations: An Update’ to the U.N. Regarding the report, Defence Minister Ehud Barak reportedly said, “This report stresses that the IDF is like no other army, both from a moral standpoint as well as from a professional standpoint”. He is playing on a popular cultural reference to the IDF as being the “most moral army in the world”, see Gideon Levy ‘IDF ceased long ago being ‘most moral army in the world’ *Haaretz*, March 22 2009, http://www.haaretz.com/print-edition/opinion/idf-ceased-long-ago-being-most-moral-army-in-the-world-1.272619. But it is in-fact Professor Asa Kasher, the man responsible for drafting
Delegitimizing the ‘delegitimizers’

The 575-page Goldstone Report was published on September 15th 2009, and yet by the morning of September 17th Israel had already prepared its official response. But it was not the defence that many were expecting; Israel immediately launched an offensive. “Goldstone”, the Israeli Ministry of Foreign Affairs claimed, “presents a major challenge to democracies forced to act against terrorist groups”217; the report takes a “simplistic approach to the realities of armed conflict...place[ing] unrealistic and unworkable demands on any State”, the net effect of which “rewards the tactic of intimidation”. Deputy Foreign Minister Ayalon denounced it as “biased, not professional” while IMFA Director General Gal. claimed it went “beyond any conceivable sense of partiality”. The U.N. once again, according to Deputy Legal Advisor Taub, played “fast and loose with their sources”. Israel has not changed its position since these statements were made and on January 29 2010, Defence Minister Ehud Barak called the report "distorted, false, and irresponsible"218. Israel’s decision not to cooperate with the Mission is reaffirmed, according to Israeli Ambassador Aharon Leshno Yaar by the “politicization that has so deeply infected the Human Rights Council”219. Prime Minister Binyamin Netanyahu raised the ante by coining the phrase, the “Goldstone effect” – “Goldstone”, he said, is a “code word for an attempt to delegitimize Israel's right to self-defence”220. In the same

the IDF’s code of ethics who best captures the patriotic spirit of Israel’s militarized society. Following the assault on Gaza he recently told interviewer Shari Makover “We are the only army in the world in whose ethical code appear the values of human life and the purity of arms. Were it not for those two values, we would be at the same level as the armies of the other democratic countries, which is very high as well. There is no one better than us.”, Quoted in Shari Makover ‘The IDF's Ethical Code in Action - Asa Kasher: Yes, We're the Most Moral Army in the World’, Ma'ariv News [translated by Musa Budieiri], 30 September 2009, http://cosmos.ucc.ie/cs1064/jabowen/IPSC/articles/article0116765.html


219Quoted in a letter to Justice Goldstone, dated April 7th 2009. See The Goldstone Report pps. 436-7

speech, Netanyahu listed this ominous Goldstone effect as “one of Israel's most serious security challenges” alongside Iran’s nuclear programme, and Hamas rocket fire. He warned Israel to prepare “for a protracted struggle” against the report, and urged that the battle would be “legal and diplomatic”. "The delegitimization [of Israel] must be delegitimized" he concluded. The narrative of battle was pushed to its maximal military conclusion by none other than the head of Shin Bet (Israel’s domestic intelligence agency), Yuval Diskin. In a meeting between Diskin and President Mahmood Abbas of the Palestinian Authority, Diskin allegedly warned Abbas that if he did not request a delay in the vote to be taken on whether to refer the Goldstone Report to the U.N. Security Council, Israel would turn the West Bank into a “second Gaza”. All of this because of a “biased”, “unprofessional”, “ politicized” and “irresponsible” report? The Goldstone effect, one senses, cuts deep.

As well as the offensive assault on the Goldstone Report, Israel has pursued a more general strategy of discrediting those behind the report rather than dealing with the actual content of Goldstone or any of the other humanitarian reports. In this way, as Gideon Levy points out, Israel has gone after the messengers, not their messages: the researcher for Human Rights Watch is a Nazi, Breaking the Silence is a business, Amnesty International is anti-Semitic and Richard Goldstone should be barred from attending his grandson's bar mitzvah! (see below)

221 Ibid., see also Rory McCarty ‘Pressure mounts for Israel to hold Gaza war inquiry’ *Guardian*, February 3 2010, http://www.guardian.co.uk/world/2010/feb/03/israel-hold-gaza-inquiry-calls
Chinkin for signing her name to an open letter sent to the London Times which stated that “Israel's actions demonstrate aggression, not self-defence.” This made her biased, the IMFA claimed. Israel also shunned Marc Garlasco, the author of the impressive HRW report on drone and “precision” bombing. His crime was that he allegedly collects Nazi memorabilia. The disgracing continued with Breaking the Silence, the group who published testimonies of 30 IDF soldiers; Israel is currently exerting pressure on foreign Governments (mainly in Europe) to cut funding for the organization.

Since the Goldstone Report was published there has been a debate in Israel about whether Goldstone is an anti-Semite and in April 2010 it took a rather unpleasant twist. Following ‘talks’ with the South African Zionist Organization and Goldstone's local synagogue in his hometown of Sandton, Goldstone was dissuaded from attending his grandson’s bar mitzvah. Apparently local Jews were outraged at the prospect that a man who “has done so much wrong in the world” could attend the event. The bar mitzvah is considered an integral and symbolic religious and cultural event in Judaism and marks the passing of children (though mainly boys according to Orthodox Judaism) into adulthood. It is reported that on the evening of 16 April 2009 many Jewish people went to the synagogue knowing that their rabbis would address the issue of the Goldstone barring and their

226 IMFA Investigation
230 Town in South Africa
message was two-fold: Goldstone should not be barred, but nobody should forget that he is a traitor to the Jewish people. Rabbi Yossi Goldman\textsuperscript{232}, in a classic liberal tone later wrote “He may not be counted to a minyan [the quorum of ten Jewish men required for certain prayers], but if he wanted to sit in shul...I am not aware of anything preventing him from doing so”. He continued, “Now make no mistake. I am no fan of Richard Goldstone...From this very pulpit I said: “Judge Goldstone has betrayed not only Israel and the Jewish people. He has betrayed his own Bobba [grandmother]!”\textsuperscript{233}. A traitor. But the good liberal Jew must be seen to be liberal unto other Jews, even if they are traitors. When the outraged Jewish community choose to pressure Goldstone into not attending his grandson’s bar mitzvah, they appealed – precisely – to the very Jewishness which they simultaneously denied at the moment they claimed that his report on Israel meant that he was “a traitor to the Jewish people”\textsuperscript{234}. The echoes of anti-Semitism inherent in targeting Goldstone, in a place of Jewish worship, for being a traitorous Jew, obviously eluded the mainstream Jewish leaders.

\textbf{Defensive}

Yet it would be a mistake to characterise Israel’s response to Goldstone as only taking the form of, in the words of Gideon Levy, “cheap propaganda”. Israel's defamation strategies – shooting the messenger – have been coupled with a sophisticated assault upon the legal message itself. Israel has launched a formidable legal defence of its actions, together with point-by-point legal refutations of Goldstone’s key claims and accusations. The defence has taken multiple forms, switching between official state utterances and non-official reports, encompassing the written, the verbal and the

\textsuperscript{232} President of the South Africa Rabbinical Association, at Sydenham Shul in Johannesburg
\textsuperscript{234}
Visuality plays a pivotal role in the construction of Israel’s legal defence (and offense) of the assault on Gaza. To underscore this fact, the visual is the subject of a separate chapter (chapter 3). While the visual elements of Israel’s legal arguments are inseparable from the legal discourses I discuss here, their inclusion at this point would detract both from the central argument in this chapter and the significance of the visual per se.

From the beginning Israel has remained adamant that ‘Operation Cast-Lead’ was both legal and legitimate, seeking the latter through a discourse of the former. The very naming of the assault as a military ‘operation’ and its presentation as a technical exercise is itself a way legitimizing the assault. Israel has defended its position on the assault in toto and maintains that all Israeli actions were “in accordance with international law”236. Pre-empting the Goldstone Report by two months, the State of Israel’s IMFA released a 164 page report, ‘The Operation in Gaza: Factual and Legal Aspects’237. The title is not incidental; when we turn to the first page the purpose of the paper is laid bare: “The Paper has been prepared at this time in order to place the Gaza Operation in its proper factual and legal context”238. In this way, Israel is responding to the presumably fictional and improperly legal aspects which had been circulating around the time; the report seeks to set the record straight. It presents a “detailed legal analysis including a survey of the relevant legal principles and State practice”. All the bases are covered: the narrative begins, of course, with Hamas rocket fire which reasons and satisfies the jus ad bellum. The principles of distinction and proportionality are discussed and a ruling is reached on the means of violence, the jus in bello: “Israel’s resort to force in the Gaza Operation was
both a necessary and a proportionate response to Hamas’ attacks”. Israel has become its own judge. The contents page does a fair job of representing the general themes and conclusions of the whole paper. Under ‘THE USE OF FORCE’ chapter, part B deals with “Hamas Breaches of the Law of Armed Conflict and War Crimes” while part C focuses on the ‘IDF’s Conduct of the Operation and Procedures to Ensure Compliance with International Law’. These are not merely sub-headings, they represent powerful rhetorical and legal argumentation.

It is worth dwelling upon what Israel has to say about necessity, proportionality and distinction. These principles form the backbone of the IMFA report as well as most other accounts defending the legality of the Gaza assault. Legal analysis of these principles is overlaid with contextual interpretations and theoretical and real moral and legal scenarios and dilemmas. Although the report was written before Goldstone was published, the legal arguments (they are arguments, and not ‘facts’) are in direct conversation with the most important claims made against Israel. One immediately gets the sense that both Israel and its critics are speaking the same language. What is interesting is the way in which this language of law in all its technicality and detail is utilized to reach radically different conclusions. In Goldstone and the humanitarian critique the law appears to be black and white, delineating absolute prohibitions and separating the lawful from the unlawful. But reading through Israel's account, one gets the sense that things are a little different.

On the question of proportionality, the report points out “civilian deaths and damage to property, even when considerable, do not necessarily mean that violations of international law as such have occurred”. The report continues “In fact, the doctrine of “proportionality operates in scenarios in which incidental injury and collateral damage are the foreseeable, albeit undesired, result of attack on a

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239 Ibid., pp. 2  
240 Ibid., pp. 8
legitimate target.”241 Collateral is not just permitted, but to some extent expected, and quoting Kenneth Watkin, the Canadian Judge Advocate General, the report explains, “although civilians are not to be directly made the object of an attack, humanitarian law accepts that they may be killed or civilian property may be damaged as a result of an attack on a military objective.”242 Moreover, the report points out, “when individual attacks are legitimate, “the mere cumulation (sic)” of such instances, all of which are deemed to have been lawful, “cannot ipso facto be said to amount to a crime.”243 But then how exactly are the legal/illegal ‘proportions’ determined? To this Israel responds with the authority of the President of the International Court of Justice (ICJ) in The Hague, Rosalyn Higgins and her observation that proportionality "cannot be in relation to any specific prior injury - it has to be in relation to the overall legitimate objective of ending the aggression."244 Ex- Permanent Representative of Israel to the United Nations Dore Gold interprets this as signifying that Israel is “not required to calibrate its use of force precisely according to the size and range of the weaponry used against it (Israel is not expected to make Kassam rockets and lob them back into Gaza)”245. But this still does not answer the question of how proportionality is worked out. Moshe Halbertal, an Israeli Legal Professor co-authored the IDF’s Code of Ethics, the guide that the IDF use to instruct their behaviour and actions in war. But even he is confounded by the question: “I must admit that I do not know the formula for such a precise calculation, and I do not believe that a clear-cut numerical rule can be established. Different people have different intuitions about strategic value and moral cost.”246. It’s a judgement call, flexible and contingent; it depends.

241 Ibid., pp. 40
242 Ibid., pp. 35
243 Ibid., pp. 41
244 Ibid., pp. 27
245 Dore Gold, Disproportional force?
246 Halbertal Goldstone Illusion
On the question of distinction, Israel sets out the law with reference to the Additional Protocol I to which it is not a signatory: “[t]he civilian population as such, as well as individual civilians, shall not be the object of attack.” Less clear on what the Protocol is designed to protect, Israel knows what it does not protect:

1. [B]y definition, the principle of distinction does not forbid the targeting of combatants, nor the targeting of civilians who take a direct part in the hostilities;
2. [T]his principle addresses only deliberate targeting of civilians, not incidental harm to civilians in the course of striking at legitimate military objectives.
3. Direct participation in hostilities has been interpreted by Israel’s High Court of Justice as involving all persons that perform the function of combatants, including “a civilian bearing arms (openly or concealed) who is on his way to the place where he will use them against the army, at such place, or on his way back from it,” as well as “a person who collected intelligence on the army, whether on issues regarding the hostilities . . . or beyond those issues . . . ; a person who transports unlawful combatants to or from the place where the hostilities are taking place; a person who operates weapons which unlawful combatants use, or supervises their operation, or provides service to them, be the distance from the battlefield as it may
4. [M]ore broadly, the presence of civilians at a site (whether voluntarily or involuntarily) does not by itself forbid an attack on an otherwise legitimate military target.

The requirement of establishing intent is much more difficult than pointing out that civilians have been killed. Intent is an elusive concept: “The perspective is that of the commander in the field at the time of a targeting decision, with the information then available”. And in addition, of course, “Mistakes made in armed conflict do not, as such, constitute war crimes”. But for Alan Dershowitz all this is beside the point. He realises that intent is a slippery concept: “The only limitation international law places on a democracy is that its actions must satisfy the principle of proportionality”. Distinction disappears from view by virtue of the fact that Israel and other “democracies” would not, could not and do not ever intentionally attack civilians. ‘We’ fight wars

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247 IMFA Investigation, pp. 41
248 Ibid., pp. 41
where it has become unthinkable to intentionally target civilians; a moral code that ‘they’ – apparently – have yet to learn.

The legal discourse on proportionality, distinction and necessity deployed by Israel creates a powerful legalized backdrop against which Israeli actions can only be read as legal. When read together with the humanitarian critique however, some doubt is shed on the claims that Israel makes in relation to absolving itself. This brings us squarely back to the question: did Israel commit war crimes? Thus far, and after examining ‘both sides’, I am no clearer on this question. But the question elides the altogether more crucial issue that it is precisely through this dialogue that the law has come to resemble something fixed, final and definite. The humanitarian critique on the one side and the Israeli counter on the other side do not challenge the law, but rely on it absolutely and, as such it is not that one is right and one is wrong but far more worryingly that both are plausible.

**Offensive 2.0 and the production of legalities**

Thus far I have demonstrated the first two moments of Israel’s legal response. Now I detail the second resolutely legalistic offense. While the defensive moment just discussed relies on the stabilization and solidification of ‘facts’ and law in order to determine legality, the offensive is dependent upon the mystification and (re)production of law and empirics, not in order to determine legality but rather more artfully, to produce it. Rather than a distinct line between the legal and the illegal, a zone of indistinction is produced in Israel’s legal offensive. Central to the zone of indistinction is the shifting figure of the civilian. The question of what constitutes a civilian is of course not limited to Israel’s assault on Gaza but is an important issue in all wars.\(^{250}\) Israel goes to

\(^{250}\) For a discussion of the civilian see Egor Primoratz *Civilian Immunity in war* (2005), Oxford: Oxford University Press; Rockel & Halpern *Inventing Collateral Damage*
great lengths to place the civilian at the centre of its account. Never does Israel forsake the civilian, but holds it in the utmost regard. This is at least the case for the discursive civilian, the idea – or ideal – of the civilian, because as we shall see the civilian is not a given, but is an invention upon which much entrepreneurial work has been done. But as ever, respect for ‘real’ corporeal civilians can only ever follow the a priori question: what is a civilian? Israel’s positing of this question is tantamount to the legal production of the assault on Gaza. When war meets law around the question of the civilian all that is solid seems to melt into air. The final stage of Israel’s military-legal alchemists is to work with the grey area of law to produce new legal facts, or if you will, to turn back into solid all that had seemingly melted. The product? New legal truths; new ‘facts on the ground’.

Lawfulness is becoming ever more the measure of success and legitimacy of war. If this were not true, Israel would not have gone to such great lengths to defend and produce their assault as lawful. In late-modern war legitimacy has become even more paramount as ‘our’ armies now fight ‘asymmetrical’ wars whereby the enemy willingly and deliberately breaks the law in order to gain strategic advantage over ‘us’. In light of this, Major-General Charles Dunlap of the U.S. Military has signalled out the “need for professionals who not only know the law, but can apply it appropriately in [a]...unique context”251. More broadly, we are witnessing a shift toward the legal, with states becoming remarkably astute in launching a legal war alongside the bombs and bullets252. More than anything this means planning attacks in advance and planning them with the help of military lawyers. Indeed, as Dunlap notes, the role of legal professionals is fully institutionalized within the armed forces and the air force especially. The direct involvement of lawyers (or Judge Advocate General’s, JAG’s) in the planning and “execution” of targets is a relatively new phenomenon


252 See Maja Zehfuss Targeting: Precision and the production of ethics, European Journal of International Relations, vol. 20 (10): pp. 1-24; Morrissey, Bases, bodies and biopolitics
although they served in significant numbers in Korea and Vietnam and at a variety of overseas bases during the Cold War\textsuperscript{253}. Their role was marginal then, but the novelty today is the extent to which they are directly and intimately involved in multiple stages of military operations from planning through to the moment of ‘execution’. The lawyers work alongside the military, “legally conditioning” the battlefield to identify legitimate military targets. In the case of Israel, Eyal Weizman\textsuperscript{254} claims that the lawyers work amounts to “poring over target-maps and informing soldiers in what way they are entitled to kill civilians”. That is, as Ignatieff\textsuperscript{255} notes, “decision-makers [are supplied] with a critical guarantee of legal coverage, turning complex issues of morality into technical issues of legality”.

It is very difficult to get an accurate assessment or even to find much at all on the role of JAG’s in Israeli military affairs. We do however know they had an active role in Gaza, especially in the planning stages. Israel boasts that “many other countries do not have lawyers available and involved to the degree these countries [U.K; U.S.A.] and Israel do”\textsuperscript{256}. It is reported that during the war more lawyers were involved than at any other point in Israeli operations; in fact IDF Chief of Staff Gabi Ashkenazi issued an order requiring the IDF in the future, to consult more with the army’s legal advisers while military operations are underway\textsuperscript{257}. Israel prides itself on the two units, the International Law Division (ILD) and the Military Advocate General's corps (MAG) devoted to regulating military conduct. These divisions provide “legal advice in international and operational

\textsuperscript{253} Dunlap Revolution in military legal affairs,
\textsuperscript{254} Weizmann Lawfare
\textsuperscript{256} IMFA Investigation, pp.81
law.” This might include “examining the legality of planned targets, providing legal advice to commanders both in the field and during the planning stages of operations, and drafting operational orders and procedures.” But beyond these general statements the IDF says very little – perhaps understandably – about the relationship between the ILD, MAG and the military. The Ministry of Defence appoints the Military Advocate General (the head of MAG) at the recommendation of the IDF Chief of Staff; the MAG is effectively a unit of the IDF so they clearly have a close relationship. Yet we do not need to know the exact role of the lawyers and the MAG to witness the effects of their work. Remnants of their labour lay throughout Gaza’s ruined landscape.

One such remnant is this leaflet (Figure 17). This is the translation, given by the IMFA:

**Figure 17. Leaflet in Arabic disseminated by the IDF**

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259 IMFA Investigation, pp. 81
260 IDF Investigation: An Update pp. 4-5
To the residents of the Gaza Strip

The IDF will act against any movements and elements conducting terrorist activities against the residents of Israel. The IDF will hit and destroy any building or site containing ammunition and weapons. As of the publication of this announcement, anyone having ammunition and/or weapons in his home is risking his life and must leave the place for the safety of his own life and that of his family. You have been warned.

IDF Command

Thus read two and a half million leaflets distributed in the Gaza Strip during the assault. Alongside the leaflets, 165,000 phone calls were made asking civilians to evacuate their houses and premises and to “distance themselves from military targets”. The same warnings were issued in Lebanon in 2006. The IMFA explains that the telephone calls were placed directly, pre-recorded messages were left and a number of radio announcements were made. Israel also developed a technique known as “roof knocking” where “teaser bombs” – bombs without explosives – were used to scare the inhabitants into escaping from their home before it was destroyed completely with a live-explosive bomb. These are the so-called “technologies of warning” Israel deployed in order to “avoid or minimise the presence of civilians in areas and facilities used by Hamas”. Rather than asking why the IAF were dropping leaflets and not bombs, a perhaps more poignant line of inquiry would interrogate how the latter were legitimized by the dropping of the former.

Once leaflets are dropped anyone who remains is a legitimate military target: they can be killed with impunity because they remained, and legally speaking, if one remains, one is either a terrorist or is harbouring terrorists. As Eyal Weizman has cogently pointed out, one phone-call turns innocent

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261 IMFA Investigation, pp. 9
262 Ibid., pp. 3
263 Ibid; also The Goldstone Report pps.123-34
265 IMFA, Investigation, pp. 3
civilian “non-combatants” into “human shields”, who can thus be defined as “taking direct part in hostilities”. Those that “participate in hostilities” lose their rights as innocent civilians and take on the role of combatants; i.e. illegitimate targets become legitimate. But what about those who did not receive notification? What about the disabled, or those who are physically or mentally incapable of leaving? Why should they leave? Where should the refugees go? As one Israeli soldier who fought in Gaza recalled, “Most people did leave, but some civilians stayed to watch over the houses. Perhaps they had nowhere else to go. Later we saw people there who could not walk”.266

The technologies of warning seem to be more productive in evacuating the concept of the civilian rather than actually getting civilians out of the way of the bombs. The civilian is evacuated in that once the technologies are deployed there literally are no civilians left: As they read the last lines of the fateful leaflets they ceased to be civilian (if they ever were), at least in the eyes of the law. In this way, Israel’s technologies signal, once again, what Derek Gregory has called the ‘death of the civilian’267. But what is so arthful about the death of the civilian is that its realization no longer relies on any civilian deaths. Why? Only combatants are killed in today’s precision wars and, as Gregory points out, they don’t have any civilians! This is not some caricature: the death of the concept of the civilian has immense legal, rhetorical force: as one Israeli soldier commented: “we should kill everyone there [in the centre of Gaza]. Everyone there is a terrorist.”268 Precisely the same claim was made about Southern Lebanon in the 2006 invasion but the idea of the ‘abusive civilian’ is not restricted to Israel. If civilians die it is their own fault according American Amitai Etzioni who recently argued that the

266 Anon soldier, Testimony 1: pp. 7 in Breaking the Silence: Testimonies from Operation Cast Lead, Breaking the Silence, July 2009 http://www.shovrimshtika.org/oferet/index_e.asp; see also The Goldstone Report, pp. 19: the effectiveness of the warnings was “diminished by the fact that the city centres [the areas where fleeing Gazans were directed]... had been the subject of intense attacks during the air phase of the military operations”
killing of civilians would be “resolved... if the abusive civilians would stop their abusive practices and fight—if they must—according to established rules of war.”

The point of the technologies of warning, together with much of Israel’s legal apparatus designed to legally condition the battlefield is not to save civilian lives; it is to turn civilian lives into what Judith Butler has called the ‘spectrally human’ so that in-turn Israeli “military necessities” can be carried out unfettered by the constraints of law. This claim is supported by the fact that Israel repeated its leafleting campaign in Gaza having already deployed the same technologies to such disastrous effect in Southern Lebanon just two or three years earlier. If these technologies aim at preserving civilian life, they don’t do a very good job – even if we believe the IDF statistics. And yet none of this is surprising. The technologies of warning make little military sense. First, as Moshe Halbertal points out, the warnings are a “costly effort” to the IDF, both in terms of safety and economic cost. But more to the point, how could these warnings ever function to distinguish ‘combatants’ from ‘civilians’? Are the IDF really able to monitor every single evacuation, all 90,000 of them? Adi Ophir talks us through a scenario that is well worth considering:

Last week they [the IDF] "eliminated" a "major" figure in Hamas. The operation was closely observed by the attorney general, who approved every detail of it. They bombed that man's house despite the fact that they knew that many children and women lived there. The guy had 4 wives and 12 children. 2 of the wives and 11 children are dead now. They say that there was a lot of ammunition in the basement and that the international law of war permits such an operation. They also say that they gave the family a warning of a few minutes in which they could have left the house, but the fanatics insisted on staying. Within a few

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270 See chapter 1

271 The U.N. put the figure of people evacuating their homes at 60,000 and stated that a further 30,000 were living in U.N. schools and buildings, See Taghreed El-Khodary and Sabrina Tavernise ‘U.N. warns of refugee crisis in Gaza Strip’, NY Times, January 12 2009, http://www.nytimes.com/2009/01/13/world/middleeast/13mideast.html

minutes warning you can't get very far from the bombarded area anyway, and how could they eliminate that prominent figure if they really gave enough time to escape?

Precisely. If sufficient warnings are given then not only the “innocent” can escape but also the “terrorists” too. This basic military fact reveals that the reason for the technologies of warning might not after all be about saving civilians, but rather, forsaking them legally. Of course, the IDF would claim that they can distinguish between the terrorist and the civilian; they have a way of knowing when it is that a civilian escapes and when a non-civilian escapes. But how? Does this claim not contradict the primary excuse given as to why so many civilians died in Gaza. Is it not precisely the impossibility of distinguishing “terrorists” from “civilians” – targets from innocents – (that the IDF and its spokespeople have asserted time and again) that justify, legally and morally, the ‘accidental’ death of civilians? The IDF cannot have it both ways: on the one hand claims it that it can distinguish (and can therefore afford to warn everyone in Gaza of a forthcoming attack) and on the other it says that distinguishing is impossible because of the complexities and “crowded environments” of Gaza. The latter impossibility, we are told, explains why time and again the IDF shot Palestinian civilians who were trying to leave their homes to walk to a safer place, sometimes when they were waving white flags. Presumably the IDF couldn’t pick out the white flag, and presumably they cannot pick out the terrorists among the civilians.

But none of this is illegal per se. In the above scenario, the warning to the civilians is a sideshow; the real legal justification lies – literally – beneath the house, in the form of ammunition. Again, it isn’t the civilian at stake, but military requirement, and this is where the really artful part comes in:

“Now imagine the attorney general of the "Democratic Jewish State" asking the intelligence commander: how much ammunition? How many children? And then imagine how he calculates: "so much dynamite is enough to justify the death of one child and so many rockets - that of one woman." It is the same attorney general that gave legal authorization to the cutting of electricity and fuel supply to Gaza about a year ago. Then too he calculated. He wanted to make sure the hospitals could still operate before he gave his authorization for the new means of catastrophization of the region”

These questions have a cold utilitarian calculus, and such equations are repeated for every scenario and eventuality. Yet it would be wrong to assume that such questions are left solely to the attorney generals that Ophir writes of. Indeed, as he notes, the involvement of JAG’s became much less significant when the ground assault started (see timeline). Their involvement was hardly visible,

273 See for example the following logic in the IMFA Investigation into the events of the assault: “The IDF is examining how the unfortunate operational error occurred, in order to reinforce safeguards and to prevent its recurrence. Israel deeply regrets the tragic outcome. This is the kind of mistake that can occur during intensive fighting in a crowded environment”, pp. 141

274 Ibid.

275 See The Goldstone Report pp.159-168
exactly because it is “more difficult to inject legal considerations in the midst of a rolling attack on the ground” than from the air; decisions are “to be taken at the spur of the moment”\textsuperscript{276}. This is precisely why the warnings are so \textit{useful}. When the lawyer cannot be at the side of every soldier, the way is prepared for them \textit{in advance}. The soldier becomes the ultimate JAG: he knows that the civilians have been warned; he has had extensive training in IDF ethics; he has read the Code of Conduct and the Rules of Engagement; he has had scenario-based training and knows that mistakes as such do not constitute war crimes; they are all terrorists anyway and even the military Rabbi who briefed him before battle okayed it. The well-trained soldier internalizes the law at every turn; a whole legal apparatus surrounds him\textsuperscript{277}. Judith Butler noted that “The law is not that to which the state is subject nor that which distinguishes between lawful state action and unlawful, but is now expressly understood as an instrument, and instrumentality of power, one that can be applied and suspended at will”\textsuperscript{278}. Pulling the trigger is no longer about lawful or unlawful acts; it is about actively \textit{producing} law. Law and war embrace each other, practice imitates theory, theory feeds off practice and both expand according to what Weizmann has termed the “elastic limits” of the law. Daniel Reisner, former commander of Israel’s International Law Division attests to just how far the co-production of law-war has gone:

“The army says, "Here is a magic formula, is it within the bounds of what is possible? To which I will reply, I am ready to try to defend it, but I am not sure I will succeed. If it's white I will allow it, if it's black I will prohibit it, but in cases of grey I will be part of the dilemma: I do not stop at grey”\textsuperscript{279};

“If you do something for long enough, the world will accept it. The whole of international law is now based on the notion that an act that is forbidden today becomes permissible if executed by enough countries...After we bombed the reactor in Iraq, the Security Council

\textsuperscript{276} Ophir \textit{Reflections on Gaza}
\textsuperscript{277} For an overview of the legal apparatus and training procedures used to condition IDF soldiers see IMFA \textit{Investigation}, pp. 76-81; 107-113
\textsuperscript{278} Butler \textit{Precarious Life}, pp.83
\textsuperscript{279} Quoted in Yotam and Blau ‘Consent and Advice’, \textit{Haaretz}, February 5, 2009. The article has been removed from \textit{Haaretz Online} but can be found at: http://www.ifamericansknew.org/csr/consent.html
condemned Israel and claimed the attack was a violation of international law. The atmosphere was that Israel had committed a crime. Today everyone says it was preventive self-defense [sic]. International law progresses through violations. We invented the targeted assassination thesis and we had to push it. At first there were protrusions that made it hard to insert easily into the legal moulds. Eight years later it is in the center [sic] of the bounds of legitimacy”.

The legal apparatus, contra all the “disengagement” talk, has not disappeared from Gaza: it remains not just as a mechanism of authorization, but as a mechanism that authorizes the expansion of the authorization of violence. Bullets and bombs now come with a guarantee of legal authenticity: As one Assistant Staff Judge Advocate (at US Southern Command) phrased it: the basic JAG responsibility is to “keep military personnel from going to jail for doing the right thing”.

International law is an empowering language as one commanding officer attests: “Just don’t do anything you don’t feel is necessary, and defend yourself – don’t get killed out there.” The most moral army in the world always does the right thing, because might, combined with legal right, makes right.

But the IMFA cannot have it both ways. Either the IDF can distinguish between civilians and combatants, in which case they have a lot of civilian deaths to account for, or they cannot distinguish in which case the technologies of warning are exposed as a ruse which functions to legitimate what would otherwise be illegitimate. But the question of whether they do or do not work is perhaps beside the point. The technologies function to legitimate violence. Their deployment is a sideshow, a prequel to the real story of the bombs that are to follow. As the leaflets fell, they re-scripted Gaza as a terrorist entity, a geo-legal spacing with profound implications for those within its borders. Within that spectral space, law become an instrument of pure power; the lawyers and

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280 Quoted in ibid. Part of this quote was quoted originally by Weizmann *Lawfare*.
281 Quoted in Morrissey, *Bases, bodies and biopolitics*, pp. 17
282 Anon. quoted in Kennedy *War Law*, pp. 106
the soldiers are given the discretionary power to kill or not to kill. As such, Gaza becomes inhabited by the forsaken, those who are dubiously and unrecognisably human. This, of course makes them expendable: their death appears as something less than death, for the not-quite living cannot quite die. In light of this, Judith Butler has asked what work the category of the human is made to do; who is included and what frames of recognition are available to us in constructing this thing we call the ‘human’? We must now ask the same of the civilian, because as Butler has noted “dehumanization becomes the condition for the production of the human”285. In the very same way, the production of the civilian is dependent upon the expendability of the ‘non-civilian’ (the combatant). The civilian of course is not dead; great efforts have been made to keep her alive and intact. Why? Because the figure of the non-civilian is constituted by and through the civilian. Without the civilian, the combatant is nothing: they depend on one another. The category of the civilian is a prerequisite to the killing of the combatant in precisely the same manner as Israel’s appeal to ‘evacuate civilians’ from Gaza is at the same time an appeal to discursively construct Gaza’s whole population as a terroristic, and thus expendable body.

Killing turned humanitarian

Moshe Halbertal said that the technologies of warning were “costly”. The other thing he said about them was that they were an “admirable... effort to avoid collateral harm”286. It is one thing to claim that these technologies do not kill287, but it quite terrifying to see these reckless and violence-authorizing technologies scripted and framed by the language of humanitarianism. Israel selflessly drops leaflets for the benefit of their civilians; they go out of their way, endangering their own soldiers to

284 See Butler Precarious Life, pp. 83
285 Pp. 91 ibid. quoted in Bhungalia pp.350
286 Halbertal Goldstone Illusion
287 The method of using ‘small’ bombs to warn civilians of an imminent attack (“roof-knocking”) can hardly be claimed to be “safe”. 
save the helpless civilians of Gaza. It is a familiar script: the humanitarian corridor is always open; bedding alongside bombs; war for peace; war for democracy; surgical missiles; compassionate soldiers and (chemo)therapy for the invaded body. Again, this is what Costas Douzinas has called ‘military humanism’, the combination of humanism and military force. When violence is carried out in the name of the civilian, or equally, when bombs are dropped in the name of humanitarianism we might pause and wonder if it really is for their benefit. Senior ILD officer of the IDF faced the facts when he told Haaretz newspaper:

“The people who go into a house despite a warning do not have to be taken into account in terms of injury to civilians, because they are voluntary human shields. From the legal point of view, I do not have to show consideration for them. In the case of people who return to their home in order to protect it, they are taking part in the fighting“.

No consideration. This interpretation can hardly be said to restrict violence; the killing of civilians is brought into the realm of the legitimate and the IDF are given carte blanche to go on a killing spree. Could there not be, as Eyal Weizman has asked, a “direct relationship between the proliferation of warning and the proliferation of destruction”? Furthermore, what if the true face of international law is not the prohibition of violence but its proliferation? The discussion of Israel’s legal offensive has demonstrated that the laws of war are unstable and shifting. The non-fixed nature of the law lends itself to an instrumentalization by invested powers and the law is turned into a means of and a means to violence. At the point when and where law becomes a tactic of power it is severed from the binaries of lawful/unlawful wrong/right and begins to produce its own law and its own reality.

289 For a discussion of how the oncological metaphor is used to sanitize the space of Baghdad, cleansing the city of cancerous growths of insurgency see Derek Gregory ‘Seeing Red: Baghdad and the event-ful city’, Political Geography, vol. 29, (5): pp. 266-279
290 Costas Douzinas 2003 ‘Humanity, military humanism and the new moral order’ Economy and Society, vol 32 (2): pp. 159-183
291 The ILD figure remains unnamed in the Haaretz article
292 Feldman and Blau Consent and Advice
The production of a discourse of legality is at the same time a construction of a discourse of legitimacy, for the legal and the legitimate are not one and the same but they are closely related. What is seen to be legal tends to have legitimizing force. What is legitimate is also the morally good and so the law tactically produces not only its own legitimacy but also its own legal-moral hierarchy.

What does all this mean for using law to oppose war? If law participates in violence, indeed if law is violence, then what is to be made of the humanitarian critique of the assault on Gaza? How are the stable apprehensions of legal/illegal espoused by the humanitarian critique supposed to grapple with a law that has been severed from such binaries in the production of its own legality? It is to these questions that I return in the conclusion (Chapter 5). But before we consider the problems posed by the humanitarian shaking hands with the military, I explore the visual-legal dimensions of the assault on Gaza.
Chapter 4. Shooting Gaza: Visual War

Handicapped, the image is not sufficient in itself and requires visual and verbal support — a spokesperson to bring forth and to have it speak.

- Ariella Azoulay The civil contract of photography

The IDF is continuously monitoring the enemy—its troop movements, preparedness, equipment and intentions. Now the IDF must monitor the media in precisely the same manner.

- Nachman Shai Former IDF Spokesperson

There will no longer be anyone in the Arab world who can claim that Israel is weak...The images of the past two weeks have been etched in the collective consciousness for years to come

- Guy Bechor YNet News

Gaza’s visual fields

On November 4th 2008 Israel instituted a complete prohibition on the entry of foreign journalists into Gaza. The ban was not eased until after the fighting had stopped (sic) three weeks later when

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293 At: http://www.aperture.org/humanrights/azoulay.php
294 Ariella Azoulay The civil contract of photography (2008), London: Zone Books
295 Nachman Shai ‘The Spokesperson—In the Crossfire: A Decade of Israeli Defense Crises from an Official Spokesperson’s Perspective’, Discussion Paper D-29 July 1998, the Joan Shorenstein Center at Harvard University
297 I question the sharp boundary between war and peace. Although the 23-day assault was officially brought to a close with the declaration of ceasefire on January 18th, unofficially war, by many other means, goes on in the form of blockade and periodic bouts of violence. To declare an end to war is every bit as much strategic as it actually refers to a cessation of violence. See also Derek Gregory ‘War and peace’, Transactions IBG, vol. 35 (2009): pp. 154–186
Israel finally declared a ceasefire. Foreign press could not gain access to Gaza so the IDF stationed them beyond the ‘closed military zone’ two kilometres away from the action atop Parash Hill, a tourist spot above the Israeli town of Sderot (figure 18). But why would the IDF ban journalists from Gaza, and why did it allow them to cover the assault from a hilltop? If the aim was to stop sensitive and potentially damaging images from being seen then the ban failed miserably: Death and destruction were photographed and filmed extensively by the Palestinian journalists already in Gaza – and these images were published in the international press\textsuperscript{298}. Was Andrew Butters of \textit{Time Magazine} therefore right to claim that Israel’s decision to ban the media “backfired, because it... [gave] a monopoly of coverage to the more inflammatory reporting of Arab satellite television stations”\textsuperscript{299}? I argue not and pose the question: what if the aim was never to stop images from getting out? What if, as David Campbell\textsuperscript{300} has claimed, the aim was not about \textit{prohibiting} the circulation of images but rather \textit{permitting} the circulation of some while politicizing others as inevitably biased?

In her last book, \textit{Regarding the Pain of Others}, Susan Sontag\textsuperscript{301} drew attention to the long-standing relationship between photography and modern war. Sontag may not have been the first to suggest that modern war is waged with images but her work demonstrated that the connection has become definitive: If we are going to talk about war then we have to talk about the presentation and representation of war. Wars have always been shaped by their visual fields and in-turn visual fields are re-shaped by war. In this vein Judith Butler has claimed that “There is no way to separate, under present historical conditions, the material reality of war from those representational regimes through

\textsuperscript{298} Campbell \textit{Constructed Visibility}\\ 
\textsuperscript{299} Andrew Butters ‘Fighting the media war in Gaza’, \textit{Time}, January 14 2009, http://www.time.com/time/world/article/0,8599,1871487,00.html\\ 
\textsuperscript{300} David Campbell \textit{Constructed visibility}, pp. 10\\ 
\textsuperscript{301} Susan Sontag \textit{Regarding the Pain of Others} (2003), New York: Farrar, Straus & Giroux
which it operates and which rationalize its own operation.” Sontag was primarily concerned with photographs but today the visual fields of war are structured by new and multiple forms of visual media. Governments now have their own Youtube channels; key political and military figures have become Facebook and Twitter fanatics; embedded journalists are attached to militaries on the front lines and war can now be witnessed from the perspective of a missile as it whistles toward its victims. Only recently have scholars began to pay attention to the relationship between geopolitics and visuality. These new visual media mean that audiences are experiencing and witnessing war in complex and diversifying ways, but the turn toward the visual also produces and constitutes these audiences and publics in the process.

Today the visual frames and discourses of modern war are being recruited to mandate a field of perceptibility which impels publics toward certain apprehensions of war. These frames build an interpretation that according to Butler “constrains what can be heard, read, seen, felt and known.” And so at stake in the mandating of perspective is the very ontology of war, forcing us to ask: what and whose account will count as ‘real’? The state, Judith Butler, claims, has an “orchestra
tive power” to ratify what will be called reality and we have recently witnessed, in both Israel and the U.S., a concerted effort to regulate the visual field to do just this. But framing and regulating are not only concerned with the visible and the invisible but their constitutive relation, not what is seen but how what is seen. These are not theoretical precepts: A powerful visual and discursive framing of war is currently taking place around what are being called the ‘new wars’. The new wars discourse delineates a Manichean geography between the way that states and non-state (or pre-state) actors

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302 Pp. 29 Butler *Frames of War*, quoted in pp. Pp266. Derek Gregory *Seeing Red*
304 Butler *Frames of War*, pp. 100
305 Ibid., p. 66
fight war. As Derek Gregory\textsuperscript{307} has pointed out, advanced militaries go to great lengths to represent their own operations as “surgical, sensitive and scrupulous” and this turn toward ‘clean war’ is part of what Christopher Coker has called the “re-enchantment of war”\textsuperscript{308}. But as Gregory insists, it is only ‘our’ wars that are re-enchanted. The same militaries that insist on the humaneness of ‘our’ wars direct public attention to an enemy which is “indiscriminate, insensitive and illegitimate”\textsuperscript{309}. These broader frames of war intersect closely with Israel’s framing of Gaza.

In this penultimate chapter I show how the imaging and representation of war is becoming ever more central to its conduct: warfare is being fought through what I call ‘image-fare’. Using Israel’s ban on international media as a focal point, I make four interconnected claims. First, Israel’s strategic use of images helped to legitimise the assault on Gaza. Two framing devices were essential: Israeli visualities construct Israel as victim; Gaza is designated as a ‘hostile entity’, prefiguring Gaza and Hamas as the perpetrator.

Second, the Israeli narrative appeals to the immediacy of images, insisting on the factual, and thus legal, veracity of the visual form, or rather, its own visual forms. Israel implores international audiences to see what they believe when it comes to showing Israel as victim or Hamas as terroristic. Seeing is unmediated, Israel claims: images speak the truth. These visualities are then used to make and substantiate a series of legal claims about the enemy. These claims reproduce Gaza as a lawless space while depicting Israel as law-abiding – and again a clear victim and perpetrator are availed.

\textsuperscript{307} Gregory \textit{Seeing Red}, pp. 266
\textsuperscript{308} Christoper Coker \textit{The future of war: The re-enchantment of war in the twenty-first century} (2004), London: Blackwell
\textsuperscript{309} Gregory \textit{Seeing Red}, pp. 267
Third, Palestinian footage and images of death and suffering must not be interpreted as necessarily effective in contesting the visualities of war deployed by Israel. Israel’s decision to ban journalists was based on the assumption that it could control what was seen and known of the assault on Gaza and yet ironically Israel ended up ensuring that international audiences saw more Palestinian coverage than ever before. However, the visual fields of Gaza are much more complex than reading one set of images against another: Palestinian visualities cannot simply be taken as necessarily ‘countering’ anything merely because they are Palestinian. Taking serious the notion that images work within what Deborah Poole and David Campbell have called the ‘visual economy’ I focus on the ways in which ostensibly critical visualizations of Gaza were blunted by three ‘economies of regulation’. First, international press edit and censor suffering and death in the name of ‘taste and decency’. Second, ‘balanced’ reporting has meant that Palestinian suffering was often represented alongside Israeli suffering, drawing a problematic moral and political equivalence between the two. Finally, the pictoral coverage of Gaza ends up producing the assault as a temporary humanitarian catastrophe rather than a political episode of carefully planned and orchestrated violence.

Wary of overstating the power of Israeli framings while understating the possibilities of challenging those framings, I finish by considering what role the circulation of the visual archive might have in challenging Israeli and IDF visualities.

Hasbara

When the Winograd Committee released its damning investigation into IDF failures in Lebanon in 2006 it concluded that lack of media coordination and preparedness had been among the war’s chief failures. Israel’s decision to close the border to international journalists grew out of the bitter experiences in Lebanon. Former IDF spokesman Nachman Shai identifies the problem: “Then, the

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media were everywhere. Their cameras and tapes picked up discussions between commanders. People talked on live television. It helped the enemy and confused and destabilized the home front.\(^{312}\) The IDF learnt that images are a powerful weapon in war. As a corrective Israel established the National Information Directorate (NID) to “synchronize the content and tone of Israel’s message”\(^{313}\) in subsequent military theatres. This time, in Gaza, Israel would take no chances. The sealing of the border to international journalists was a prerequisite in achieving the high levels of coordination that the IDF required. The IDF perceived the media to be such a dangerous threat that they ignored a ruling from its own Supreme Court on December 31st 2008 which stated that some journalists should be granted at least limited access to Gaza\(^{314}\). Despite a number of promises made by the IDF to the media, no such access was granted\(^{315}\). Unsurprisingly, Israel cited “security reasons”, Maj. Avital Leibovich, IDF spokeswoman claiming that “If a journalist gets injured or killed, then it is Central Command’s responsibility.”\(^{316}\) But this line of reasoning was contradicted by a statement from the Government Press Office who couldn’t resist commenting on the new imperatives of media war: “Any journalist who enters Gaza becomes a fig leaf and front for the Hamas terror organization, and I see no reason why we should help that.”\(^{317}\). Even the official Press Office could not make up its mind: was the ban a result of genuine security concerns or because Israel thought that the media would favour Hamas if they had access to Gaza?


\(^{314}\) The decision came in response to a petition by the Foreign Press Association in Israel which at the time had been campaigning for over two months for access to Gaza, see their letter, ‘An Open Letter from the Foreign Press Association in Israel’, December 29 2009, at: http://www.fpa.org.il/?categoryId=414. The BBC reported as early as November 10th 2008 that no journalists were being allowed into Gaza (see Aleem Maqbool ‘Gaza shut to fuel and journalists’ \textit{BBC Online}, November 10 2008, http://news.bbc.co.uk/2/hi/middle_east/7719880.stm). For more information on the closure see Kim Sengupta ‘Israel ordered to allow journalists into Gaza’ \textit{The Independent}, December 31 2008, http://www.independent.co.uk/news/world/middle-east/israel-ordered-to-allow-journalists-into-gaza-1219795.html

\(^{315}\) Ethan Bronner, \textit{Media Clamp}

\(^{316}\) Ibid.

\(^{317}\) Daniel Seaman quoted in ibid.
Israel’s blanket media ban was never about the suppression of “truth”; rather, it was a way of organizing and disciplining the gaze of the international community so that some things could be seen while others remained hidden from view. The ban was not therefore an attempt to “keep Gaza hidden” David Campbell has argued, “it was an attempt to politicise the hundreds of pictures that emerged daily as inevitably ‘biased’”\textsuperscript{318}. Limiting the availability of images was part of a wider effort to produce a particular visualization of the conflict. It was not incidental that the international media covered the assault from the hills of Sdreot. As Ariella Azoulay argues, the position helped construct a particular war: “From their observation point, what they see is exactly the picture that Israel wishes to show: a war fought on equal footing by two sides. Missiles launched in Gaza hit Israel, and Israel retaliates”\textsuperscript{319} (Figures 19 & 20) This imaging levels the asymmetries of the conflict, but the distant positioning of the cameras also works to elide the death and suffering beneath and after the smoke and bombs that so resemble the ‘shock and awe’ doctrine.

Lilie Chouliaraki has argued that the reporting of war at a distance is reminiscent of the ‘tableau vivant’, “an art from that relies on the physical re-enactment of culturally familiar pictorial representations of the ‘cityscape’, fuzzing the line between live performance and still image”\textsuperscript{320}. What other commentators have in mind when writing about war as tableau vivant is typically a much greater distance than we witnessed in Gaza. Gregory, for example, writes about the reporting of the initial stages of the bombardment of Afghanistan as a “war without witnesses”; all reporters could do was “stand on mountain tops and watch for puffs of smoke.”\textsuperscript{321} But what is interesting about Gaza is the way in which a remarkably close, short-range, intensely intimate war could so transform

\textsuperscript{318} Campbell \textit{Constructed Visibility}, pp. 10
\textsuperscript{319} Azoulay \textit{Asleep in a Sterile Zone}
\textsuperscript{321} Gregory \textit{The Colonial Present}, pp. 52-3
distance that it expands into the long-range, distant and impersonal. As a tableau vivant the assault on Gaza from the hillside “appears to be an explosion of shapes and colors against the dark background of the cityscape: random orange colored flashes and tiny, fluorescent white spots glowing in the dark”\textsuperscript{322}. The composition of these images is often accompanied in videos and footage by “sound effect of rattles and blasts that amplify the effect of unrelenting action”\textsuperscript{323}. One cannot hear nor see humans: the war is represented in “non-human” terms and this works through language choices in media narratives as well as visuals as Chouliaraki notes. Things, not humans inhabit the scene: “bombs”, “explosions”, “buildings”, “Hamas”, “the city”. This is the fallacy of ‘shock and awe’ war. The camera at distance, just like the view through the scope of the aerial targeting device, erases bodies from the landscape of war, or as Lillie Chouliaraki has put it, “Western media broadcast from positions of showing that exclude the witnessing of human death and render the reporting of this war an exercise in military action”\textsuperscript{324}. The media ban disciplined our gaze, instructing us not only what to see, but compelling us \textit{how} to see what we see.

\textsuperscript{322}Chouliaraki \textit{Witnessing War} pp. 221
\textsuperscript{323}Ibid. pp.221
\textsuperscript{324}Ibid. pp. 225
Once the ban was in place the NID[^327] was tasked with explaining Israel’s position to the world. The word for explanation in Hebrew is "hasbara", but pejoratively it also means spin and propaganda.[^328]

[^325]: Anon. Found at: http://www psywarrior.com/GazaPSYOP.html
The directorate’s chief, Yarden Vatikai, pointed out that the “hasbara apparatus needed a body that would coordinate its agencies, coordinate the messages and become a platform for cooperation between all the agencies that deal with communication relations and public diplomacy”\(^{329}\). The internet and the new/social media were an essential component of the hasbara campaign and as soon as the first bombs were dropped, the IDF Spokesperson Unit (IDF-SU) launched its own YouTube channel (figure 21). The channel was set up to detail “the IDF’s humane action and operational success in Operation Cast Lead”\(^{330}\) and it soon became the most subscribed Israeli website ever, attracting over 2 million views by the end of the assault (Anderson 2009). In tandem with the YouTube channel Israeli officials delivered private briefings to international bloggers and maintained personal video blogs. “In testament to the efficacy of the image, Israel mounted video cameras at the Kerem Shalom crossing in order to broadcast – online, in real time – its transfer of humanitarian goods into Gaza after the assault”\(^{331}\). The short messaging website Twitter was used for the first time; the Israeli consulate in New York opened its own Twitter account two days after the start of the offensive, holding Twitter-based press conferences that were later lauded as having “revolutionized Israeli diplomacy”\(^{332}\). But some of the fiercest efforts made by Israel were in the domain of popular internet usage. In an effort to stem ‘anti-Israel sentiment’, the Foreign Ministry “recruited undercover volunteers to deliver the state-sponsored war message to the Internet (sic)

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\(^{327}\) The NID was established in 2007 at the recommendation of the Winograd Commission, a commission headed by Elyahu Winograd with the mandate to investigate the events that took place in (and leading up to) the 2006 Lebanon war. The main findings were published in an interim report in April 2007, followed by a final report which was published in January 2008. One of the key recommendations of the report was that the IDF should put more effort into PR. The NID was established as a corrective to the IDF failures in Lebanon in 2006 and was tasked with “synchronizing the content and tone of Israel's message in subsequent military theatres”, Kuntsman and Stein *Another War Zone*, see also ‘memories of Lebanon’ in this thesis.


\(^{329}\) Quoted in ibid.

\(^{330}\) IDF Spokesperson Youtube Channel, 2009, at: http://www.youtube.com/user/idfnewsdesk#p/u

\(^{331}\) Kuntsman and Stein *Another War Zone*

public through the informal language of the “talkback”\(^{333}\). The campaign focused on European websites, where audiences were thought to be particularly hostile to Israel. This project was formally added to the state budget in 2009 under the rubric “internet warfare team.” In the words of the deputy director of the Foreign Ministry’s hasbara department Mr Sihturman: “They will speak as net surfers and as citizens, and will write responses that will look personal but will be based on a prepared list of messages that the Foreign Ministry developed”\(^{334}\). These PR measures were deployed alongside the more explicitly violent bombing of Palestinian television and news stations throughout Gaza: this time Israel was taking no chances.

![Figure 21. IDF Spokesperson YouTube channel, screenshot](image)

**Of victims and perpetrators**

Two messages were central to Israel’s visual representation of the assault and they can be summarized by a simple typology: ‘it’s their fault, not ours’ and its corollary: ‘they started it’ (note the

\(^{333}\) Kuntsman and Stein *Another War Zone*

immense rhetorical power of the bleeding colours – and what they represent – in figure 22). Recycling old tropes of Israeli-Jewish victimhood, the core messages from the NID and the IDF-SU were that Hamas broke the cease-fire agreements with Israel; that Israel’s objective is the defence of its population; and that Hamas is a terror organization targeting Israeli civilians.

In September 2007 Gaza was officially declared a “hostile entity” by Israel’s Security Cabinet. Lisa Bhungalia (2010: 349) has argued that the deeming of Gaza as a hostile entity constructs a conceptual framework based upon “an ontological distinction of ‘us’ and ‘them’: Gaza, the antagonistic, ‘otherized’ space...is set against the normalized, civilized space of Israel”. These orientalist tropes reduce the ongoing conflict to what she calls a post 9/11 “Manichean theatre comprised of humanity fighting the mujabideen, the besieded verses the barbaric”. What kind of people inhabit a space which has been designated “hostile”? The naming of territory is simultaneously a demarcation of the population who live there; that which appears as terroristic and hostile is simultaneously that which can – must even – be contained or, in the last resort, eliminated. The crucial thing here is that Israel is always and already the victim and Gaza and Hamas are always-already the perpetrators. The Israeli narrative establishes Israel as a besieged space, one which has been breached – unremittingly – by the others of Gaza. The narration of Israel as victim and the naming of Gaza as hostile are two faces of the same coin. Together they work to constitute every Israeli act as defensive. If Gaza is the aggressor then accordingly they started it; Israeli action is prefigured as a response to (rather than an instigation of) violence. As Zizek has pointed out, actions taken on the part of Palestinians are prefigured as ‘acts of terror’, and cited as ‘proof’ that Israel is, in fact, dealing

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335 See Hannah Arendt The Origins of Totalitarianism, (1968), New York: Harcourt
336 Shabi Winning the Media War. The concept of the civilian is an especially complicated one in Israeli society because Israeli military operations rely on the mobilization of thousands of reservists who “shift from civilians to soldiers in a day” Laura King Israel's reservists shift from civilians to soldiers in a day’ Los Angeles Times, 24 July, at: http://articles.latimes.com/2006/jul/24/world/fg-reservists24, cited in Gregory Death of the Civilian?. The question of ‘who is a civilian?’ must attend not only to the question of ‘what is a civilian?’ but crucially also ‘when is what a civilian?’.
with terrorists. This paradox, he argues, “is inscribed into the very notion of a ‘war on terror’—a strange war in which the enemy is criminalized if he defends himself and returns fire”. The typology of Israel-as-victim/them-as-perpetrators is an important component within the “cultural resources and social systems through which images are interpreted and valued”, which is to say that that these constructions underwrite and frame the ways in which audiences understand the conflict between Israel and Palestine. Israel, after all, is “only democracy in the Middle East” and in the western geo-political imagination it therefore follows that as "an island of freedom located in a region controlled by military dictators, feudal kings and religious leaders, Israel should receive unreserved support from western liberal states interested in strengthening democratic values around the globe.”

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337 Cited in Bhungalia *A Liminal Territory*, pp.356
338 Campbell *Geopolitics and Visuality*, pp.361
339 Neve Gordon ‘Most Israelis Don’t Believe It (or Support It): The Only Democracy in the Middle East?’ *Counterpunch*, February 3 2009, at: [http://www.counterpunch.org/gordon02032004.html](http://www.counterpunch.org/gordon02032004.html)
Figure 22. IDF map of rocket ranges, source: IDF Spokesperson, 9 Jan 2009
**Visual-legal performances**

But the narration of Gaza as a hostile entity is not only a broad geo-political trope. IDF visualities substantiate, rationalize and legitimize these claims at the level of the image so that they become quotidian assumptions in popular news discourse. IDF visuals reproduce Gaza (and its people) as hostile by making two simple yet problematic claims. First, their images are intrinsically true. Second, because they are intrinsically true they can be used to make and substantiate legal claims about the enemy. IDF visual claims are therefore simultaneously legal claims.

![Figure 23. Satellite close-up of alleged rocket fire located next to a public building. The original caption reads: “Rocket launching position near public buildings in the Shati Refugee Camp”, Source: IMFA](image-url)

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340 IDF Spokesperson, reproduced IMFA *Investigation*, pp. 57
Hamas activities “spotted in the schoolyard” tell us why Israel fired on schools: because they fired from schools. The pointers tell us why Israel – “accidentally” – killed civilians: they – deliberately – fire from civilian areas (figures 23 & 24). Why could Israel not seamlessly distinguish terrorists from civilians? They don’t wear uniform and therefore blend into the general population. They are Amitai Etzioni’s “abusive civilians” \(^{342}\) \textit{par excellence}. Where Israel regrets the loss of life on both sides, Hamas intentionally attacks innocent Israeli ‘civilians’ \(^{343}\). The plethora of weapons, the terrorists arsenal is paraded so we may witness its deathly scope, its unbearable intensity and visceral reality: these weapons exist (figures 25 & 27). Faces are revealed not to humanise but to demonstrate the inhumanity of those who kill at will, in the name of radical Islam and capital "T" Terrorism. They don’t value life like we do \(^{344}\). These are performances of space that very much draw lines around the

\[^{341}\text{IDF Spokesperson, 31 October 2007, reproduced in ibid, pp. 58}\]
\[^{342}\text{Amitat Etzioni ‘Unmanned aircraft systems: the moral and legal case’, Joint Forces Quarterly (2010), vol. 57 (2nd quarter): pp. 66-71}\]
\[^{343}\text{See supra note 335.}\]
\[^{344}\text{This is a common sentiment implicit in the ‘new wars’ discourse and also amongst many Israelis. In an article published in the Israeli newspaper "Hassidic World" Yitzhak Ben-Zvi writes of the Arabs as “a cult of murderers, savages, and a loathsome nation [...] they are a people similar to donkeys… they have a great desire to murder and are even worse than the Nazi enemy, quoted in Roe Nahmias ‘Haredi writer accused of racism, slander’, YNET News, August 26 2006, http://www.ynetnews.com/articles/0,7340,L-3295985,00.html}\]

Figure 24. Unmanned aerial vehicle shot of UNRWA bombed moments after this photograph was taken. The caption reads: “Rocket launching squad positioned near the main building of an UNRWA educational complex in Beit Hanoun”, source: IMFA\(^{341}\)
terroristic and barbaric space of the enemy. These are images that demonstrate the precarity of Israeli lives, the leakiness of the border and the perforations of space maintained by the terrorist other. The images perform Israeli space as constantly threatened and vulnerable (again, figure 22). They present Gaza as a space saturated in terroristic backwardness, a space where hooded, faceless and thus unrecognisably human Hamas-figures forsake their own people for their radical fundamentalist cause (note the representations of Hamas members as terroristic (figures 26 & 27); immoral (figure 26), and suspicious (figure 27) and compare this to the aestheticization and glorification of IDF soldiers in figure 28). They use children and babies as human shields (figure 26); these are cowardly, immoral people inhabiting a corrupted and degenerate space. ‘What kind of people’ these images rhetorically enquire “launch rocket attacks from within densely populated areas near schools and protected U.N. Facilities”? What kind of commander uses “hospitals as bases of operations and ambulances for transport”? What kind of enemy “stores weapons in mosques” and “booby-traps entire civilian neighbourhoods so that an attack on one structure would devastate many others”?345

345 IMFA Investigation, pp.2
Figure 25. Hamas weapons. The original caption reads: “Weapons, including an anti-tank cannon, discovered in Jabaliya mosque during the Gaza Operation”, source: IMFA 346.

Figure 26. Hamas use of children as human shields, source: thediamondguru 347

346 Ibid. Pp. 60
The answer? *Them, not us*: Hamas breeches the law; the IDF abides by it. These visualities produce Israeli space and practice as resolutely and irreconcilably different and irreconcilable to the practices and spaces maintained by Hamas and Gaza. The scripting and visualization of Gaza as a necessarily terroristic space performs the spectral figures that inhabit that space as dubiously human. Indeed, as Judith Butler has warned us,

“If we assume that everyone who is human goes to war like us, and that this is part of what makes them recognizably human, or that the violence we commit is violence that falls within the realm of the recognizably human, but the violence that others commit is unrecognizable as human activity, then we make use of a limited and limiting cultural frame to understand what it is to be human”

Israel’s visual-legal performance commits to a Manichean dichotomy between what Butler calls the recognisably human and the dubiously human. Once this rhetorical manoeuvre has been completed the very barbarity and excessive lawlessness of the enemy other serves to legitimize Israel and the means of violence employed during the assault. It is no longer simply that what Hamas is doing is deemed illegitimate by Israel. Their illegitimacy is now performed in images and in videos so that we may witness, in real time and via the unquestionable truth of the camera, their inhuman acts, their use of human shields and their cowardly hiding. Without the visual scripting of Gaza as a terrorist entity, without the imaging of Israel as victim, without the satellite images of rocket launch sites, and without the display of Hamas weapons, Israel’s claims would make little sense. The law is used to delegitimize the enemy while simultaneously legitimizing Israeli actions. What makes these visualities so compelling first and foremost is that they visualize legal ‘truths’, rendering often complex legal arguments transparent via the appeal to unmediated, disinterested objectivity. The most threatening

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347 At: http://images.google.com/imgres?imgurl=http://4.bp.blogspot.com/_aKt4nP-9jd8/SWrCd7xIf4I/AAAAAAAFaI/6LodWXQHTCU/s400/hush.bmp&imgrefurl=http://thediamondguru.blogspot.com/2009/01/israel-v-gaza-hamas.html&usg=__KSdXo2gugvX7bQA-FyvMy3NYrRI=&h=279&w=400&sz=41&hl=en&start=0&sig2=13t4G5iJRjo1ESWUYU8YFfZlw&zoom=1&tbid=A-n5cBLPE3_6lM&tbm=bn&bws=214&ei=JsmcTPy2HamsQOy|63VAQ&prev=/images%3Fq%3Dhamas%2Bcartoon%2Bhuman%2Bhush%26hl%3Den%26biw%3D1280%26bih%3D619%26tbnv%3D3D2%26bmm%3D1&itbs=1&iar=hc&vpx=1141&vpy=93&dur=110&hovh=187&hovw=269&tx=122&ty=57&oei=JsmcTPy2HamsQOy|63VAQ&esq=1&page=1&ndsp=18&ved=1t:429,r:0,s:0

348 Butler *Precarious Life*, pp. 89
claim made about the IDF in Gaza was that its actions were illegal and amounted to crimes of war. In this sense it became doubly imperative for Israel to articulate a legal defence and offense that were remarkably simple and clear and yet which could also be articulated and disseminated widely through popular visual media. The beauty of all this is in the coming together of the visual and the legal in a discourse of truth and immediacy.

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349 This was the conclusion reached by The Goldstone Report as well as a number of international NGO and human rights groups (see pp. 93, this thesis)

350 Ibid. pp. 91
Israel’s claims do not have to be believed because they can be *seen*. The IDF videos posted on YouTube use indexical indicators that appeal to the intrinsic truth of images: “what we have behind me [on two television screens] is further evidence...”; “what this map proves is the way in which Hamas deliberately puts its own people directly in the line of fire...” “what you are about to see is actual footage taken from the cockpits of Israel aircraft that proves...”\(^{351}\). *The images are speaking.* It matters not *what* they say so much as whatever they claim is unquestionably true. They prove *this* by showing *that*. These rhetorical tricks appeal to the notion that seeing really is believing. But what is most interesting about these images is that *without the apparatus of indexes, pointers, captions and voiceovers they simply make no sense.* It is not obvious for example that the blurred figure in front of what we are told is a U.N. building is in-fact a Hamas operative (look again at figure 24), just as it is impossible to tell whether the video purportedly showing Hamas operatives loading a truck full of missiles is not


\(^{352}\) IDF Spokesperson Youtube Channel, at: http://www.youtube.com/user/idfnadesk#p/u
actually footage of civilians loading a truck full of oxygen canisters. Images are not disinterested but are recruited to make arguments. Israel is profoundly interested in these images not for what they intrinsically communicate but precisely because Israel has learnt to communicate through and for the image.

IDF images do not speak for themselves, but are spoken for. Images always demand interpretation and the IDF assist the interpretation of its images with captions, directives, and explanatory tags. These indexical pointers become crucial to help mobilise condemnation (or conversely, give cause for celebration) of the violence depicted in images, so as to generate the 'appropriate' response. The pointers and captions instruct us what to see and what to remember; multiple meanings are reduced to a single or narrow interpretation: *it’s their fault, not ours because they are terrorists and they started it.*

**Visual economy**

IDF images of are not all that that came out of Gaza; the visual fields of the assault were far more open than the IDF might have liked. The closure of the border to international journalists contributed, ironically, to the proliferation of ‘counter’ images. In the absence of footage, news outlets searched for a story and this took them to those inside Gaza, to the Palestinian journalists already there. Al Jazeera and al-Arabiyya had Palestinian reporters and presenters on the ground in Gaza, as did a number of other local news broadcasters. It is tempting to read the Palestinian coverage of the assault as something which necessarily countered the IDF version of events. If IDF visualities constructed a particular way of seeing Gaza, then Palestinian footage, one might assume, would

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353 On December 29 2009, the Israeli Air Force killed eight civilians who they thought were loading missiles onto a truck. In July 2009 Israel published an investigation into the incident, concluding that, “In fact, the truck was carrying oxygen tanks and not rockets”, IMFA Investigation, pp.146


work against these constructions, offering a radically different view and visuality of the assault. The visual fields of Gaza however, are much more complex than reading one set of images against another. Palestinian visualities cannot simply be taken as necessarily ‘countering’ anything merely because they are Palestinian.

Images circulate in what Deborah Poole has called a ‘visual economy’. Poole argues that the idea of a visual economy is superior to the notion of visual culture because visual economy demands attention to the way “visual images [are] part of a comprehensive organization of people, ideas and objects”\(^{356}\). In order to understand the significance of visuality in the production of geopolitics Campbell\(^{357}\) draws from Poole and concludes that visual culture must recast as visual economy to “enable the constitutive relations of geopolitics and visuality to shift from the social construction of the visual field to the visual performance of the social field”. Images, never discreet objects, are part of a wider political assemblage that is made possible by – and is productive of – relations of power. These relations of power regulate and organize images at three different levels; the site(s) and spaces of production; the circulation of images and; the cultural resources and social systems through which images are interpreted and understood. Elsewhere, Campbell\(^{358}\) argues that the visual performance of the social field is structured by what he calls ‘economies of regulation’. Being aware of the complex ways in which images are subject to economies of production, circulation, consumption and endless regulation alerts us to the fact that “images do a lot of work: they visually perform the social field on which action can be made to occur, they testify to the conditions of the social field, and they can induce a responsibility in those concerned about the social field”\(^{359}\). But the all important point remains: images cannot do this alone. Images enter social worlds and political

\(^{356}\) Poole quoted in Campbell *Constructed Visibility*, pp. 361

\(^{357}\) Ibid., pp. 357


\(^{359}\) Campbell *Constructed Visibility*, see also Thomas Keenan ‘Publicity and Indifference (Sarajevo on Television)’, *PMLA* (2002), vol. 117 (1): pp. 104-116
contexts that exist prior to their shooting and circulation, and these contexts – be they geo-political, legal or economic – can determine what any image may (or may not) achieve. The single image “cannot testify to what is revealed through it, but must be attached to another image, another piece of information, another assertion or description, another grievance or piece of evidence, another broadcast, another transmitter. An image is only ever another statement in a regime of statements.”

Conceptualising the visual field of Gaza in terms of a visual economy means that images cannot be isolated as discrete objects but have to be “understood as imbricated in networks of materials, technologies, institutions, markets, social spaces, affects, cultural histories and political contexts” (Campbell 2007: 361).

‘What the Arabs see’

One of the most powerful counter-claims made in Palestinian coverage of the assault on Gaza was the representation of suffering and the display of dead bodies. Images of suffering, many of them graphic, reached an international audience and were found all over the (front) pages of international newspapers such as The Guardian, The Observer and The New York Times. But what can these images achieve?

Many political practices rely on a techno-logic of the visual to validate their respective projects, and many rely on the circulation of abject imagery to illustrate and support their political claims. The representation and communication of suffering is central to Palestinian identity (Allen 2009). Lori

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360 Azoulay The Civil Contract of Photography, pp. 191
361 I take ‘Palestinian coverage’ to include professional and amateur journalists as well as citizens that were inside Gaza, reporting from a position sympathetic to the Palestinian cause and critical of Israel’s assault. While this broad definition homogenizes what is undoubtedly a heterogeneous collection of perspectives, I use it because according to many reports a so called ‘Palestinian perspective’ was clearly present in the reporting of the assault. I hope to challenge the usefulness of the category in what follows.
362 See Campbell Constructed Visibility
363 Moller Photographic Interventions
Allen and George Giacaman argue that suffering marks a particular moment in Palestinian history around the time of the First Intifada when Palestinians “discovered” human rights as the ideal language through which to make their voices heard. They are correct that the mobilization of suffering as a means of self-representation reached critical mass around that time, but Palestinian suffering is, of course, much older. Al Nakba, the catastrophe (1948), signalled the immediate forcible removal of 711,000 Palestinians from their homes and land. Suffering remains one of the few constants for a people subject to Israel’s arbitrary and encroaching rule; violence and suffering has become normal, indeed increasingly normal since the Second Intifada. In this way Palestinians have learnt to vie for empathy in what Bob has called a “global meritocracy of suffering in which all deserving causes attract international support”. Many feel that because suffering is an integral part of Palestinian life it should be represented in an unmediated fashion. Their argument is that the visceral nature of bodies and injury communicates better than anything else the infliction of pain and suffering by Israel. This is a common sentiment amongst Palestinians. Lori Allen for example, tells of how her friend Khader insisted on showing her images of mangled bodies and the aftermath of violent clashes from the Second Intifada. For Khader, images of suffering constitute irrefutable proofs of injustice: “the person who cares about humanity, it would affect them, and they could judge...let the world see and it will do something”. If suffering is not seen, it is not known and if it is not known then there can be no catalyst for change.

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366 Lori Allen ‘Getting by the occupation: How violence became normal during the second Palestinian intifada’, Cultural Anthropology (2008), vol. 23 (3): 453-487
368 Allen Martyr Bodies, pp. 161
Figure 29. Palestinians attend a demonstration, source: Al Jazeera

Figure 30. Palestinian bodies are laid out at Shifa hospital in Gaza after Israeli missile strikes, source: The Guardian

Al-Jazeera coverage of the assault showed Palestinian suffering in all its unedited detail. Their network was the only international broadcaster with reporters on both sides of the border, in Israel.

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Image found at: http://english.aljazeera.net/focus/war_on_gaza/2009/01/20091585448204690.html

Published in The Guardian, 27 December 2008, photography by Suhaib Salem/Reuters
and Gaza\textsuperscript{371}. The fact that Al Jazeera had six reporters on the ground even before the assault had begun was doubly significant as numerous other international news outlets began to rely on them for their information, images and footage\textsuperscript{372}. Habib Battah, freelance journalist and media analyst based in Beirut and New York, claims that the images captured by Palestinian journalists were “often broadcast unedited”. Typically:

“The cycle begins with rooftop-mounted cameras, capturing the air raids live. After moments of quiet, thunderous bombing commences and plumes of smoke rise over the skyline. Then, anguish on the streets. Panicked civilians run for cover as ambulances careen through narrow alleys. Rescue workers hurriedly pick through the rubble, often pulling out mangled bodies. Fathers with tears of rage hold dead children up to the cameras, vowing revenge. The wounded are carried out in stretchers, gushing with blood. Later, local journalists visit the hospitals and more gruesome images, more dead children are broadcast. Doctors wrap up the tiny bodies and carry them into overflowing morgues. The survivors speak to reporters. Their distraught voices are heard around the region; the outflow of misery and destruction is constant.”\textsuperscript{373}

Such was routine for the independent Palestinian journalists who lived the story they were reporting. Images of dead children and mangled bodies were commonplace; the suffering was laid bare for Arab audiences to see. The images and coverage of the assault by Al Jazeera demonstrate an unrelenting physical intimacy with death. Bodies were revealed in all their rawness, the emphasis on their “destroyed physiology was shown in a form” that according to Allen “accentuated that rawness.”\textsuperscript{374} A whole affective register and environment is created; families and friends weep and cry over dead bodies and crowds gather around to morn their lost ones, their Martyrs. The explicit coverage of the war by Arabic channels like Al Jazeera confirms Allen’s observation that suffering and victimization become central to humanizing the Palestinian subject. Palestinian visualities

\textsuperscript{371} Al Jazeera English 2009 ‘Focus on Gaza’, http://english.aljazeera.net/programmes/general
\textsuperscript{373} Habib Battah ‘In the US, Gaza is a different war’, Al Jazeera, 7 January 2009, at: http://english.aljazeera.net/focus/war_on_gaza/2009/01/20091585448204690.html
\textsuperscript{374} Allen Martyr Bodies, pp. 171
imagine and appeal to an ‘international community’ via a politics of immediation. A benevolent audience is assumed to exist and Palestinian bodies in all their visceral reality become the visual vehicle through which Palestinians hope to prove that they are legible as the ‘human’ in human-rights and humanitarian discourse.

In order to answer what such visualities are able to achieve it is first necessary to distinguish between what U.K.’s Channel 4 News Jon show has claimed are “two versions of the assault on Gaza” The first, he argues “is the moderated account aired in the West; the other is the unexpurgated account of civilian deaths filmed in vivid close-up inside Gaza”375. Audiences are not pre-given but are constituted by and through discourse and as such the ‘two versions’ both respond to and reproduce audiences who already carry with them a series of assumptions, attitudes and values. But the question of what images might achieve relies on much more than who the audience are. There is also the question of how those images might be mediated, framed and regulated in the visual economy. While Snow’s distinction between what the “Arab” world saw and what the “West” saw is useful, it leads him to a problematic conclusion. He claims that “as with every military conflict, the inevitable first casualty is the truth”376. Snow assumes that there is some irreducible and objective “truth” beneath the fog of war and in this context he is explicit that the “unexpurgated” Arab coverage provides such truth. This is an interesting counter to the claims made by Israel that their own account is the only true one. But by claiming that the “Western account” has been so reduced by the ban on journalists that the scale of protest has been dulled, Snow implies that if only “Western” audiences would have seen the “truth” (by which he means “wailing women running in

376 Ibid. This is a famous quote and is normally attributed to US Senator Hiram WarrenJohnson in 1918; he is purported to have said: The first casualty when war comes is truth, see The Guardian, Who coined the phrase, "The first casualty of War is Truth" http://www.guardian.co.uk/notesandqueries/query/0,5753,21510,00.html
the streets, carrying the wrapped remains of tiny children”) protest would have been automatic. This is an extremely problematic assumption which overlooks the above conversation about how images are mediated, framed and regulated not only by Israel’s media ban but by the visual economy and particularly the economies of regulation in our own media. If attention is shifted to focus on the visual economies of Gaza I suggest that Snow’s ‘two versions’ actually come to resemble each other and end up producing a narrative that is not too dissimilar from the Israeli narrative.

**What we (cannot) see**

Palestinians shared a hope that the world would see their suffering. But many western audiences do not like to see the worst of war and there has been a move toward filtering explicit content via the protocols of ‘taste and decency’. Taste and decency involves the media regulating the representation of death and atrocity so that bodies “dissappear” – or rather, do not appear in the first place. The economies of taste and decency are entrenched today and examples abound. One of the most high profile cases recently was when the U.S. Senate barred news photographs of the flag-covered coffins of service members killed in Iraq. This is not an exceptional case but are the norm according to which much of the raw footage from Gaza was edited. Picture editor of The Independent, Sophie Batterbury wrote about how she handled some of the 300 images that reached her desk on the first morning of Israel’s attack. She recalls a “number of images showing dead and dismembered bodies, some of which were relatively mild in tone and others which were so horrific that I couldn't look at them any larger than thumbnails”. It was not that such images were not available: they were in abundance. In Campbell’s analysis of the coverage of the war by the U.K.’s Guardian and Observer, he claims that only a handful of images showed dead and maimed bodies. In another example, editor

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377 Campbell *Horrific Blindness*


379 Quoted in Campbell *Constructed Visibility*, pp. 12
Julian Rake recounts of the way in which Reuters edits footage and images before they sent them out to newspapers and news stations around the world. Rake defends a decision not to air the full footage of a burnt baby, five month old, being removed from the back of an ambulance by a doctor\textsuperscript{380}: “what we did was we showed, a sanitised if you like, yea a sanitised version...in my view putting that other stuff [the graphic footage] wouldn’t have added to your understanding, to my understanding of what happened”\textsuperscript{381}.

Yet ‘sanitization’ of such footage is never only about public understanding, but is productive of publics and public understanding. The shying away from the explicit that these examples demonstrate is at the same time a shying away from the most pressing issues of the day: life and death. If the unsanitized picture is a weapon for Palestinians then the editing of gore is also a kind of sanitization of the Palestinian cause. If missing limbs, severed heads and broken bodies cannot be seen, perhaps the dead just vanished. If seeing is believing, what about that which is not seen, is it rendered necessarily unbelievable? Numbers are easier to digest than explicit images of the body in pain, just as numbers of fallen soldiers are easier to digest than images of their coffins. The coffin bespeaks the body it holds; the body in severe pain bespeaks its unrepresentability, hence the discomfort it causes. There was possibly no ‘need’ for Reuters to send out such horrific and graphic footage just like there was no ‘need’ to print numerous images of dead Iraqi’s in the British and U.S. press. At one level one might sympathise with the decision to edit such images. Images of suffering are not an injunction to action as is so often hoped; the problem of ‘compassion fatigue’\textsuperscript{382} is by now well documented. The compassion fatigue thesis argues that the abundant supply of imagery dulls our senses and creates a syndrome of communal inaction. It is also worth noting that the displaying

\textsuperscript{380} The full footage can be seen at: http://blip.tv/file/1679332/
\textsuperscript{381} Quoted in Channel 4 ‘Unseen Gaza’, Dispatches documentary, January 22 2009, for further info see: http://www.channel4.com/programmes/dispatches/episode-guide/series-6/episode-3
\textsuperscript{382} Susan Moeller Compassion fatigue: how the media sell disease, famine, war and death (1999), New York: Routledge
of dead bodies partly reproduces the violence represented in the image, normalizing death and suffering. In this view the proliferation of images of “just more Palestinians dying” are read as naturalized and generalized statements of horror. The problem with this view is that it intersects all too closely with a discursive turn in the representation of war as something else other than the infliction of mass death and suffering. It also intersects dangerously with IDF visual narratives which erase images of death from war or construe death as necessary collateral damage in the fight of good against evil. In this way the turn toward ‘taste and decency’ is simultaneously a turning away not just from the realities of war but from a way of representing war that “we” in the west find excessive and voyeuristic.

In the end it is not only ‘their’ wars that are so different to our own but also the very way in which they represent their wars. Apparently the Arab world abandons “truth” in pursuit of “images of carnage and emotional narratives”\(^{383}\). As the assault on Gaza wore on and such images proliferated on Arab news stations, the Jerusalem Post described the coverage as “voyeuristic, nearly pornographic”. Something about Palestinian representational forms and its proximity to the graphic repulses not only the Jerusalem Post. As the Los Angeles Times would have it: “Al Jazeera and other Arab media outlets have grown more objective in reporting in recent years, but when it comes to the Palestinian-Israeli conflict, balanced coverage is often outweighed by pathos and narratives of funeral corteges proceeding amid the sounds of explosions”\(^{384}\). Arab media outlets (all of them) just can’t help themselves when it comes to this conflict. Such renderings of Arabic representational forms are used to denounce the authenticity and trustworthiness of “their” media; their proximity to death is framed as necessarily biased. As one commentator recently said of Al-Jazeera’s coverage of


\(^{384}\) Ibid.
Israel’s illegal assault on the Mavi Marmara Aid Flotilla, “it was about as fair as cutting one leg off a chicken and sticking it in a fox-run.” Indeed, this was the sentiment of the Israeli state when two months after the assault on Gaza Israel launched a boycott of al-Jazeera, accusing it of “bias” because it had covered the Gaza incursion but not the Palestinian rocket attacks against the Israeli city of Ashkelon. Yet all this is marked by a stunning irony: the IDF rely on precisely the same fiction that their images and footage are unmediated and are therefore true. The act of boycotting al-Jazeera on account of “bias” is a rhetorical act which elides the fact that Israeli coverage too is profoundly – necessarily – biased and mediated. That Israel went as far as to ban foreign press from Gaza sheds light on the contradictions and double-standards in the IDF narrative.

Equivocating suffering, eliminating politics

From time to time, the screen that insulated western audiences from Gaza was ruptured by photographs transmitted via email by Gazan photographers – unbearable images of severe harm to civilians. Very few of these were printed in Israeli daily press. But when these images did find outlet in international media they were blunted by two further economies of regulation.

First, Palestinian suffering was often presented alongside Israeli suffering. The New York Times online ran a retrospective on Gaza entitled “Photographer’s Journal: A War’s Many Angles.” Under the aegis

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387 Azoulay Alseep in a Sterile zone
388 Gideon Levy cites an example that he claims was telling of the Israeli coverage of the assault on Gaza. On a single day during the assault around 200 Palestinians were killed. The following day no news could be found of their death on the front page of Israel’s leading newspaper. Instead Yediot Ahronot ran a story on an Israeli dog killed by a Kassam rocket. Scroll to page 16 and there were two lines about the Palestinian deaths. (Levy The Punishment of Gaza Presentation given at the University of British Columbia, September 26 2010, available on video at: http://vimeo.com/15379617. See also Johann Hari ‘Is Gideon Levy the most hated man in Israel or just the most heroic?’ The Independent September 24 2010, http://www.independent.co.uk/news/world/middle-east/is-gideon-levy-the-most-hated-man-in-israel-or-just-the-most-heroic-2087909.html
389 The full sets of images can be found at: http://www.nytimes.com/packages/flash/international/20090125-PhotoJournal-Gaza-Israel/
of ‘fairness’ and ‘objectivity’ the feature comprised two sets of photographs, one from Israel taken by Moises Saman (figures 31, 33 and 35) and the other from Gaza taken by Tyler Hicks (figures 32, 34, 36). The photographers provide voiceover audio testimony that begins when the viewer views the first image. Flicking through the images one is compelled to feel compassion not only for the Palestinians but for Israeli’s as well. Both sides bury their loved ones; both sides have their widows. Images of relatives burying their loved ones appeal to a fundamental humanism somehow beyond politics (figures 31 & 32). Symmetries are established by bullet-holes and bombed out homes: destruction is wrought on both sides. Further parallels are established by the figure of the lone woman; war’s victims are not on one side or the other but belong to a gendered innocence that transcends Israeli-Palestinian difference. The sitting Palestinian woman appears helpless, the caption, ‘Palestinians saw destruction as Israeli troops began to pull out’ secures her role as agent-less witness; she did not experience destruction, but saw it, as if she were exterior to the violence and destruction that frames the landscape in which she sits (figure 33). The Israeli woman stands surveying the scene but she is walking: she can escape the scene (figure 36). A similar ‘balance’ was struck by the Washington Post who ran a front page story with images of two distraught children clinging to their mothers: On the left, a Palestinian mother who lost five children (figure 37). On the right an equal-sized picture of an Israeli woman who was “distressed by the fighting”®. The presentation of mutual suffering rhetorically produces the media as disinterested harbingers of truth. The BBC displayed this sentiment when it refused to give airtime to the Disasters Emergency Committee appeal for funds to aid Gaza. Director General Marc Thompson claimed that airing the appeal would pose a “danger for the BBC” because it “…could be interpreted as taking a political

® Habib Battah ‘In the US Gaza is a different war’, Al Jazeera, January 7 2009, http://english.aljazeera.net/focus/war_on_gaza/2009/01/20091585448204690.html
stance on an ongoing story”\textsuperscript{391}. These editorial decisions discursively construct the media as apolitical while ironing over the \textit{differences} between Israeli and Palestinian suffering.

But what about the assault on Gaza was equal and symmetric? What about the reporting of war has ever been “objective”? In the NYT retrospective there is a strange absence of action in the Israeli set of images. It is particularly strange given that the positioning of Moises Saman’s photographs reveal that he was embedded with the IDF at the time. As Lagerquist points out: “Not a single one is shooting, loading a gun, or cleaning a tank barrel. Plumes of smoke across the border are pictured only distantly, one of them from some elevation, unfurling elegiacally from a remote, empty beach. It is as if some other army were in the process of killing fourteen hundred people”\textsuperscript{392}. In 1991 the then Chief Spokesman for the IDF, Nachman Shai recommended the attachment of media teams to military units, a measure he assured would “have a definite impact on local and world opinion and, in the long run, will be to our benefit”\textsuperscript{393}. Embedding journalists would become official IDF policy. This is precisely why none of this can be construed as ‘fair’, ‘unbiased’ reporting. Journalists embedded on the front line construct a very partial way of seeing. Moises Saman’s choice of location was not coincidental; he was based in the Israeli town of Ashkelon, one of the main towns that was receiving rocket fire from Gaza.

\textsuperscript{393} Pp. 15, Nachman Shai 1998 ‘The Spokesperson—In the Crossfire: A Decade of Israeli Defense Crises from an Official Spokesperson’s Perspective’, Discussion Paper D-29 July 1998, the Joan Shorenstein Center at Harvard University
Figure 31. ‘An Israeli soldier mourned a fallen comrade in Jerusalem’ source: screenshot, NYT

Figure 32. ‘At the cemetery, a battery powered neon light casts a glow over men digging graves’, source: screenshot NYT
Figure 33. ‘A wall marked with rocket shrapnel in the southern Israeli town of Ashkelon’, source: screenshot NYT

Figure 34. ‘Residents returned to bombed-out houses and began to clean debris and collect their belongings’, source: screenshot NYT
Figure 35. ‘A wall in the Israeli city of Beersheba damaged by rockets from Gaza. A 7-year old boy was seriously wounded in an attack on the city’, source: screenshot, NYT

Figure 36. ‘Palestinians saw destruction as Israeli troops began to pull out of Gaza’, source: screenshot NYT
It is disingenuous to present Palestinian suffering alongside Israeli suffering under the aegis of objectivity because the scale and intensity of violence are incomparable. Israel launched a full-scale military assault on a largely (or wholly) defenceless civilian population. Numbers matter. Fourteen hundred Palestinians died. The number was eleven for Israel. In the ten years since the beginning of the second intifada Israeli forces killed 6,371 Palestinians, including 1,317 minors. The tactic of claiming objectivity renders the suffering of Palestinians illegible on its own terms. Palestinians can suffer only so far as and as much as Israelis are seen to be suffering. To show Israeli suffering as comparable to Palestinian suffering is a profoundly political act that is, as Major Avital Leibovich admits, “favourable to Israel”. We must resist such attempts to parallel Palestinian and Israeli suffering, not only because doing so draws a moral equivalence between the Israeli woman who is tired of war and the Palestinian woman who has lost all of her children (figure 37), but because Palestinian suffering, identity and agency is subsumed by a generalized suffering of both sides.

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394 BT’selem ‘10 years to the second intifada’, http://www.btselem.org/English/Press_Releases/20100927.asp
395 Quoted in Shabi Special spin body gets media on message
Those pictorial representations of suffering that made it past the economies of taste and equivalence “reproduced” according to Campbell “a humanitarian subjectivity that is consistent with continued Israeli governance of the Occupied Territories”\textsuperscript{397}. Campbell locates the efficacy of the ban at precisely the point at which the ban itself appears to fail, the point at which images find their way out of Gaza. Campbell argues that it is in these images that “we have the production of Palestinians as “humanitarian clients’” a category which “severely limits their political agency regardless of the intentions of those who took or published the pictures”\textsuperscript{398}. This leads him to the conclusion that although newspapers such as \textit{The Guardian} might have thought the publication of photographs of personal and infrastructural devastation offered a critical perspective on the conflict, they actually represent Gaza as a humanitarian catastrophe which is both temporary and somehow beyond the

\textsuperscript{396} The date is not given: image and story available online at: http://english.aljazeera.net/focus/war_on_gaza/2009/01/20091585448204690.html
\textsuperscript{397} Campbell \textit{Constructed Visibility}, pp. 25
\textsuperscript{398} Ibid., pp. 24-5
political. Campbell is quite correct to assert that the humanitarian emergency that ensued during and after the assault was “neither an emergency previously unknown nor a condition beyond politics”\textsuperscript{399}. Rather, as Israeli Philosopher Adi Ophir has shown with such perspicacity, Israel has long governed Gaza by an “ongoing measured and calculated catastrophization”: “the scope of destruction and the number of civilian casualties [in Gaza] are first and foremost a temporary change in the mode of catastrophization: airplane bombs are added to the closure, artillery shells go hand in hand with the cutoff of electricity and the destruction of the sewage system”\textsuperscript{400}. Carefully managed disaster is not the exception in Gaza but the norm. Humanitarian framings, framings which both Palestinian and international coverage work within propagate the sense that the violence is temporary and exceptional, deflecting attention away from the fact that the exceptional has become normal and the temporary, permanent. Occupation bleeds into war and back again, but the audience cannot see this in the iconography of humanitarian disaster. Does peace follow war? It surely depends on how one defines those misleadingly oppositional terms.

**Exposing frames: violences within**

The problems of productively challenging Israeli visual representations are manifold. The Palestinian representational form of showing suffering is inadequate on at least two accounts. First, western media elide Palestinian suffering, either via direct censorship or by showing it alongside Israeli suffering. But even when Palestinian suffering is seen it is necessary to ask how it is framed, which brings us to a second problem. Representational framings of Gaza as a hostile entity proscribe Palestinians as spectrally human; their lives cannot be grieved because ultimately they – the terrorists – brought the assault upon themselves by firing rockets and blowing themselves up. The pictoral representations which hope, precisely, to challenge this perspective end up re-locating Palestinian

\textsuperscript{399} Ibid. pp. 27  
\textsuperscript{400} Ophir Reflections on Gaza
lives in a humanitarian catastrophe over which ‘they’ (the Palestinians and the audience) have little control. The Israeli occupation disappears from view and it is hoped that the war will come to a swift and peaceful end: when the dreadful images stop, then the dreadful acts they represent presumably come to an end too. ‘Operation Cast-Lead’ may have ended, but the suffering continues under an occupation which Israel refuses even to acknowledge, let alone to bear responsibility for under the international law of occupation.

If such a diagnosis looks dim, I would argue that it is representative of the situation in Gaza today. The U.N. enquiry headed by Mr. Justice Richard Goldstone into war crimes in Gaza has yielded little in the way of actual change, still less by way of justice. U.S. veto power will ensure that the Goldstone Report and others like it will not make their way to the International Criminal Court. And even if they did, the broken U.N. Resolutions scattered throughout Israeli history point to the fact that Israel is in-fact above the law, not subject to it. No justice will be done as far as the law is concerned. Neither will concession be paid by Israel in terms of renewing the peace talks: at present settlement expansion looks set to continue, rendering the peace talks futile. The border restrictions may have been eased since the Mavi Marmara affair in May 2010, but Israel still retains effective control of Gaza’s air, land and sea space.

The IDF was well aware that damaging and sensitive images would get out of Gaza during and after the assault. It is worth asking whether this marks not so much an oversight as a worryingly sophisticated understanding by Israeli PR technicians of the ways in which visual economies work. Israeli visual representations combined the overt regulation of images via the ban, but they also relied upon the covert and unspoken regulations of the visual economy that would end up privileging the Israeli narrative over its counter narratives. But perhaps what the IDF continues to
underestimate is the power of the visual archive to circulate, change and generate new meanings. In this spirit Judith Butler has asked what happens to the visual fields of war when “the mandatory framings become part of the story”; what if “there is a way to photograph the frame itself”? Was it not precisely a ‘framing of the frame’ that we saw in the image and footage of the journalists stranded atop the hill outside Gaza? Parash hill became infamous during the assault; journalists called it the “hill of shame”. They choose this name because hundreds of Israeli civilians climbed the hill to watch the show of Gaza burning. They posed for other exalted Israelis while making ‘victory’ signs for the camera (Figure 38). The story told through this image, and through others like it is that Israel does not believe in the freedom of press, that Israel wants to carefully regulate the way the world sees the Gaza offensive. The IDF media ban becomes part of the story; the frame constructed and sought by the IDF is quite literally framed at the same time as a violent inflection of Israeli society is exposed. That which constituted the frame, he who organized our gaze is brought into view. It is at moments like this that we might realise what we have seen is not some balanced, even less objective, view of the assault. Rather, we see how our seeing has been regulated by a powerful state that is invested in perpetuating catastrophe in Gaza through a series of politicized and often dehumanizing frames.

401 Butler Frames of War, pp.71
Figure 38. Israelis gathered on a hill near Gaza to see the "show" during one of the last days of bombing by the IAF, January 2009, source: Miki Kratsman\textsuperscript{402}.

Just as the assault on Gaza continues so the visual archive will continue to expand, circulate and sediment. There have already been renewed attempts by Israel to regulate the visual field since the assault on Gaza: in the attacks on the Mavi Marmara flotilla we witnessed the conjoining of the Israeli imagefare and warfare apparatus once again. “Everything” was filmed: the humanitarians attacked first, they had weapons, they were not actually humanitarians, but terrorists\textsuperscript{403}. These are familiar tropes but I would suggest that today they are tropes which \textit{are} being contested. I say this not only because the flotilla incident caused at least some momentary outrage in the international community. The Mavi Marmara flotilla was never likely to reach Gaza, but that was not the primary intention of those on board. The primary aim was to expose the siege of Gaza, to reveal the truth that Gaza is still under the sovereignty of Israel. The violence of the Israeli state was exposed on

\textsuperscript{402} Used first by Ariella Azoulay ‘Asleep in a sterile zone’, \textit{Aperture}, http://www.aperture.org/humanrights/azoulay.php
\textsuperscript{403} All these claims have been made by Israel and the IDF (see this video shot by the IDF which purportedly shows those aboard the Mavi Marmara using pre-emptory violence against IDF troops:http://www.youtube.com/user/idfnadesk#p/a/u/0/gYjkLUcbjWo) See also IDF 2010
that day, May 31 2010, as IDF boarded the Mavi Marmara and executed nine Turkish passengers, some of them at point blank range. Could it not be that the Mavi Marmara incident provides at least a start point in answering the question raised by David Campbell: “how can the permanent emergency of catastrophization in Gaza be pictured?” There was no “war” on in Gaza that day; it was a day like any other, nothing exceptional: siege, struggle and survival. But what is war if not this? The visualities of the flotilla throw light on the fact that the catastrophes embodied in the siege of Gaza are permanent.

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Figure 39. Eden Abergil sparked the outrage when she posted pictures of herself with Palestinian captives on her Facebook page, source: Getty Images/AFP [taken from www.Guardian.co.uk]

404 Campbell *Constructed Visibility*
Israel’s marked loss of control over the public narrative that followed the flotilla episode narrative has caused no small amount of consternation in Israel⁴⁰⁵. As one commentator put it, “we are being indisputably beaten hands down on the PR uses of this new technology [internet social media]. We may be a start up nation, but we are bricks and mortar communicators”⁴⁰⁶. Just two months after the Flotilla killings and Israel and the IDF were back in the news, this time for a series of photos uploaded to Facebook by a former IDF soldier. The pictures showing Eden Abergil posing in-front of blindfolded Palestinian prisoners under the caption ‘best time of my life’ “raised a storm”⁴⁰⁷ in Israel and beyond (see figure 39). In the exposé that followed, Israeli newspapers reported on the prevalence of this digital activity. Haaretz news ran the headline ‘Facebook photos of soldiers posing with bound Palestinians are the norm’ alongside a series of images depicting IDF soldiers striking various poses next to dead or gagged Palestinians. One does not have to view the whole series to realise that these photographs bear some terrifying similarity to those of the torture in Abu Ghraib. The photographs of Abu Ghraib revealed that violence in the name of civilization reveals its own barbarism⁴⁰⁸. Is not a kind of barbarism framed in Israel’s own visualities? Does the violence dealt out to Gaza, to the Mavi Marmara and repeated everyday in Gaza not speak of a profoundly violent state? The loss of control Israel so fears is already in the past. As the visual archive circulates so Israel has become its own worst enemy.

⁴⁰⁵ Levy Punishment of Gaza
⁴⁰⁸ Butler Frames of War, pp. 93
Chapter 5. Violence Legislates

5.1. Collaborative achievements

It is no surprise that Israel has come to use the language of humanitarianism to justify and defend the violence visited upon Gaza. And yet it is not only the military that are borrowing from the humanitarians; the humanitarians have begun speaking in the military lexicon too. These seemingly disparate – even antithetical – languages converge around the very laws of war I have been discussing. And yet these convergences are not new: it might reasonably be argued that the whole corpus of IHL is the product of a great conversation between the humanitarians and the militaries of the last century or so. IHL is, after all, a compromise between military necessity and the attempt to make war more ‘humane’ and it has never, therefore, been about the prohibition of violence. IHL is a restrictive legal regime with the raison d’être of limiting – not ceasing – violence. As David Kennedy compellingly argues, “...military strategists, and humanitarians may disagree, but they are speaking the same language and playing the same game”. Humanitarians will find this hard to digest as their tradition tempts us to suppose that they stand outside the military profession; their standards are higher, their rules stricter. Moral clarity, cool reasoning and impartial perspective mark the self-understanding of humanitarians – but the posture can be deceiving. IHL provides the “vocabulary not only for restraining the violence and incidence of war – but also for waging war and deciding to go to war”[409]. The innocent humanitarian no longer stands above violence, but partakes in it: the call to comply with international law legitimates. To ‘comply’ means that “killing maiming, humiliating, wounding people is legally privileged, authorized, permitted, and justified”[410].

[409] Kennedy Of War and Law, pp. 167
[410] Ibid. pp. 8
Goldstone and the humanitarians use law to oppose war. David Kennedy has cautioned us not to confound war and law, not to reduce them to binaries because to “resist war in the name of law, to exalt law as an external ethical restraint on the frequency and violence of war, to praise law for bringing the calculations of cool reason to the passions of warfare, is to misunderstand the delicate partnership of war and law.”\(^{411}\) In this final section I explore what has been lost as law has become the *dues et machine* of our politics of war. What problems do the convergence of the humanitarian and the military bring forth?

**The other Goldstone**

Goldstone has become a *cause célèbre* for humanitarians, Palestinians and solidarity activists alike. ON For the Palestinians this is in no small part, I suspect, due to the fact that outright criticism of Israel and its policies is increasingly hard to come across. Goldstone has become the voice of the oppressed, and for many his report signalled the end of Israel’s reign of impunity. Goldstone is respected in the international community not only for his personal legal standing and involvement in the ruling against Apartheid in South Africa, but also because of UN provenance, and the objective appeal of the UN. Haaretz journalist Uri Avnery speaks for many when he writes that Goldstone “provid[es] one of the most vivid, sober and unmistakable recommendations ever issued by a UN mission since Israel began its open-ended campaign of massacres and violations...”\(^{412}\). Richard Falk called Goldstone’s report an “impeccable documentation of a crucial chapter in [Palestinian] victimization under occupation”\(^{413}\). Goldstone is unwavering in his position that *prima facie* war crimes were committed and asks that perpetrators be tried and prosecuted. Justice, Goldstone

\(^{411}\) Ibid. pp. 167
promises, will be done. But it is worth asking whether it is indeed justice that is being ushered in by Goldstone and the humanitarians, or whether something far less honourable is at work.

Goldstone investigated the *jus in bello* (the way force was actually used) and not the *jus ad bellum* (the right to use force) of Israel’s assault. In an interview with *Al Jazeera English* Goldstone told presenter Shihab Rattansi “we didn’t look at the justification of military operations at all, we took them as a given”. When asked by Rattansi whether *jus in bello* and *jus ad bellum* are not connected Goldstone responded with the resolution of any good lawyer: “no no, absolutely not”\(^4\). What are the implications for taking as a ‘given’ Israel’s right to self defence? Are the means and ends of war really so independent from one another? The failure to investigate the self-defence narrative symbolizes the shaking of hands between war and law. Richard Falk is sceptical of the *a priori* right to self-defence and agitates against reading Israel’s resort to force as a given:

“The Goldstone Report endorses the misleading main line of the Israeli narrative by assuming that Israel was acting in self-defence against a terrorist adversary. The report does describe the success of the ceasefire with Hamas that had cut violence in southern Israel to very low levels, and attributes its disruption to Israel’s attack on 4 November 2008, but nowhere does it make the inference that would seem to follow, that the Israeli attacks were an instance of the international crime of aggression”\(^5\)

Falk’s going after the international crime of aggression charge is based on the fact that a state may, according to the ‘principle of last resort’, only launch a war if it has exhausted all other means of self-defence. Israel of course argues that it did, and yet at precisely the same time Israel signed the 6-month ceasefire with Hamas in June 2008 it also began making its military preparations for

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\(^5\) Richard Falk quoted in Harry Clark *Justice Goldstone at Brandeis*, emphasis added
Operation Cast-Lead: war was looked likely all along\textsuperscript{416}. International crimes of aggression are of historic importance because they are an indictment of war and aggression \textit{in toto}. According to the Nuremberg Trial of 1945, aggression is “the supreme international crime differing only from other war crimes in that it contains within itself the accumulated evil of the whole”\textsuperscript{417}. What was lost at the moment Goldstone decided not to question Israel’s right to “self-defence” was a critique of ‘the whole’. Israel has characterised the Goldstone Report as ‘going too far’; I would suggest that it didn’t go far enough.

\textit{Cordon sanitaire: normalizing war}

The flipside of failing to indict or even investigate Israel for crimes of aggression is that the assault on Gaza gained legitimacy. The humanitarians have been vocal in their denunciation of war crimes. But opposition is also a kind of authorization. It is necessary to ask: what is being opposed and at what cost does the humanitarian oppose particular war crimes over the general crime of war? Drawing on the work of Giorgio Agamben, Elizabeth Dauphinee argues that a state of exception is produced in the identification of ‘war crimes’. She identifies two states of exception which give rise to what she calls the \textit{normalization} and \textit{securitization} of war. First, the space of exception “which is identified as having produced the victim in the first place”\textsuperscript{418} ‘War crimes’ are made possible only inasmuch as they produce victims, and the victim is necessarily exceptional in order that a ‘war crime’ may have constituted the identified victim. Dauphinee adds that the extent to which a victim is “constituted as bare life is tied to the specific political practices that rendered her exceptional in the first place, and not by the injuring logic of war itself”\textsuperscript{419}. The second state of exception is located in the logic of the war crimes trial. The war criminal is excised from the realm of legal legitimacy into

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\begin{itemize}
\item \textsuperscript{416} ICG \textit{Ending the War in Gaza}
\item \textsuperscript{418} Dauphinee \textit{War Crimes and the Ruin Of Law}, pp. 56
\item \textsuperscript{419} Ibid., 57
\end{itemize}
\end{footnotesize}
a state of exception: his behaviour is by definition exceptional in that he is identified as a war
criminal and perpetrator. Dauphinee insists that both of these states of exception are “legal excisions
of particular subjects from the realm of the political” and what is secured through them is the
“legitimacy of war itself”\textsuperscript{420}. As such, the rendering of war crimes as exceptional normalizes and
legitimizes the ‘non-criminal’ but still violent acts of war; everything that is not “criminal” is normal
and thus legitimate. Law stands-in for ethics, becoming the supreme judge of right and wrong.

In light of all this we might ask after the ‘best-possible’ aspirations of Goldstone and the
humanitarians and what has been lost by their implication in the normalization of the violence of
war. What does the Goldstone Report wish to achieve? As far as the law is concerned the best
Goldstone can achieve is the prosecution of a handful of individuals. Why? Because in failing to call
into question the legality of the war itself, it is only the exceptional (and worst) acts that ever
cconcerned Goldstone. In this way a \textit{cordon sanitaire} distinguishes the abhorrent from the acceptable
violences of the assault. As much as the Goldstone Report points to the structural violence visited
upon Gaza, it legitimized at least some of the violence as soon as it began to use the language of
“proportionality” “distinction” and “necessity”. If Goldstone himself thought Israel had a right to
self defence we might ask what level of violence he would have deemed acceptable. At a talk
Goldstone gave at Brandeis University in a program entitled “The Challenge of the UN Gaza
Report” in 2009, this piercing question was put to him by a member of the audience. A
proportionate response he said (and I am paraphrasing from Harry Clark who was at the talk) might
have included commando operations and bombing of suspected sites, as long as “collateral damage”
was “proportionate,” which would exclude use of white phosphorus and anti-personnel

\textsuperscript{420} ibid, 57
munitions. Goldstone’s response goes to the very root of the problem when humanitarians begin down the path of speaking in the lexicon of the laws of war.

Recall for a moment Adi Ophir’s analysis: “Now imagine the attorney general of the "Democratic Jewish State" asking the intelligence commander: how much ammunition? How many children? And then imagine how he calculates...” Goldstone too was calculating when he answered this question; the humanitarians too were calculating when they called the attack “disproportionate”; the humanists too were distinguishing when they opposed the killing of civilians; and all of them were participating in the violence when they signalled out particular incidents as if war crimes were more important than the crime of war itself. If the humanitarians found civilian deaths abhorrent, what did they think about the death of “combatants”? If the assault was disproportionate what ratios might we deem proportionate? If too many died then would more precise technology have made enough difference to quell our opposition? If extrajudicial assassinations were conducted in bad taste, have we not forgotten about the regular assassinations and operations? If the flachette and phosphorous bombs were too much for international audiences to see, would tear-gas and bomblets have been more palatable?

The humanitarians are loath to admit it, but they too are asking these questions; they too draw normative distinctions between legitimate and illegitimate means of death and above all else, they too are playing with what lives count and what lives are expendable. The figure of the civilian throws into relief the hypocrisy at the heart of IHL. The civilian is protected, the non-civilian can be forsaken. When the Goldstone Report places “the civilian population of the region [Gaza] at the centre of its concerns regarding the violations of international law”, it forgets that in the vocabulary of the laws of war, civilians can easily become combatants. But even more than this, IHL relies on

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421 Harry Clark Justice Goldstone at Brandeis
the distinction: the lives of some are secured through the deaths of others. It’s a calculation. But it remains as Elaine Scarry insists: war “is a form of violence; it is a member of a class of occurrences whose activity is “injuring””\(^{422}\). Does it really matter whether we name a human a civilian or a combatant? Scarry is spot on: the principle aim of war is to injure. Legal or illegal, injury is the goal: “torn, bleeding, injured, obliterated bodies [are...] the currency with which the ‘outcome’ of war is purchased”\(^{423}\).

There was no good answer Goldstone could have given because in one sense it was already too late. Much has been lost. The entrance of humanitarians into the lexicon of military necessity and the laws of war signals a tacit acceptance of its rules and limitations. Once we use law we accept it: we may try to change it and to use it strategically but fundamentally our acceptance legitimises its norms. Once we use law we have acceded to it, we are, so to speak, already past the gates of the camp. Claude Lanzmann, in a brilliant seminar on his monumental film \textit{Shoah}, claims that “when the gates of the camp are passed it is already too late”\(^{424}\) (1991, 89). When making the film he was troubled by the fate of the victims and asked about those who were doomed to Auschwitz, “At which moment did it start to be too late?” We might ask the same of the victims of Gaza, and at least part of the answer begins not when we walk through the gates of Gaza, the “world’s biggest prison”, but when we open the gate to law and begin down its deathly path. And if it is that the new face of IHL is violence and not restraint as Eyal Weizmann claims, we might be wary of opening that gate at all.

\(^{424}\) Claude Lanzmann ‘A seminar with Claude Lanzmann’, \textit{Yale French Studies} No. 79,(1991), pp. 82-99
5.2. **Violence legislates**

There is one final problem raised by the emerging convergence of humanitarian and military vocabulary – one perhaps even more worrying than the ones already discussed. We have already witnessed that Israel’s assault on Gaza was not just about bombs and bullets, but involved a carefully constructed legal offensive too. I demonstrated how, through the technologies of warning, Israel obfuscated the boundaries between civilian and combatant, permissible and impermissible. Once the civilian becomes Etzioni’s ‘abusive civilian’ s/he is no longer civilian. I now want to finish by revisiting this idea of the elastic limit of the law and to explore some of the troubling contours that are beginning to emerge from contemporary attempts to re-write IHL. Much more than I have hitherto suggested is at stake in the bewildering war and peace rooms of IHL where militaries meet humanitarians. Law has become a tactic; an instrumental weapon. In one sense Israel’s assault on Goldstone was never only about Goldstone; the real target, I want suggest, was international law itself.

IHL has two sources, treatise law and customary law. Customary law is interesting because it is not static but is shaped and developed according to the behaviour and conduct of states. This means that military practice can shape the law. The customary element of IHL is essential, it is argued, because the nature of war changes and with it, the law must change too. One only need think about the transition from ground-war to air-war to imagine the drastic shifts that are required of the laws of war: aerial bombing – especially carpet bombing – presented massive challenges for the law that were simply not present before the invention of the aeroplane. Today we are witnessing new legal challenges with the proliferation of UAV’s. One of the most important recent changes, and one reflected in IHL, is Common Article Three of the Additional Protocols (1977), the first-ever

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international treaty devoted exclusively to situations of non-international armed conflicts. But warfare continues to change. The so-called ‘new-wars’ of the last decades are different from the ‘traditional wars’, the most radical change being the proliferation of non-state violence and the loss of the states’ monopoly of violence. Modern warfare, if we are to believe British General Rupert Smith, is rapidly moving away from the traditional inter-state model to what he calls "war amongst the people". There is of course a raging debate about the ‘new-wars’ and how new they actually might be but I mention this notion of the new war here because it crops up again and again in Israel’s account of the assault on Gaza. The claim about new wars demanding new laws normally proceeds thus:

“Democratic States today frequently face attacks from non-State actors seeking to terrorise civilian populations... Israel is a sovereign State, with a moral and legal obligation, and an inherent right under international law, to protect its citizens from terrorism. No nation is required to submit to terrorist attacks... For a State, like Israel... responding to and preventing such attacks poses operational, legal and moral challenges.”

The new-war/law narrative is continued by Asa Kasher (a professor of Philosophy and Ethics at Tel Aviv University and the author of the Israeli army's Code of Conduct) and Major General Amos Yadlin (former head of the IDF's National Defense College), under whose auspices Kasher formulated the Code of Conduct. The above situation, claims Yadlin, amounts to “A new model of warfare - the counter terrorism war” and what is required is nothing short of “a new set of rules

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427 See Gregory War and Peace.
430 IMFA Investigation pp. 5
on how to fight it. The other side is fighting outside the rules and we have to create new ethical rules for the international law of armed conflict [IHL]. The duty of the state is to defend its citizens. Any time a terrorist gets away because of concerns about collateral damage, we may be violating our main duty to protect our citizens."\(^{432}\). If western warfare is to remain the paragon of legitimacy, the beacon of humaneness amidst the terror of ‘Other’s’ war, it follows that international law must respond to meet the challenges of the new nature of armed conflict.

One of the key ways in which all those states engaged in so-called “asymmetric warfare” against Terrorism and the Global Jihad have risen to this challenge is to utilize what has become known as lawfare\(^{433}\) – the use of law for achieving military goals. Just a decade ago it had become a matter of course to equate lawfare with the “bad guys” who use and abuse law to gain strategic advantage over law-abiding democratic states. Charles Dunlap, U.S. Major-General and Deputy JAG is often credited for coining the term used to think along these lines. In 2001 he warned democracies (he had the U.S. and Israel specifically in mind) that “the rule of law is being hijacked into just another way of fighting (lawfare) to the detriment of humanitarian values as well as the law itself”\(^{434}\). But since then Dunlap has changed his view on lawfare and has come to realise that it is “absurd” to think of lawfare as “intrinsically evil”\(^{435}\). Revisit Dunlap less than ten-years later and he contends that “lawfare is more than just something adversaries seek to use against law-abiding societies; it is a resource that democratic militaries can—and should— employ affirmatively”\(^{436}\). Lawfare can now be used for ‘good’ - providing it is utilized by the good. The idea is to substitute law for war to “reduce

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\(^{432}\) Amos Yadlin ‘Ethical dilemmas in fighting terrorism’, Jerusalem Center for Public Affairs, Vol. 4, (8): 25, November 2004

\(^{433}\) Dunlap Military Interventions: Dunlap first defined lawfare as “the use of law as a weapon of war”, pp. 2

\(^{434}\) Ibid., pp. 6


the destructiveness of war, if not its frequency”⁴³⁷. The normal example he cites is of U.S. forces in Afghanistan using a legal “weapon”—a contract—“to deny potentially valuable military information (derived from commercially available satellite imagery) from hostile forces”⁴³⁸. Dunlap is upbeat about the challenges that lay ahead; lawfare seems a happy discovery for him, if only because it is now in the ‘right’ hands.

To Dunlap’s beat Israel now marches. The re-writing of IHL has become a legitimate task. Asa Kasher, the man at the cutting-edge of military ethics in Israel, believes Israel is “in a key position in the development of customary international law in this field because we are on the front lines in the fight against terrorism”⁴³⁹. Developing law along these lines involves disposing of some of the old ethical concepts according to Kasher. He notes that “The classical assumption of mutual observance of the norms of warfare never holds in the war on terrorism”. The Geneva Conventions are outdated; “They were appropriate for classic warfare...But in our time the whole business of rules of fair combat has been pushed aside”. But what is to replace them? Kasher asserts the primacy of Israeli soldiers’ lives over and above those of Palestinians “Why should I force” an Israeli soldier, he asks, “to endanger himself...so that the terrorist’s neighbour isn't killed? [...]From the standpoint of the state of Israel, the neighbor is much less important. I owe the soldier more. If it's between the soldier and the terrorist's neighbor, the priority is the soldier”⁴⁴⁰. He further suggests that it is not Israel’s responsibility to distinguish between civilians and combatants since Israel has relinquished “effective control” of Gaza. These are not so much new distinctions as imaginative – even courageous – assertions, but reading Kasher and Yadlin one gets the sense that perhaps the new face of

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⁴³⁷ Scott Horton A kinder, Gentler Lawfare
⁴³⁸ See for example Charles Dunlap ‘Lawfare: a decisive element’, pp. 35
⁴⁴⁰ Quoted in Halper The Second Battle of Gaza
international law is more about imagining and performing evolving frontiers rather than setting things in black and white. In this way Eyal Weizmann has argued that international law has become an endless series of conflicts over the border of the permissible and impermissible.

Recall for a moment the words of Daniel Reisner from the previous section. Reisner was the former commander of Israel’s ILD and on the question of making new realities he said that “If you do something for long enough, the world will accept it. The whole of international law is now based on the notion that an act that is forbidden today becomes permissible if executed by enough countries”. It is exactly this line of thinking, the presumption that violence legislates, that underscores the approach being taken in Israel today and in the assault on Gaza. Kasher’s insistence on not putting his soldiers in harm’s way is not strictly legal but neither is it illegal. His assertion about Israel’s relinquished responsibility to distinguish between civilians and combatants introduces a quasi legal-fiction; a work of the imagination. The tactic of ‘knock on roof’ employed in Gaza was nothing but an experiment. The leafleting campaign over Lebanon and Gaza was not novel (it has been practiced at least since Vietnam) but at some point that too was the work of legal innovation. Again, we have seen all this before, and not just in Israel. For example, the Bush Administration invented the term “unlawful combatant” to skirt around the problem of affording legal protection to the indefinitely detained. Or in another example we might ask what need there was in the U.S. Department of Defence for a military tribunal system given that both a civil court and a military court system already existed: DOD representatives said they needed another “instrument” given the new circumstances. Kasher explicates the new relationship between law and practice and affirms Eyal Weizmann’s observation that IHL is bent according to its ‘elastic limit’ when he writes that: “The more often Western states apply principles that originated in Israel to their own non-traditional conflicts in places like

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441 Butler Precarious Life, pp.83
Afghanistan and Iraq, then the greater the chance these principles have of becoming a valuable part of international law”. Kasher never qualifies for whom these new principles will become “valuable”, but his words nonetheless demonstrate the terrifying degree to which law has become purely instrumental.

The instrumentalization of law and the increasing willingness of ‘our’ states to use law as a weapon of war – and to do it overtly – signals the death of the traditional vocabulary of clear lines and sharp legal distinctions. The truth of course is that it was never just ‘them’ using and abusing law, which is why I have gone to such efforts to demonstrate the ways in which Israel has always utilized law as a kind of weapon. Indeed, Jean and John Comaroff have noted that the instrumentalization of law has a longer history, and it is not confined to the disorderly spaces of the postcolony. Mindful of the emergence of lawfare they write “Many of the practices quintessentially associated with the postcolonies are not confined to them. They are discernable elsewhere...if perhaps as acutely or as vividly- or living under a legal alias.442 Lawfare therefore is partly about the legalization “by sovereign fiat [of] what is dubbed “corrupt” elsewhere”443. Perhaps the vocabulary of sharp distinctions is not yet dead but David Kennedy has warned us that today it is unclear whether it is any longer available to the humanitarians. Why? “The trouble begins”, Kennedy claims “when humanitarians speaking the language of external virtue hit the problem of exceptions – what if it were Hitler, what if there were genocide, what if they were raping your mother? What about self-defence? What about Deterrence?” These classic questions, to which we should surely add the prototypical question of Israeli ethicists: ‘what if it were your child hit by that Hamas rocket?’ “take us straight to the doctrinal world of flexible standards, balancing conflicting considerations,

443 Ibid. pp. 38
assessing proportionality..”

Humanitarians have already gone down the path of strategic calculation but they are not yet ready to face the full implications of their actions. Two examples suffice to demonstrate the point. First, Goldstone insisted on the absolute separation of *jus ad bellum* from *jus in bello*, and while this is ostensibly honourable it is remarkably ignorant of the fact that today the means and ends of war are deliberately confounded. One might easily respond to Goldstone’s idealism that “when we are seeking a goal that is morally justified in and of itself, then it is also morally justified to achieve it, even if this may lead to undesirable consequences”. The ends justify the means and as much as these must indeed be kept separate, what is required of the humanitarians is a critique that exposes the way in which Israel seeks to blur them in order to justify any and all acts of violence. Second, in an article critiquing Kasher and Yadlin for their 2005 article justifying what they called ‘assassination and preventative killing’ just-war theorists Michael Walzer and Avishai Margalit insist that “the crucial means for limiting the scope of warfare is to draw a sharp line between combatants and noncombatants (sic)”.

Again, we might agree – Walzer claims that this is the “only morally relevant distinction all those involved in war can agree on” – but what about attending to the ways in which these distinctions have been rendered all but meaningless in the grey of law espoused by Israel and its apologists who now argue that a civilian-combatant continuum is what “we” need?

Here I find myself agreeing with Kasher in his assertion that “The media don’t understand the nature of international law. It’s not like tough traffic laws. Much of it is customary law. The decisive

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444 Kennedy *Of War and Law* pp. 108-9
447 See for example: Alan Dershowitz A, ‘Arithmetic of pain’ *Wall Street Journal* 19 July 2006; Alan Dershowitz “Civilian casualty? It depends’ *Los Angeles Times*, 22 July 2006. Kasher in his ‘A moral evaluation of the Gaza war-operation cast lead’ argues much the same as Dershowitz when he writes “What we need instead of the crude and now impractical distinction familiar from the case of regular wars is a scale of involvement in terrorist activity: There are people who are directly involved, those who are indirectly involved, and those who are not involved at all”; for more on this see Gregory, *The death of the civilian*
question is how enlightened countries conduct themselves”\textsuperscript{448}. Media and humanitarians alike, in Gaza, in Iraq, today and throughout history have insisted on calling and naming this or that act of war “illegal”. In so doing they have in large part failed to understand that the true nature of IHL is inhabited not only by the legal but the lethal as well. What are the humanitarians supposed to make of the reality that now faces them when Israel retorts to their righteous allegations: “What we are doing is becoming the law”\textsuperscript{449}?

All this is extremely problematic for the legal opposition to the assault on Gaza. The fact that law is not static gives humanitarians and those who oppose war much less to work with, or rather, what they have to work with has began to shift and change shape. If “military necessity” and state practice/violence can reconfigure those lines of the law that we once thought were absolute and clear, by what legal compass are we to navigate? And in what space and time do we anchor our claims if the law is interpretive and evolving? David Kennedy’s argument that to “oppose war in the name of law...is to misunderstand the delicate partnership of war and law” seems like an understatement. If war is continued to be opposed in the name of law we effectively leave Israel and its allies to pursue their goal of launching an unending war upon an ever more ambiguously defined enemy. But not only this, we also leave the re-writing of IHL to those who have recruited and instrumentalised law for the purposes of rendering legitimate and moral these very wars that never end. The rhetorical power of the law cannot be underestimated in this crusade. Law has become violence, it is doing the work of the military while simultaneously making a mockery of the humanitarian misunderstanding that law always prohibits violence – and all the while it is doing it in the guise of lawfulness and legitimacy.


\textsuperscript{449} Ibid.
The problem facing us today is so profound that it calls into question the very foundation of International Humanitarian Law. To some extent humanitarians have relied upon the law for too much, or to paraphrase Giorgio Agamben\(^\text{450}\) we have forgotten that law does not exhaust the question. In constantly invoking the law, ethical categories and juridical categories have become confused so that now humanitarians no longer speak of immoral, unethical wars – but only illegal ones. Politics had been displaced by and into the legal\(^\text{451}\). Can we afford such a dependence on law for our politics, even less, our morality? We should treat with caution any situation where legal issues are treated as the focal point for ethics and politics, yet it seems that in relation to the assault on Gaza, the legal has come to eclipse all else. Even more will continue to be eclipsed so long as we forget that the law is not only insufficient, but that it might also be too much. This is a critique of both the humanitarians and the military, of Goldstone and Israel.

If Israel’s assault on Gaza did not trouble us enough then perhaps its assault upon international law will. Because whether we like it or not, Israel’s assault enlists us all in the drama of war. It prompts us as an audience to respond to the multiple rhetorical, legal and ethical claims that have been made. Kasher’s hope in all of this is that “the world will soon acknowledge Israel’s lead in developing customary international law”. My hope is that we can realize the magnitude of the danger this poses because we are all – if unequally – exposed to what Elaine Scarry has termed “the misrule of men”\(^\text{452}\). To this extent and “in terms of vulnerability as well as solidarity, we are all, indeed, Palestinians”\(^\text{453}\)

\(^{450}\) Giorgio Agamben \textit{Remnants of Auschwitz}, pp. 18-23
\(^{451}\) Comaroff and Comaroff \textit{Law and Disorder}, pp. 32
\(^{452}\) Elaine Scarry \textit{The misrule of men} (2010), Boston: Boston Review
\(^{453}\) Jeff Halper \textit{The Second Battle of Gaza}
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