Middle East Studies Association Meeting Panel on Gaza, 23 November 2014

“A Brief Introduction,” Sara Roy .................................................. 1
“The Coming War Will Be a Nightmare,” Paul Gaston Aaron ......................... 4
“Gaza: The Unprotected Edge of Palestine,” Brian K. Barber ......................... 9
“Cement Determines the Future in Gaza,” Bill Corcoran ............................ 19
“Gaza’s Histories: From Catastrophe to Precarity and Back Again,” Ilana Feldman .... 24
“Operation Protective Edge and Why Getting the Law Right Matters,” Susan M. Akram .... 29

A BRIEF INTRODUCTION

BY SARA ROY

In the aftermath of the horrific summer 2014 attack on Gaza known as Operation Protective Edge (OPE), the third Israeli war against the Gaza Strip in six years, Professor Nathan Brown, the president of the Middle East Studies Association (MESA), asked me to organize a panel on Gaza for MESA’s annual meeting in November 2014.

The panel brought together scholars and practitioners who, collectively, have decades of experience researching and working in Gaza.

The first speaker was Paul Aaron, a correspondent for Politika, a newspaper based in Belgrade, and an independent researcher and consultant. Reporting for Politika, Aaron remained in Gaza throughout OPE. He interviewed Hamas leaders, clinical staff at the Gaza Community Mental Health Center, surgeons at al-Shifa Hospital, displaced families sheltering in UNRWA 1 schools, and returnees to Shuja’iya and Khuza’a camped amid the ruins. Aaron’s presentation conveyed what total war does to a community already at the breaking point. Though the impact was complex and shifting, he described some ominous trends, possible harbingers of Gaza’s future.

These trends include the collective abandonment of any hope for peace and coexistence with Israel; celebration of military resistance coupled with increased despair about the possibility of a coherent and responsible Palestinian national movement; and the unraveling of Gaza’s social


© Copyright by the Institute for Palestine Studies. All rights reserved.
fabric characterized in part by the emergence of a growing underclass, and a deepening sense of helplessness and dependency. In this regard, OPE unleashed a dynamic of disintegration.

The second speaker was Brian Barber, currently a Jacobs Foundation Fellow at the New America Foundation, and a professor at the University of Tennessee, Knoxville, where he is director of the Center for the Study of Youth and Political Conflict. Barber argued that the magnitude of the repeated catastrophes in Gaza encourages quantification: astounding numbers of casualties, property destruction, and so forth.

An unintended consequence of such a perspective, however, is the depersonalized view outsiders get of Gaza and its people. Barber’s presentation focused on humanizing Gazans as ordinary (in the best definition of the word), competent, humble, resourceful people. Barber humanized Gaza’s suffering by relating individual narratives from his October 2014 trip to Gaza, which, beyond the obvious trauma caused by the violence and destruction of OPE, reveal the more vexing levels of suffering caused by such problems as power outages, lack of recreation, idleness, and the inability to move. Speaking personally about individuals and families he has lived with and interviewed over the last twenty years, Barber referenced his ongoing research, which is documenting a nuanced form of psychological suffering—contextualized suffering—that Gazans describe as “feeling broken or destroyed.”

The third speaker was Chris Gunness, the spokesperson and director of advocacy and strategic communications for UNRWA in the Office of the Commissioner-General, Jerusalem.

As the largest humanitarian actor in Gaza, UNRWA took a leading role in the international response to the dramatic upsurge in violence that engulfed Gaza in July and August 2014.

Gunness’s presentation argued that the current situation in Gaza is unsustainable both in terms of the repetitive cycles of violence and destruction and, even more so, in terms of the human cost to the Middle East’s most isolated community. He argued forcefully that the time for humanitarian action alone has long past and that there must be concerted political action from the donor and world community to break the pattern of blockade, rockets, and massive destruction. Gunness raised questions about a policy of allowing Gaza to languish in a state of de-development while militancy rises alarmingly in the Middle East, concluding that while engaging Gaza and ending its isolation may be a challenge, it is also an opportunity—more urgent than ever before—to lay aside a paradigm that has failed miserably.

The fourth speaker was William Corcoran, president of American Near East Refugee Aid (ANERA), a nongovernmental organization (NGO) with nearly fifty years of experience working in the occupied Palestinian territories.

Corcoran addressed the complexity and the challenge of the nonprofit response in Gaza, highlighting ANERA’s efforts to provide Gazans with humanitarian support during OPE, and revealing the limited capacity of the NGO community to respond to the magnitude of devastation wrought by the attack. However, under the right conditions—a status quo that allows the free movement of people and materials—certain needed change is possible. Corcoran summarized Gaza’s massive reconstruction needs, particularly in infrastructure—especially water/sanitation—arguing, critically, for cement and other building materials. If cement were readily available, Gaza’s economic sector would be stimulated in a way that would reduce the need for humanitarian assistance. Another critical factor is staff, a community of NGO workers able to implement needed programs, a community now exhausted, depleted, and traumatized by the last war.
Corcoran’s presentation emphasized two main points. The first is that only political change could alter Gaza’s reality. The second is that Israel’s policy toward Gaza should be understood as a template for its future policies in the West Bank.

The fifth speaker was Ilana Feldman, associate professor of anthropology, history, and international affairs at George Washington University.

Feldman’s presentation situated Gaza’s current catastrophe in the context of its long history of inflicted suffering. She argued that Gaza’s calibrated suffering has long been used by Israel as a strategy of control and that OPE was made possible by this long trajectory. A key component of the strategy is humanitarianism—producing a humanitarian problem in Gaza through blockade and other restrictions—as a way of managing a political problem. By inducing a chronic humanitarian problem and consigning Gazans to relief, Israel has negated or attempted to negate any identity based on a political or national claim.

Feldman further addressed the relationship between suffering and claim-making, arguing that Palestinians worry that if they are not seen as being in acute need, their claims will go unheard. Yet their claims are not for aid, which is sometimes desperately needed, but for justice. In this regard, while it is important to lift the devastating blockade on Gaza, justice cannot come without ending Israel’s occupation.

The sixth speaker was Susan Akram, clinical professor of law and director of the International Human Rights Clinic program at Boston University School of Law.

Akram addressed several key issues: the extent to which humanitarian law and human rights law determine responsibility to protect the Gazan population; the extent to which humanitarian law and human rights law determine culpability, and for what breaches or what crimes; whether Gaza is “occupied territory” as a matter of law, and to what extent the answer to that question determines responsibility and culpability for crimes under the above framework; and whether the answers to these questions make a difference in how activists can or should move forward to demand redress, and the options available for doing so.

Akram concluded with a call for a strategic movement that is informed by a legal framework that unifies the Palestinian population in a single experience of mass expulsion, ethnic cleansing, and genocide. This movement, furthermore, must reject the further fragmentation of the Palestinian people by its occupiers, its donors, its public representatives, or international agencies.

Consequently, she argued, it is time to get the law right so that every single killing in Gaza in every new conflict does not have to be individually scrutinized as a violation of international humanitarian law or whether it should be regarded as an act of occupation or an act of international armed conflict. It is past time to get the law right so that this movement can find traction in all the ways that law and grassroots efforts make possible.

As the panel chair, I had planned (but did not have the time) to offer a brief conclusion to the panel as follows:

Given all that you have heard today, it is clear that the situation in Gaza is desperate with no meaningful end to the blockade or the occupation in the foreseeable future. As I have argued elsewhere, the current reconstruction plan will, if implemented, solidify the blockade rather than end it.

If, under these circumstances, Gaza is prevented from entering the world, then the world must enter Gaza.
Here, I would like to make three recommendations:

First, Gazans are desperate for connection with the outside world. While Gaza needs to interact freely with the world, until that happens the world must interact with Gaza. International meetings should be held there like science forums, academic, medical and legal meetings, international art fairs, and so on. Perhaps the International Studies Association, for example, would like to hold its annual meeting there, perhaps its British or European counterpart, perhaps both together. The resistance that will no doubt arise should be addressed and publicized and organizers must insist and persist, raising awareness along the way.

Second, more academic programs should be established between Gazan and Western universities, as well as high schools and elementary schools. I know that Gazans, especially young men and women, are anxious for links with Israeli, American, and European institutions sympathetic to their cause. People want to participate in the world but they must be treated as principal and valued participants in their own remaking, not as beneficiaries—the recipients of humanitarian aid.

Last, and perhaps more controversial for some, but no less important, we as concerned academics must bring Gaza to Israel, engaging Israelis and trying to create ways these two societies can understand each other and, ultimately, engage the other as equal.

Gaza is home to nearly two million human beings whose suffering is unconscionable and, inexplicably, sanctioned. This must end. There is no other way if regional peace is to become possible.

About the Author
Sara Roy is a senior research scholar at the Center for Middle Eastern Studies (CMES) at Harvard University specializing in the Palestinian economy, Palestinian Islamism, and the Israeli-Palestinian conflict. Dr. Roy is a member of the board of directors of the Gaza Community Mental Health Program—U.S. branch and cochair of the Middle East Seminar, jointly sponsored by the Weatherhead Center for International Affairs and CMES. The third, updated edition of Roy’s seminal book, The Gaza Strip: The Political Economy of De-Development, is forthcoming from the Institute for Palestine Studies in 2015.

THE COMING WAR WILL BE A NIGHTMARE

BY PAUL GASTON AARON

A week after the start of Operation Protective Edge, I returned to Gaza as a correspondent for the Belgrade newspaper, Politika. I stayed for two months. My brief remarks today will try to convey some sense of what happens when a community that is already at the breaking point is subjected to total war.

Over the last decade, Gazans have endured economic deprivation, recurrent exposure to traumatic events, and close confinement to a narrow strip of territory that is densely populated, ecologically degraded, and cut off from the outside world.

Within this detention center, people evolved a variety of ways to adjust and endure. “Our skins have grown as tough as crocodile hide,” a friend used to tell me. “We have all learned to become pain containers,” was how a psychologist from the Gaza Community Mental Health Program put it. In the mosques, the imams preached that stoicism was divinely sanctioned and that Allah gives the hardest tests to those he loves the most. According to Hamas, the capacity to endure
demonstrates an adherence to ribat, a Qur’anic precept that refers to the patient waiting of the lone soldier who stands guard at his outpost in defense of sacred ground, and whose faithful vigilance is ultimately rewarded.

But while Gazans draw on different frames of reference to explain their patterns of survival, everyone acknowledges the fundamental importance of family and kinship networks. Such informal structures provide physical and financial protection and emotional and psychological meaning. It was precisely these keystones of coherence the Israeli assault aimed to demolish. This was how many ordinary Gazans read the logic of the onslaught they experienced. Its duration; its intensity; its indiscriminate nature: all seemed aimed at imploding a society and bringing an entire population to its knees.

Schools, universities, ambulances, hospitals, factories, workshops, sewer lines, power plants, farms, refugee camps, and high-rise buildings whose tenants comprised Gaza’s disappearing middle class: everything and everybody became fair game. The border areas were hardest hit, with vast stretches of Shuja’iya, Bayt Lahiya, Khuza’a, and Rafah razed to the ground.

But there was no safe haven. At night, the upscale al-Rimal neighborhood area where I stayed was bathed in a lurid orange glow as flares fell in a slow corkscrew descent.

Ayman, who studied international relations at Harvard in 2004, had relocated to my building with his family after their own house was destroyed by artillery fire. “If it happened one time, two times, ten times, I might believe that attacks against civilian targets were accidental,” he said. “But not a mistake every hour, every day, for more than a month.”

Prime Minister Benjamin Netanyahu claimed that every effort was made to protect noncombatants, but this is belied by statements from Israeli army strategists. “There are many aspects of Hamas, and we are trying to hit the whole spectrum because everything is connected and everything supports terrorism,” said one.

The goal is to use “disproportionate force,” thereby “inflicting damage and meting out punishment to an extent that will demand long and expensive reconstruction processes,” said a second.

Gazi Eisenkot, head of the northern command during the 2006 war in Lebanon and recently appointed Israel Defense Forces (IDF) chief of staff remarked, “In practical terms, the Palestinians in Gaza are all Mashaal, the Lebanese are all Nasrallah . . . They grumble about being punished because of their leaders, while fearing their leaders more than they fear us. We need to make the fear we sow among them greater.”

Gazans felt exposed and unprotected, like prey being stalked by hunters in the sky. Children were especially vulnerable. When he heard the boom of explosions, the ten-year-old son of my landlord collapsed on the floor, quivering with panic. But fear as a weapon often backfired. Instead of breaking collective will, the Israeli version of shock and awe more often forged a sense of

solidarity. Instead of inducing helpless despair, it more often triggered defiance. During the war, Gazans stuck together. Bakers baked bread and didn’t increase prices. The police were nowhere to be found but people managed themselves and maintained law and order. And regardless of age, economic status, or factional affiliation, people identified with the armed resistance and took pride in the courage and ingenuity of the young fighters who held their own against the world’s fourth most powerful army.

“We target only the sources of terror and Shuja’iyya is a source of terror,” declared Netanyahu. “We asked in every way for the civilian population to leave, but Hamas told them not to so they could be used as human shields . . . Hamas wants you to die, we want you to be safe.”

Hani lived on Baghdad Street in the heart of Shuja’iyya. He studied English literature at the University of Montana.

The attack started at around 11:30 Saturday night. It came suddenly. People here have been through invasions before, but it was never like this. We didn’t leave because we didn’t think it could get this bad. I know the Israelis say that Hamas held us hostage. But no one ordered us to stay. Twenty-two members of my family huddled under the stairwell. Parents, sisters, brothers, aunts, uncles. We stayed there until 10:00 A.M. the next morning when there was a lull, which is when we were able to escape. During the night, I tried to keep track of the number of explosions. I stopped counting at 866. Every thirty seconds there was a shell or a bomb. The walls of the buildings were sheared off but they fell out rather than in. My sister said, “We are all going to die.” She went to each of us and kissed us, told us how much she loved us and said goodbye. For some reason, I stayed perfectly calm. Wherever I go, I always bring a book. So I began to read, with light from my cell phone. The title was *Terror in the Name of God*. It’s about religion and violence. There are chapters on Buddhism, Christianity, Islam: all the major religions. But the chapter on Judaism seemed more like an apology or excuse rather than an analysis. Every war that Israel fights gets traced back to a single event: the Holocaust. Why should a country be allowed to use past suffering as a weapon to make others suffer now? They get away with murder and the world watches and does nothing.

Hassan Ziada is a skilled and dedicated clinician at the Gaza Community Health Program. He has devoted his career to relieving the psychological suffering of families and children. When I saw him this summer, he appeared physically and emotionally shattered. His leg shook uncontrollably and he had to fight back tears. His mother, two brothers, and three nephews were killed when a bomb struck their house.

We planned this house for our mother. It contained our dreams, whole generations of our dreams. We built it year by year with hope and love: four stories, two hundred meters, walls, ceilings, floors. No, it was so much more. It was the story of our success and our happiness. Of what we accomplished caring for each other and supporting each other. Even before this war, Gaza was a place where everything you did to make a decent life could suddenly be undone. People feel they have no control of the future. Change can come only by ending the blockade, by allowing

---


---

6

---

Journal of Palestine Studies
a normal economy where it becomes possible to work and earn, to hope and create. A single political decision by Israel will make much more difference than therapeutic treatment or donor aid. Israel wants unconditional surrender. This will not happen. The root of the problem is occupation, and it must be addressed in all I do; if not, then I collaborate with the aggressor and prepare the victim for the next round of violence. The war has made me ask essential questions: What is your relation to life, and to the lives of others? What lies behind the mentality that conceives and implements a doctrine of killing whole families? How do we provoke the humanity of the Israelis? How to make them look into the mirror and see reflected back our loss and pain?

At a beachfront cafe called Salaam, I interviewed Basim Naim, a major figure in Hamas who has served as minister of health, member of the politburo, and chief adviser to Ismail Haniyeh.

This war brought home to me the special character of people in Gaza. A few days ago, I visited a relative of mine. Two of her sons, twenty-one and twenty-three years old, became shuhada fighting with the resistance. Her house in Beit Hanoun was completely demolished. When I went to see her, she had moved into a dilapidated two-room apartment. She used a curtain to make a separate area for guests so they could be served coffee to drink and bread and salt to eat. And she brought flowers and cages of song birds. Life is full of hardship but we make it worth living. We learn to look for beauty and happiness in small things. This is our strength and this is why we endure.7

According to Naim, patience will prevail. “What just happened in Gaza is not a single episode but part of an ongoing process. History is never static. How long did it take the Algerians to win their national liberation struggle? One hundred fifty years. How long did it take the Vietnamese? The South Africans? We are prepared to wait.” But the capacity to wait and endure, which Naim sees as Gaza’s abiding resource, proved far from inexhaustible. After fifty-one days of war, the ceasefire was greeted with rapturous victory celebrations. The euphoria soon began to wear off. As it did, people came to confront how much had been destroyed, how little had been achieved, and how long it would take for Gaza to dig out from under.

Young Gazans, many of them middle-class, fled by the hundreds, only to drown in the Mediterranean, literally in the same boat as sub-Saharans fleeing poverty for Fortress Europe. Throughout the assault, the dominant tone in testimony was that “fast death” in a conflict that might shift the intolerable status quo was preferable to the “slow death” through suffocating closure. The postwar exodus suggested that this was not merely wartime rhetoric. In one version or another, I heard from many people the same grim prognosis: Gaza as a society has been broken beyond repair. It will never be the same. The fracturing results not only from the sheer scale of carnage and destruction inflicted, but also from a growing sense of despair that immense sacrifice did nothing to create a better future.

There is no government in place. Hamas has disappeared. Reconciliation has never been so remote. Abu Mazen [Palestinian Authority president Mahmoud Abbas] convened a group of Gazan businessmen and told them that Haniyeh was a son of a whore8 and that reconstruction

---

would stop dead in its tracks if one bag of cement was diverted. The Israelis say that the peace process runs through Ramallah and Cairo. Winter approaches, and Gazans are left out in the cold, with no end in sight beyond deepening precariousness and dependency.

In A Miracle, a Universe: Settling Accounts with Torturers, Lawrence Weschler cites Harvard professor Elaine Scarry. He distills a central message of her classic book The Body in Pain: “Torture in its essence is a discourse, a teaching: what is being taught is the futility of acting like a subject, of aspiring to anything beyond abject objecthood.”

The message absorbed by many Gazans is that you are alone. You can scream as loud as you want, but no one cares about you. No one listens.

“His toys and games will be the toys and games of death,” pioneering Gaza psychiatrist Dr. Eyad El Sarraj said of the children of the second intifada. Near the Murabitun mosque in the epicenter of the destruction of Shuja’iya, I saw an agitated and grim-faced boy of five or six years old standing next to his pancaked house. Gripped tightly in his hand was a defused hand grenade . . .

I followed Mustafa Barghouti, one of the few West Bank politicians who bothered to visit Gaza, as he wandered through the postapocalyptic landscape. He used his iPhone to take pictures and record interviews. He stopped to talk to a man from the Hilles family. The man tells Barghouti that the Israeli assault was like Judgment Day as described in the Qur’an when the gates of hell open and everything is consumed, with men and stones as fuel.

Barghouti came to a demolished factory and approached the owner who sat in a chair in front. The man is from the Abu Amr family; his cousin is a key figure in the Ramallah government. The Abu Amrs are a wealthy Fatah family, and they’re politically connected with VIP passes and a background of strong commercial connections to Israel. The owner says the factory was new, cost millions of dollars, and employed a large workforce. It was a total loss. He says he once believed in peace and coexistence, in the possibility of a political settlement with Israel. But not anymore.

“They want to kill us all,” he tells Barghouti. “They want to leave us with nothing. They regard us as vermin, as creatures who emerge from underground tunnels, like rats, or snakes, or cockroaches. Our lives and the lives of our children don’t matter. We are sub-human.”

The next generation, he says, will be far more dangerous than Mohammed Deif, the legendary commander in chief of the Izzeddin al-Qassam Brigades who has long been number one on Israel’s hit list.

Israel has reduced Gaza to a wasteland and sown the dragon’s teeth that could give rise to an enemy more implacable and fanatic than Hamas. Israel’s defense planners appear untroubled at such a prospect. They say nothing is worse than Hamas, that their willpower, military discipline, and tactical ingenuity represent a mortal threat, that small groups of radical jihadis will be easier to manage.

Early Sunday morning on 3 August, an F-16 dropped two one-thousand-pound bombs on the main buildings of the Islamic University. With modern facilities, excellent teachers, an administration that honors academic excellence and steers clear of politics, and twenty thousand loyal students—more than half female—the university is among the very best in all of Palestine. In

2010, Noam Chomsky, visiting to receive an honorary degree, lectured on linguistics to a packed house.

Twelve hours after the airstrike, the pristine campus was thick with the stench of burning. Scattered across the parking lot were exam papers from a course in English literature. Students had been asked to analyze William Butler Yeats’s poem, “The Second Coming.”

I scooped up a handful of the booklets. After cleaning off a layer of black dust, I browsed through one. “What I saw didn’t have the look of mercy,” had written one student. “A beast with the head of a lion and the body of a man has come from the desert. It is moving and there are birds flying above, which means that everywhere the beast goes there will be dead people left behind, and the birds are following their food. The darkness increases and now I know that the coming will be a nightmare. Wake up because the time is now.”

About the Author
Paul Gaston Aaron is a writer and researcher who worked closely with the late Dr. Eyad El Sarraj, Gaza’s pioneering psychiatrist.

GAZA: THE UNPROTECTED EDGE OF PALESTINE

BY BRIAN K. BARBER

Thirty-four-year-old Ahmed made the now difficult and expensive journey from the Middle Camps—the cluster of four refugee camps in the central part of the Strip—to greet my arrival in Gaza City as he always insists on doing. I have known him since he was sixteen when I spent six months with him and his family in the Maghazi refugee camp. Operation Protective Edge had just devastated the Strip, but most urgent to him was to tell me, with enormous pride and love, that his youngest sister Noor had recently passed the dreaded matriculation exam, the *tawjihi*—and, that she’d done so with the exceptional score of ninety-three, the highest in the family! Together we playfully mocked his own barely-passing score of fifty-one, and recalled the scores of the seven other siblings in his refugee family. He was so happy for his little sister.

And then the sadness came. The score, received by text message on one of the siblings’ cell phones since Noor did not have one of her own, came during the war. It was not safe to have even a meager version of the celebratory party that Noor—excruciatingly shy—had so hoped for; not even any candies to hand out to the neighborhood in her honor. The following day, Ahmed volunteered an accounting of the money I had passed on to him from a Palestinian friend in Jerusalem who wanted to help the needy in Gaza. He had gone directly and bought Noor a cell phone—not the Samsung Galaxy she had dreamed about, but even a cheap one would mean a lot to her. Although he could have used the money, as he and his wife were expecting their first child and he had been without a job for years, he chose not to use it for himself.

Thirty-nine-year-old Hussam—leader of his youth group during the first intifada in Nuseirat, another of the Middle Camps—apologized for not being able to make the ritual greeting upon my arrival. As assistant dean of one of Gaza’s many colleges, he was swamped with the seventeen hundred new students that had enrolled on that first day of the semester. He launched directly
into describing with both pride and weariness all that he had to do in this most demanding job. At some point in this enumeration, he jumped suddenly in his chair.

“Did you hear that?” he asked. I had only vaguely heard the scraping of the chair across the terrace as someone got up from a table.

“You see,” he continued. “We are so on edge now after this war. It was a heavier war, we felt death was knocking.” And, uncharacteristically for this very confident and staid man, Hussam couldn’t stop from describing the personal agony he felt during the war.

Like all families I know, his also received the IDF phone call about an impending bombing of home or neighborhood. His father took the call: “Is your front door open?” asked the officer. Such a perplexing question thought Fares. “No,” he replied. “Then open it and leave, we will destroy your home in five minutes.” Unlike some of my friends who ignored the call, all of Hussam’s family decided to heed the warning—his mother and father, and all of his married and single siblings.

Hussam and his wife chose to go to his in-laws’ home. But, it was close to Gaza’s lone power plant, often a target of bombardment. Too nervous there—and just before it too was hit by a bomb—they moved to another family member’s home. But it was near the main mosque in Nuseirat camp, a storied edifice of resistance and attack throughout the years of occupation, and therefore also at risk of aerial attack at any moment. He, his wife, and four children couldn’t take the anxiety any longer. Their family home had not been destroyed yet—and in the end never was—so they elected to return there. Hussam situated his family in the stairwell, the safest place in the flimsy cement block building.

It was a Friday, and he needed to get back to the mosque. His wife and children pleaded for him not to go, but he had to if only for his own sanity. It is, after all, in these private devotions that this former leader of the communist Popular Front for the Liberation of Palestine finds meaning and the capacity to move on in the face of the failure of his political efforts to bring freedom to his people.1

***

Many ask me to report on Gaza and how Gazans are doing, especially during and after this most recent war with Israel. I am not a Gazan, nor even a Palestinian. But I have been given intimate access to the homes of Palestinian families, especially in Gaza. Conducting research2 on the effects on youth of life in conflict zones, I have more than twenty years of sustained presence in the region, residing with Gazan families repeatedly over the decades, interacting with them in the most private rooms of their homes. This exceptional familiarity has taught me much about life in Gaza; what people think about daily, what they discuss, hope for, value, and expect; what brings them joy, and what hurts them.

How are they?

---

1. See Brian K. Barber, “After the War: A Week in Gaza, My ‘Second Home,’” Context: By New America, 23 February 2014, https://context.newamerica.org/a-week-in-gaza-3e70f52f782, for an elaboration of these anecdotes.

To set the context, I have interviewed youth and families from at least fifteen cultures across the globe. There is none among those groups more humble and hospitable than Gazans; and none among them whose dignity and honor have been more severely wounded.

Here, I draw on anecdotes from my recent visits there as well as from a large multi-method research project that colleagues and I are completing. The study, funded by the Jacobs Foundation, was conducted in partnership with the Palestinian Center for Policy and Survey Research and included eighteen hundred male and female participants from a representative sample of the West Bank, East Jerusalem, and the Gaza Strip. These adults, aged between thirty and forty, represent the cohort of youth political activists during the first intifada. The project documents their current well-being and also traces the varied trajectories their lives have taken since their youth in that initial struggle.

I present this sketch not merely as compelling insight into a particularly downtrodden people. Rather, I have come to view this type of information as crucial to world affairs and to peace. For, the now well-familiar figures relating death, injury, displacement, and property destruction in Gaza from the 2014 war (and others before it)—horrifying as they are—merely symptomize the larger tragedy of Gazans: the world’s refusal to acknowledge their humanity, worth, and competence.

Pitifully, any effort to portray the people of Gaza must begin by dispelling stigma, stereotype, and disinformation. Just this past autumn, while attending one of the many events in Washington, DC, on Israel and Palestine, a highly experienced, honorable official with a real concern for Gaza unwittingly perpetuated a damning misconception of Gazans. He was, ironically, attempting to condemn the brutal ferocity of Israel’s recent attacks during the 2014 war. But in so doing, he unintentionally indicted Gaza: “No wonder there is so much hatred and violence in Gaza.” He was wrong. Gaza is not, nor has it ever been, consumed with hatred and violence. This misimpression of the angry, vengeful Gazan results from the tyranny of the media’s selective attention to Gaza—only focusing the camera lenses when spilt blood reaches some noteworthy threshold.

One of my earliest memories of Gaza is of a young man in the back of a Rafah classroom nervously raising his hand. He pleaded that I go home and tell Americans: “We are not all terrorists.” Some months later, while talking to a classroom of junior college students, six times the same question pair was asked—verbatim: “Do you like Gaza? Will you ever come back?” Even then, nearly twenty years ago, the sense of existential insecurity was so profound that the students could never hear enough times my positive answer to both of the questions.

On 11 September 2011 I was checking out of the Beach Hotel when Mohammed, the young desk clerk, shyly said: “We are sorry.” Whatever for, I asked. “We know this is the ten-year anniversary of 9/11 and we are so sorry this happened to your country.” Fearing that much of the world had falsely attributed the tragedy to Palestinians, he stretched forth his hand, and continued: “You see how all the fingers on a hand are not the same lengths? This is the same for Arabs. We are not all the same. We didn’t do that awful thing and we are so sorry it happened.”

This spontaneous outreach from a young stranger whose life has known nothing but strangling constraint—who likely has never stepped foot outside of the Gaza Strip and who assuredly spends the small wage he is fortunate to earn on the needs of his large, otherwise unemployed family—better describes my interactions in Gaza than all of the quick snapshots or superficial commentaries made in moments of misery and destruction that make up most outsiders’ characterization of this rejected people.

What has life been like for Gazans over these twenty years? Here are some findings from our project.\(^5\) Although our sample is representative of Palestinians throughout the occupied Palestinian territory (oPt) (the youth of the first intifada that has been my research interest all these years), I’ll refer only to the figures for Gaza, since it is our subject here; while generally somewhat lower, the figures would be very similar in East Jerusalem and the West Bank. The reference period for having experienced the following events is the twenty-five-year period since the beginning of the first intifada in 1987 until 2011, the time when the data were collected.

Percentages of our sample who reported experiencing the following:\(^6\)

- Heard or felt the effects of a bomb 98%
- Felt much or extreme fear for self and family 86%
- The family home was raided 80%
- Witnessed father or close person humiliated 74%
- Shot at 65%
- Verbally abused 61%
- Hit or kicked 48%
- Lost home or property 44%
- Detained or imprisoned for political reasons 22%
- Injured in political conflict 20%

---


Regarding movement to accomplish the basics of life, for those needing to travel:

- Work: Travel barred/delayed 89%
- To visit family: Travel barred/delayed 67%
- Medical care: Travel barred/delayed 62%
- Education: Travel barred/delayed 50%

Imagine that these respondents are not yet forty and this has been their lived reality. It is in this context that, according to the World Bank, Gazans nevertheless have one of the highest literacy rates in the world; that they do all they can to make and find employment; they form families and have relatively high rates of marital harmony and family satisfaction.

Gazans are suffering. Beneath the horrific destruction in the eastern part of the Strip that many of us have viewed and photographed is the more insidious personal sense of being broken and destroyed. That is the label we have given to a new measure of mental suffering that has surfaced in our assessment after careful interviewing of Palestinians over these years.

The severity of this sense of being overwhelmed by forbidding context first became evident in a 2010 interview of the late psychiatrist Dr. Eyad El Sarraj. It was deeply sobering to hear him describe how perilous and terrifying the 2008–9 war [Operation Cast Lead]—already a year past—felt for him and his family, who were by all accounts more fortified with economic and psychological resources than most in Gaza. Together, we worked on developing this assessment that sources the suffering in the binding political and economic context whose policies and actions deny the most basic of rights and abuse dignity—unlike standard measures of post-traumatic stress disorder (PTSD) or depression, which imply some malfunction within the person in need of psychotherapy.

We have used this assessment in our ongoing projects throughout the oPt. Think for a moment of your own life. How often during the past two weeks have you felt that “your spirit or morale is broken or destroyed,” that “your ambitions and hopes for the future are destroyed,” or that you felt “emotionally or psychologically exhausted”? Already by 2011—even before the 2012 war [Operation Pillar of Defense] and this recent 2014 catastrophe [Operation Protective Edge]—all Gazans reported having such feelings sometime in the previous two weeks, with many reporting them as frequent or regular. Such rates would be even higher now, and were even then higher than conventional measures of PTSD and depression.

When asked to identify the components of life that speak to its quality, a common answer would include measures such as economic well-being, interpersonal relationships, health, and/or personal

---


achievement. As our studies show, when Palestinians discuss quality of life, the driving core is the political context. Quite literally—and all the more so in Gaza given the fractured, internecine political conflict—the quality of daily life is determined by the political realities of military control, infringement on mobility, access to basic resources, humiliating treatment, and the ever-present expectation of further hostility.10

Yasser Abu Jamei, El Sarraj’s successor as executive director of the Gaza Community Mental Health Programme, underscored this political source of suffering during my October 2014 visit when asked what Gazans needed most. If only because he is himself a psychiatrist, but also because of an air strike during the war in which he lost twenty-five members of his own family, one could have expected him to plead for mental health services. Instead, his answer was: “Remove the siege.”

***

One final anecdote adds to this brief sketch of contemporary Gazans. I dined the final night of the October 2014 trip at one of Gaza’s beachside restaurants. Ahmed, a young waiter who I had never met before, peered over my shoulder to view the photographs I had just taken of the most recent destruction. “Are those from Shuja’iya?” he asked, referring to the destroyed and now infamous eastern Gaza City suburb. Although it was just two miles away, he hadn’t been there.

We were just yards from the spot where the four Bakr boys were killed while playing on the beach a few weeks earlier. He fixed his eyes on mine and somberly asked: “Will there be another war?”

I diverted. “Are you frightened?”

“No, not frightened,” he replied, “but it was hard to see so many people killed every day; it wears on you; it hurts psychologically.” Thinking that I owed him my honesty, I told him that, yes, indeed, I thought there would be another war.

“During ‘Id?” he asked with evident shock, referring to the sacred three-day Muslim holiday, ’Id al-Adha, that would begin the next day. I realized I had misunderstood his question. He knew there would be another war someday. Why would he not? The past six years of his life had already encompassed three wars.

“Oh,” I rushed to correct, “No, no, there will not be another war during ‘Id! I promise you this!” His shoulders dropped, the taut muscles of his face relaxed, and his eyes cleared. He simply needed a rest, a break, before trudging on to make the most out of life possible.11

How Gazans are doing now can be succinctly captured in a string of adjectives: isolated, burdened, exhausted, neglected, determined, resistant, and hopeful—that someday the oppressive and insulting constraints on their lives will be removed.

About the Author
Brian K. Barber is professor of child and family studies and the founding director of the Center for the Study of Youth and Political Conflict at the University of Tennessee, Knoxville. He is also a New America Fellow. He is editor of *Adolescents and War: How Youth Deal with Political Violence* (Oxford; New York: Oxford University Press, 2009).

---

HUMANITARIAN WORK ALONE IS NOT ENOUGH: IT IS TIME FOR CONCERTED POLITICAL ACTION

BY CHRIS GUNNESS

Sixty-five years since its founding, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) has been an illustration of what can be, and in many ways has been, achieved for Palestine refugees. Consistent with the mandate, role, and responsibilities that it has been given by the international community, specifically the UN General Assembly, UNRWA is profoundly committed to serving Palestine refugee communities. But UNRWA today is also a living reminder of what happens when no political solutions are found to address the underlying causes of a historic injustice. We find it impossible to accept, year after year, the failure to resolve the fundamental issues of occupation, blockade, and conflicts that severely affect Palestine refugees.

As the summer’s merciless conflict demonstrated, the pressures on Palestinians and Palestine refugees are immense. The threats to their lives and livelihoods are of such magnitude that we have moved well beyond the realm of humanitarian action alone. But even as UNRWA remains committed to its human development mandate, only resolute political action by the international community can bring about hope.

This call should not be taken lightly as UNRWA is among the best placed organizations to daily observe and highlight the human consequences and costs of the ongoing denial of dignity and rights to Palestine refugees. It is our responsibility both to provide services to the refugees and also to advocate for an end to this intolerable reality.

UNRWA’s Contribution

UNRWA has achieved one of the most remarkable processes of human capital development in the developing world, in particular in the fields of health and education, as underlined once again in a recent World Bank report, which found that students in UNRWA schools in the West Bank, Gaza, and Jordan consistently outperformed children in local government schools.

Palestinians have always greatly invested in education, something UNRWA was able to build on and expand. I frequently hear comments about the burden for donors to continue assisting an ever-growing number of Palestine refugees, when in actual fact they have through UNRWA supported a

---

major investment in knowledge and skills. All of our donors should take credit for this outstanding accomplishment.

Many developing and middle-income countries would envy the Palestinians for the quality of their human capital. However, there is one thing that Palestinians envy others for above all else, and that is the fact of having a state. The creation of a Palestinian state—living beside and coexisting peacefully with Israel—would be one of the defining measures of the sustainability of this decades-long process of human development.

**Regional Trend**

Over the past six months (May through November 2014), various events and changes have come to define our operational context. To begin, the wider Middle East has become very unstable. We are deeply aware that countries playing host to Palestine refugees, of whom there are over five million, in particular Syria, have witnessed intensified levels of violence. Our beneficiaries are suffering from intensifying vulnerability as the plight of Palestine refugees from Syria becomes increasingly grave. Closed borders and a series of forced returns from neighboring countries drive an already vulnerable population to take life-threatening risks, such as attempting to escape by boat on the Mediterranean, often with tragic consequences. In addition, many are attempting dangerous cross-border routes into Europe and beyond where they face deep uncertainty.

UNRWA is concerned about the increasing border restrictions in the Middle East region for Palestine refugees fleeing Syria, as well as reports of some who have safely escaped being forced back into Syria. We acknowledge the enormous efforts of neighboring countries to provide a safe haven to Palestine refugees and the security challenges they face, but we are receiving increasing reports of Palestine refugees from Syria encountering being rebuffed around the region—Jordan, Lebanon, Turkey, and Egypt—as well as in Europe.

UNRWA continues to underscore the position expressed in the statement of the President of the Security Council of 2 October 2013 in which the council reaffirmed the importance of *non-refoulement* (rejecting forced return) and recalled its encouragement to "countries neighboring Syria to protect all people fleeing the violence in Syria, including Palestinians."

UNRWA continues to advocate for Palestine refugees from Syria being treated in accordance with applicable standards under international law, including the principle of nondiscrimination. UNRWA has also advocated for greater assistance for host countries to address the refugee crisis.

After the strong focus on Palestine this summer, there is now a real risk that attention shifts once more to a multiplicity of other crises in the world and that it becomes once again challenging to draw attention to the fate of Palestine refugees. We are making a determined effort that this not be so because we know it is a risk the world cannot take.

**Gaza**

As for Gaza and this summer’s hostilities, though the war was predictable and predicted, its ferocity and scope took UNRWA by surprise. And Gaza, of course, is unique in the annals of

contemporary warfare in being a conflict zone with a fence around it. So there is no possibility for its residents to flee to safety outside.

Our worst-case contingency planning was for 50,000 displaced people coming to our installations. This was the extent of the displacement at the height of the fighting in 2008–9. However, during the summer 2014 hostilities, over 500,000 people were displaced at the height of the fighting—almost 30 percent of Gaza’s entire population—of whom 300,000 took refuge in ninety of our schools. UNRWA runs a massive education system in Gaza for a quarter of a million children. Our schools were an obvious place to take refuge and people assumed that the blue UN flag above the building would afford them some form of protection. To their great distress and ours, they were wrong.

To be clear, an UNRWA school in Gaza is a small compound with twenty classrooms and sanitation facilities for one thousand children during the day. At the height of the conflict, some of our schools were housing as many as 5,000 displaced people around the clock. People arrived on foot carrying whatever they could, usually with children, often through rubble-strewn streets, amid intense bombing. So along with providing accommodation, sanitation, food, and medicines, we were also dealing with trauma.

The appalling circumstances inside some of our schools were compounded by the lack of security. On seven separate occasions UNRWA schools sheltering people were hit. Before the conflict began, we conveyed the precise GPS coordinates of all our installations in Gaza to the Israeli authorities, in accordance with the 1946 Convention on Privileges and Immunities. As displaced people streamed into our schools, we relayed this information to the Israeli army. In the case of the UNRWA’s Beit Hanoun school, which was hit on 24 July, the coordinates had been notified twelve times; we notified the Israeli army seventeen times of the fact that hundreds of civilians were taking refuge at our Jabaliya school, which was hit on 30 July; and with the attack near our school in Rafah, in the deep south of Gaza on 3 August, we notified the Israeli army no less than thirty-three times. In the case of the UNRWA school in al-Maghazi in Central Gaza, which was hit on 21 July, we notified the relevant authorities that we wanted to conduct an on-site investigation the very next day and negotiated a two-hour window when a clearly marked UN vehicle would go to the school. Yet during that window, the school was shelled, and indeed the shell hit where a colleague had been only seconds earlier. It is a miracle that he was not killed.

The final figures tell their own horrifying story about the conduct of hostilities: 551 Palestinian children are confirmed killed during the fifty-day war. We estimate that of the injured, 1,000 will have some form of lasting disability for the rest of their lives. The cumulative death toll among Palestinians is at least 2,254, including 306 women, according to the continued collection of preliminary data. Of the 2,254 Palestinians killed, over 50 percent are believed to be civilians; the status of 122 additional fatalities (civilian or militant) remains to be confirmed. The cumulative Israeli death toll on the Israeli side was 71, 66 of whom were soldiers, and one civilian fatality was a child.

UNRWA students paid a heavy price: 138 students attending UNRWA schools are confirmed killed. An additional 814 were injured and 560 lost either their father, their mother, or both their parents. By the end of the conflict, 118 UNRWA installations had been damaged, of which 83 were schools and 10 were health centers. We lost 11 staff members, the majority of whom were killed inside their homes.
And the future looks bleak. We estimate that 120,000 homes were destroyed or damaged, of which at least 20,000 are uninhabitable. Many of those will be on water and electricity grids that are not functional. As of mid-October 2014, Gaza’s only power plant remained inoperable, resulting in electricity outages of eighteen hours per day. Some 450,000 people remain unable to access municipal water due to damage or low pressure.

During the hostilities, the UN estimates that 80,000 projectiles (mortars, rockets, and bombs) were dropped over Gaza. Typically after a conflict like this one, 10 percent remain unexploded. So we estimate that there may be some 8,000 pieces of unexploded ordnance.

UNRWA’s track record on condemning the rockets is a matter of public record. We have done this, not from the safety of our desks outside of Gaza. UNRWA’s commissioner-general, Pierre Krähenbühl, condemned them from inside Gaza during the conflict. But rockets do not justify the collective punishment of an entire population, nearly a million of whom are children.

Of Gaza’s five crossings, a single crossing remains operational for the transfer of goods to and from Gaza. All the others remain closed. In 2013 alone, extra staffing, transit, and logistical costs resulting from Israeli requirements on access and monitoring of construction material imported through Kerem Shalom, the only open border crossing with Israel, amounted to over $6.7 million. This is equivalent to the cost of building three UNRWA schools in Gaza, or distributing food to over 800,000 beneficiaries for over a month.

The ban on sale of goods from Gaza to the West Bank and Israel is in effect since June 2007. Despite the installation of a new scanner (funded by the Netherlands) that would allow for a comprehensive security check of all goods exiting Gaza at Kerem Shalom, during 2013, only 23 truckloads exited Gaza to the West Bank and 160 carried export goods from Gaza to other countries. The total number of truckloads for the entire year—183—is equal to 73 percent of the number that exited Gaza on a weekly basis prior to June 2007.

According to data from the Palestinian Central Bureau of Statistics (PCBS), the unemployment rate surged to a record high of 44.5 percent in the second quarter of 2014, up from 27.9 percent in the second quarter of 2013. The refugee unemployment rate in Gaza reached a staggering 45.5 percent, the highest level ever reported by UNRWA’s PCBS-based records in 2000. The total number of unemployed has exceeded 200,000 in mid-2014, double the comparable figure for mid-2103 (108,000).

Food prices have soared during the summer 2014 hostilities due to the loss of livelihoods, destruction of productive assets, and limited access to farm lands. While resumption of local production has brought the prices of most food commodities back to prewar levels, vegetables are still more expensive than they were in June 2014—for example, the price of tomatoes is currently three times higher than prior to the war.

Rebuilding

The focus now is on rebuilding Gaza. We welcomed the Cairo Conference and the significant pledges made. These need urgently to be transformed into actual disbursements. We welcomed Palestinian prime minister Rami Hamdallah’s visit to Gaza in early October. Ongoing leadership by
the government of national consensus is needed to ensure that the reconstruction can take place. A genuine commitment by Israel is also required to enable the needed material to be brought to Gaza. For the time being the process is much too slow and largely ineffective. Should this continue we will reach the winter with no progress in rebuilding the homes of the many still displaced, including those still in UNRWA schools. The people of Gaza deserve much better and much more than that.

This should not be a time for wait-and-see attitudes on anybody’s side. The actors who agreed to the temporary mechanism for reconstructing Gaza should be held accountable for its implementation. Time is running out, tempers are rising in Gaza, and people are desperate.

The only way this sense of despair can be overcome is to make Gaza a livable place once again. This means, as the secretary-general has recently emphasized, once and for all addressing the underlying causes of the Israeli-Palestinian conflict: an end to the occupation that has ground on for nearly half a century, and a full lifting of the illegal blockade of the Gaza Strip. Indeed there is no doubt in my mind that, after years of collective punishment of Gaza’s population and after the recent devastating conflict, it is simply inconceivable to return to the preexisting conditions under the blockade.

A change of paradigm is necessary. Nothing short of dedicated and determined political action by the international community can bring it about. Failure to address the underlying causes of conflict will be to risk a return to the unsustainable pattern of blockade, rockets, and widespread destruction. We cannot allow 6 million civilians in Israel to live in fear of rockets raining down on their cities. At the same time, we cannot allow 1.8 million people in Gaza to be subjected to the denial of dignity to which they were subjected this summer. We must force our political leadership to search for a new paradigm.

About the Author
Chris Gunness is spokesperson and director for advocacy and strategic communications at the United Nations Relief and Works Agency (UNRWA).

CEMENT DETERMINES THE FUTURE IN GAZA

BY BILL CORCORAN

I travel to Gaza four times annually. Despite their abundance, I find it difficult to absorb the figures and statistics on Gaza’s destruction and challenges—it’s too much information. So, I have developed some simple benchmarks that assist my comprehension of the depth of the problem.

I boil the issue down to two indicators—cement and staff.

I don’t mean this simplification to be glib or to dismiss the complexity of the rebuilding process. But these two factors—cement and staff—help to measure the progress of reconstructing Gaza. Moreover, I feel that we can extrapolate from the lessons of Gaza to assess the future of the West Bank. My supposition is that Gaza provides key indications of where Palestine is going. Tracking speeches or press analyses is interesting but generally inconclusive. Instead, I consider the design and implementation of the general framework Israel uses to oversee the entry of materials and
people to Gaza as an indicator of either a hardened attitude of perpetual occupation or a new openness to ending the status quo. So even the West Bank should take careful notice of how Gaza is treated.

**The Big Picture through the Lens of Gaza**

The immediate task at hand is obvious: Gaza must be rebuilt and it must be rebuilt quickly. This requires a pragmatic, businesslike approach that is both speedy and efficient for numerous humanitarian reasons.

Early predictions do not bode well for the average Gaza family. According to Shelter Cluster–Palestine, a coalition of NGOs dedicated to housing for Gazans coordinated by the UN Office for the Coordination of Humanitarian Affairs (OCHA) and the Israeli human rights nonprofit, Gisha, at the current rate of entry, the building materials required just for housing needs would entail a reconstruction process of nineteen to twenty years. Without equivocation, that pace extending over two decades would be morally unacceptable. At this moment, winter rains are damaging what little infrastructure exists and exposing hundreds of thousands of people to conditions that are conducive to public illness.

“The National Early Recovery and Reconstruction Plan for Gaza,” released by the Palestinian Authority in October 2014, is a highly credible, if not somewhat conservative, plan in its estimates of dollars. But to implement it will demand the combined effort of governments, private business, and the NGO community. The task is too big to be borne by one or the other.

As NGOs examine the plan, there are some major items besides funding that stand out as absolute requirements if we are to assist. Two of the most central, cement and staff, serve as my benchmarks in this analysis.

**Cement**

The critical nature of cement and all building materials cannot be overstated. While the rubble can be salvaged and reused, it must be bound together by high-quality cement for new construction and even for repairs. This is particularly the case for multistory structures, which are common in crowded Gaza.

To present the magnitude of the job, allow me to relate some factoids from the Palestinian Contractors Union. They garnered the statistics firsthand, contrasting the 2014 war with that of 2009 (which was also half as long):

- **Debris**—the amount of rubble that must be cleared and gathered is four times greater than that collected in the aftermath of 2009’s Operation Cast Lead.
- **Collection sites**—the mapped locations are homes, factories, and apartment buildings like the famous Italian Tower in central Gaza City. This is in stark contrast to 2009 when the key targets were Hamas properties and government ministry offices.

2. See Doc. B4 in JPS 44(2)—Ed.
3. Osama Kuheil, president of the Palestinian Contractors Union, in conversation with author.
Supply chain eliminated—in 2009, commercially operated tunnels from Egypt supplied building materials within days of the cease-fire. In addition, some materials were trucked in through the Rafah crossing from Egypt. In 2014, the vast majority of tunnels have been closed and Rafah is almost not operational. This makes the sole point of entry the Israeli-controlled Kerem Shalom cargo crossing. That processing system is highly manual, without conveyor belts or container scanners. Thus, daily output is limited, without much capacity for upgrading quantity or speed.

In contrast, press releases have routinely touted the entry of cement. In reality, though, only one shipment had been processed and that was only 30 percent of one month’s requirements. It was all delivered to the UN for repairs to war damaged UN buildings, including schools.

Importation of cement is currently occurring at the equivalent of five hundred tons per day. To repeat previously stated calculations, that equates to twenty years of restoring preexisting structures.

Some cement exists in the marketplace. But that is beyond the reach of the average family or humanitarian project. The price before the war averaged $100 per ton. Today the cost averages $1,000 per ton. Moreover, most purchases attract the attention of Hamas, resulting in direct project interference.

So, the practical dilemma for ANERA and much of the NGO community remains: if no efficient framework for the importation of cement can be agreed upon with the Israelis or Egyptians, rebuilding cannot proceed.

The net result is that many neighborhoods will continue to lack fresh water access. The technical hurdles are minor but most require cement and pipes. Thus, thousands of people’s water use is limited to bottled water or tanker truck deliveries to curbside storage containers.

An importation protocol has been floated by the Israelis that can be summarized as follows:

1. **Project approval**—all concepts must be submitted to Israeli engineers with a complete bill of quantities listing the materials and amounts needed.
2. **Dedicated warehouse**—if the project is approved, and the material is shipped, it must be stored in a dedicated storage facility, equipped with guards twenty-four hours a day, seven days a week, and cameras. Regular inventory reporting must be filed with the Israelis.
3. **Theft reports**—the disappearance of any amount of material must be reported immediately to the Israelis.
4. **Contractor reports**—the NGO must collect and submit to the Israelis information on all contractor employees, including names and ID numbers.

ANERA voiced a variety of concerns regarding this protocol. Foremost, ANERA could not see itself collecting intelligence on construction crews and then reporting them to Israeli officials. That kind of “policing” would place our Gaza staff under suspicion and probable jeopardy.

Second, the expense would be prohibitive for our private or non-USAID projects. Carrying the costs of secure warehouses and extra staff would add several hundred thousand dollars annually to our overhead of small infrastructure projects.

---

4. United States Agency for International Development—Ed.
We, like many other NGOs, therefore seem stymied. Privately funded ANERA projects are stalled. These include repairs to existing clinics and preschools, as well as all new construction, and restoration of agricultural or water systems. At this point in traditional emergency management, we should have finished the relief stage and moved on to reconstruction and recovery. But we remain mired in relief.

To make this more illustrative, I will share some of our recent history. Since the inception of hostilities in July 2014 to the present, ANERA has delivered $5 million of projects with its own funding and another $3 million that are funded by USAID. At first glance, this sounds impressive. But that $8 million was relegated to distributions of clothes, food, water, and medicine—in other words, relief supplies. While these were desperately needed, a prolonged period of relief is counterproductive. It keeps Gaza dependent and on welfare.

If cement were readily available, charity would not be as necessary because the availability of cement would unilaterally generate business activity. As contractors employ day laborers, the construction would stimulate the economy to gradually operate on its own. Without cement, the predictable result is an unemployment rate approximating 60 percent.

Another pitfall of being without cement is that we risk a rapid deterioration of public health during the winter rains. Until now, the humanitarian community has rightly congratulated itself on stemming the possibility of disease during and immediately after the war. While sewage was running from exploded pipes into the streets, clean water was unavailable in many neighborhoods, and when congested shelters housed families who were unable to shower for days on end, we filled that gap in public health. But I would submit that we filled it only temporarily. The sustained exposure of hundreds of thousands to winter temperatures without proper shelter coupled with winter floods and the return of sewage in the streets create renewed potential for disease.

Quite simply, the public health infrastructure and systems of water and sanitation are woefully inadequate to handle the stress of winter conditions. Massive physical improvements must be made and without delay. Yet those improvements can only be made with cement. Absent cement, ANERA has reexamined options and shifted project priorities from construction to agriculture. In the hope of creating jobs and promoting health, we are restoring farmland that was severely damaged. The Palestinian Agricultural Relief Committee estimates damage at $500 million. We plan to enlist a labor-intensive approach—cash-for-work—to employ as many as possible in restoring food production. While useful, this approach is slow and short-term in its stimulation of the economy.

**Staff**

The second key ingredient or benchmark is staff or, more specifically, the availability of NGO workers. Of our eighty-five staff in Palestine, fifteen are based in Gaza. All of them are Gazans who remained throughout the bombing. They worked every week and performed beautifully. But now they are fragile for obvious reasons. This is the third war they have endured in five years. This invasion lasted fifty-one days, over twice as long as the 2009 war. It touched them all. One program coordinator lost twenty-two family members, the al-Najjar family, and all of them were in their homes at the time.
Staff have not completely bounced back as a result. Although they are professional aid workers, they admit that their productivity is impaired. Each one requires assistance to be healthy and productive again. Sadly, we can’t treat them. We have attempted using various approaches. But to no avail. We initially made several requests to bring in a Palestinian doctor from Jerusalem who is specialized in trauma treatment. Those requests have been endlessly delayed. We then sought to transport our entire Gaza staff to Jerusalem for counseling and rest and recreation. This again was not possible.

Finally, we attempted to second some of our West Bank and Jerusalem staff to Gaza. We hoped an injection of new blood would energize the Gaza staff and offer an opportunity for in-depth peer discussions. We hoped that our West Bank agronomist could assess the restoration of farmland and that our pharmacist from Ramallah could oversee the repairs of clinics and hospitals. Even after coordination with the Israelis, though, they were turned back at the Erez crossing [the pedestrian terminal on the Israeli-Gaza barrier].

Consequently, we are coping with exhausted staff who are dedicated and work hard but are impaired in their ability to rebuild themselves and Gaza. The reason is quite evident. Since the invasion, despite a greater need for trained professionals to direct the recovery, the protocol for entry and exit permits hasn’t changed one bit.

Let’s not fool ourselves. Despite all the rhetoric, press conferences, and meetings, the ability of the humanitarian aid community to respond is severely hampered by political decisions. We are dealing with exhausted personnel and a supply chain that doesn’t function freely. The aid community profoundly needs the cooperation of Israeli, Palestinian, and Egyptian authorities in approving novel and enhanced regimes.

Conclusion

How are these logistical issues of relief and development predictive of the future of Palestine? Despite international shock at the human and property toll of the war, practical solutions to humanitarian problems have not arisen from the Israeli side in four months. Additionally, the Palestinian interim government hasn’t assumed control in Gaza. That obstacle further delays serious border discussions with both Egypt and Israel. The net result is that we face an impasse. Moreover, international pressure on all parties to discern a solution seems to have dissipated in the wake of other regional disasters.

In the face of this stalemate, a board member pointedly asked me, if there is no political progress or movement, how does ANERA, or any NGO for that matter, work in a future of perpetual occupation, increasing regulation, and, probably, civil strife? And she asked that before Jerusalem exploded. Weeks later, I’m not certain that we can answer her.

About the Author

Bill Corcoran has been the president and CEO of American Near East Refugee Aid (ANERA) since January 2007. One of the largest U.S. nonprofits working solely in the Near East, ANERA is a leading development organization dedicated to improving the lives of Palestinian refugees and poor families in Gaza, the West Bank, and Lebanon.
GAZA’S HISTORIES: FROM CATASTROPHE TO PRECARYTY AND BACK AGAIN

BY ILANA FELDMAN

The Gaza Strip is the product of catastrophe. First came the Nakba, out of which what had been one district in Palestine became the entity we know today. About twenty-eight miles long and six miles across at its widest point, Gaza still boasts borders defined as “provisional” by the 1949 armistice agreement between Israel and Egypt. Two-thirds of the territory’s residents are refugees, displaced from villages and towns in other parts of historic Palestine, most of them close to Gaza, if not within sight of it. These refugees have lived, for generations now, just a few miles from their homes with their movements both within and beyond Gaza’s borders subject to the whims of occupying and neighboring powers.

Although the 1948 Nakba is the founding catastrophe of Gaza, it is only one among many that have shaped this place, including the 1956 Suez War and the four-month Israeli occupation of Gaza that accompanied it; the June 1967 war and the subsequent continuing occupation of Gaza (along with the West Bank and the Syrian Golan); and the 2009, 2012, and 2014 Israeli assaults on the territory. Each of these events resulted in further defining Gaza’s borders and boundaries (through the placement of UN peacekeepers, the seizure of land for Israeli/Jewish settlements, and the creation of security zones inside the Strip) and reshaping its population (through the expulsion of people to the Sinai and the encouragement of emigration to Jordan and beyond). They also reconfigured its systems of governance and its economic connections.

That Gaza is the product of catastrophe is evident. It is also the product of conditions that Elizabeth Povinelli calls “cruddy.” Povinelli specifically contrasts suffering that is “catastrophic, crisis-laden, and sublime” with that which is “ordinary, chronic, and cruddy.”¹ The Palestinian experience generally, and the Gazan one quite acutely, has been shaped by a to-and-fro between these states: the emergency circumstances produced by each crisis that are soon thereafter transformed into chronic conditions of need and restriction. The specific circumstances of Palestinian vulnerability, which resonate globally, are joined by poverty, precarity, and the regular rhythms of immobility, of confinement in place, to become the palette of Gaza’s chronic conditions. It is this sort of suffering, which often persists beyond the threshold of a catastrophic “event” or crisis, that Povinelli terms cruddy.

The ways that the catastrophic and the cruddy come together in the Gazan experience was made tragically clear in the recent sinking of a boat filled with many escaping Gazans.² A migrant boat with approximately five hundred people on board was rammed by smugglers when the captain refused an order to transfer the passengers into a much smaller boat that he said would sink under their weight. Most on board, including the captain, drowned when the boat sank, and initial reports indicated that

as many as two hundred were from Gaza (on board were also Palestinians from the Yarmouk camp in Syria).³

The fact of impoverished people paying large sums of money to smugglers and taking significant risks with their lives in the hopes of reaching a more secure place that might offer more opportunity is, horribly, a regular feature of our unequal world. And the language in which this event was reported—as the sinking of a “migrant” boat—locates this event in the realm of global precarity. But it is a relatively new part of the Gazan experience. The tunnels that for many years of the blockade on Gaza helped sustain its economic life are now being put to use in ferrying people (mostly young men) out of Gaza and into smugglers’ networks. This phenomenon is a product of the continuing degradation of the quality of life in a territory suffocated by economic blockade and suffering repeated material destruction. It is also the result of the growing immobilization of Gaza’s population, which, in earlier periods of economic difficulty, had more outlets for legal travel to work abroad. Grinding poverty, a sense of futility about the future, and the promise that things could (and could only) be better elsewhere, are global conditions of chronic suffering. In Gaza they are direct outcomes of Israeli policy, Egyptian complicity, and international indifference. The catastrophic and the cruddy are clearly not opposite or unconnected categories, to be sure, but they do constitute distinct registers of suffering and they can demand different mechanisms of humanitarian response.

Catastrophe is more easily recognized than cruddy suffering, often (but crucially not always) making it easier to obtain donations for emergency humanitarian response. Humanitarian actors know what to do in an emergency—how to save lives, provide food and shelter—but the needs of chronic suffering are harder to address.⁴ One of the challenges for humanitarian actors in Gaza is that they are buffeted between the catastrophic and the cruddy and trying to respond in alternation to both situations. Further, even as there is tremendous need for humanitarian assistance, humanitarianism cannot be a sufficient response. In order to break out of this cycle it is vital to seek a political resolution. So what I want to turn to now is neither the inadequacy of the humanitarian response nor the necessity of a political resolution, but rather the ways that the movement between the catastrophic and the cruddy, and the forms of isolation that go along with it, have been Israeli strategies of control in Gaza. And this is one reason why breaking out of the cycle is so difficult: it suits Israel.

Mowing the Lawn?

Degraded expectations are part of the process and practice of isolating Gaza. Alongside the three assaults Israeli forces have launched on the Strip in the last seven years—two involving a significant ground invasion, all involving massive destruction—Israel has imposed a devastating siege and blockade on Gaza for the past eight years and a constraining closure regime for the past twenty-five.

The former was ostensibly in response to first the Hamas victory in parliamentary elections and then its takeover of the Gaza Strip the following year, and the latter began during the first intifada and intensified steadily during the Oslo years. Such policies of isolation have not only harmed individuals—impeding their ability to live full lives—but have also impaired Palestinian political community, fostering growing distance, distrust, and ultimately division between the West Bank and Gaza.

Israeli military strategists refer to the practice of periodically targeting Gaza as “mowing the lawn.” As Ephraim Inbar and Eitan Shamir wrote in the Jerusalem Post, “Israel simply needs to “mow the grass” once in a while to degrade the enemy’s capabilities. . . . Keeping the enemy off balance and reducing its capabilities requires Israeli military readiness and a willingness to use force intermittently. . . .”6 Israel’s defense of this strategy focuses on Hamas as the target, with the effects on Palestinian society relegated to “collateral damage.”

But, as a number of observers have pointed out, the real target of these assaults are the Palestinian population and Palestinian society. That is, the “targeting of Palestinian infrastructure, agriculture, cultural and religious institutions is ultimately intended to make it impossible for Palestinian society in Gaza to sustain itself.”7 So the term “mowing the lawn”—which perhaps suggests that the grass is allowed to grow in between mowings—doesn’t fully capture the nature of this policy.

Assaults are paired with the isolation policies that restrict life in Gaza in the lulls between attacks. And the regular assaults not only result in catastrophic loss of life and damage to infrastructure, they produce a degradation of the underlying “normal.” When the smoke clears from each assault, living conditions in Gaza return to an everyday that is somewhat worse than the one before. As it is intended to do, this process interrupts political engagement, economic activity, and social life. And it transforms people’s expectations for the future, as everyone assumes, indeed knows, that another attack will follow.

A policy of oscillation between crisis and precarity relies not only on military weapons but also on turning other forms of intervention into weaponry. Humanitarianism has been a crucial tool in this arsenal. Since the Hamas takeover of the Strip, Israel’s strategy has been to produce a humanitarian problem—generally kept shy of a humanitarian crisis—as a way of managing a political problem [see “Tightening the Noose: Impoverishment of Gaza, 2005–2010” in JPS 43(2)]. Part of this strategy is about framing—defining the Palestinian problem as a humanitarian rather than a political one—in an effort to impede the Palestinian pursuit of political aims, including


efforts toward reconciliation between Fatah and Hamas and attempts to accomplish the national goals of statehood and ending the Israeli occupation. And part of this strategy is technocratic and policy-oriented—to control and constrain living conditions to the extent that there in fact will be a perpetual humanitarian problem in Gaza. This has involved the severe restriction not only of construction materials and other items, but also of food sources. The infamous Israeli military “Redlines” document is well known by now, describing the 2007–10 policies that identified the precise number of calories required to keep Gaza’s population “at a level just above the UN definition of hunger” and outlining what items should be allowed into Gaza to keep available calories to this limit, taking into account the Strip’s own production. This weaponized deployment of humanitarianism is one means through which Gaza’s condition is moved from catastrophe to precarity, and back again. This consigning of Gaza to “relief” has been part of a double-pronged strategy that subjects the West Bank and Gaza to different treatments (with development in the West Bank pursued in an effort to foster an “economic peace” in lieu of a just political resolution), which itself has roots in the older policies of “de-development” that Sara Roy has described.

Humanitarian actors have long protested the severe restrictions imposed on their ability to bring needed goods into Gaza. In the lead-up to the most recent international donor conference on Gaza, held in Cairo on 12 October 2014, Oxfam warned that “unless long-standing Israeli restrictions on imports are lifted,” the money pledged would “languish in bank accounts for decades before it reach[e]d people” and that “under current [Israeli] restrictions and rate of imports, it could take more than 50 years to build the 89,000 new homes, 226 new schools, as well as the health facilities, factories and water and sanitation infrastructure that people in Gaza need.”

In the aftermath of this summer’s assault, some humanitarian actors have complained not only about constraints on their work, but about “a restrictive new monitoring regime for building materials that risks putting the UN in charge of a continuing Israeli blockade.” According to a Guardian report, Israel would have the power to veto major reconstruction projects, UN officials would be required to be present at concrete mixing factories, and Palestinian “homeowners needing building materials [would be required] to register their ID

---

number, address/locality [and] family status for a database that will be available to Israeli officials, including its intelligence agencies.” So here, it is humanitarians who could be utilized as weapons against Palestinians.

I want also to note another aspect of this humanitarianism problem, one which is further connected to the oscillation between the catastrophic and the precarious that has been Gaza’s experience. With crisis the watchword for humanitarian intervention, anything less—including the chronic and cruddy suffering that has been endemic—may have difficulty capturing the public’s humanitarian imagination. Israel has sometimes worked to take discursive advantage of this tension in humanitarian definition by suggesting that since there is not only abject suffering in Gaza there is no humanitarian need.

Palestinian refugees, wherever they live, confront these challenges as they struggle to make their claims for restitution and redress on an international stage. One of the reasons that refugee camps have so much symbolic importance to Palestinians, that changes in camp conditions have been so fraught, and that rations remain important to people who no longer need them, is the connection between suffering and claim-making. Palestinians worry that if they are not perceived as being in abject need, their claims will get no hearing even though their fundamental claims are not for aid—albeit that such aid is sometimes desperately needed—but for justice. The humanitarian frame—and the definition of the humanitarian situation that comes with it—can get in the way of such claims. This is part of the double bind of humanitarianism for Palestinians, one that has been particularly acute in Gaza. With crisis as its starting point and aid as its answer, humanitarianism is profoundly limited in its capacity to “solve” Gaza’s problems even though humanitarian need has at times seemed the best way to gain the world’s attention.

**From Humanitarianism to Solidarity**

Humanitarians know this, of course. And they are increasingly seeking ways not only to call attention to humanitarian need in Gaza—the clarion call for donations—but also to the limits of humanitarianism. Particular attention has been paid to ending the devastating blockade on Gaza. I will conclude by noting that as important as it is to lift the blockade, this is only one thing that is needed. The closure policy that preceded the blockade—and that separated the West Bank from Gaza—needs to be reversed. The occupation needs to really end—not just pursued from the border and the air. And, ultimately, the events and consequences of 1948 need to be faced head on and a just resolution pursued.

**About the Author**

Ilana Feldman is associate professor of anthropology, history, and international affairs at George Washington University. The author of two books related to Gaza, her current project traces the Palestinian experience with humanitarianism in the years since 1948.

---

OPERATION PROTECTIVE EDGE AND WHY GETTING THE LAW RIGHT MATTERS

BY SUSAN M. AKRAM

The aftermath of the most recent invasions and conflicts in Gaza has brought an utterly inadequate response from the international community, along with the inevitability that there will be more conflict and more devastation without meaningful intervention from outside the region. It is therefore more urgent than ever to examine whether international law can provide a brake on the abuse of power that has subjected a primarily civilian population to years of siege, bombings, and destruction. Whether there are venues for implementing international law in the form of prosecutions, sanctions, and the like can only be assessed once there is a clear legal framework that allows such remedies to be pursued. That is why it is essential to understand the scope of available legal frameworks for addressing the situation in Gaza. In other words, getting the law right is absolutely critical to establishing responsibility not only for the victims of the latest round of conflict but also the larger context in which the euphemistically titled Cast Lead, Pillar of Defense, and the most recent Operation Protective Edge (OPE) have taken place. It is on the basis of this premise that I review and assess the adequacy and sufficiency of the legal frameworks that have been applied to the Gaza conflict, and propose which are the most useful as tools to protect as well as seek redress for the main victims of Gaza’s successive conflicts.

Getting the law right matters. The Israeli-Palestinian conflict, and in particular, the ongoing conflict involving Gaza, has been described through various legal frameworks. Among those are international humanitarian law, specifically the law of armed conflict and the rules of occupation; the treaty frameworks of apartheid, genocide, and ethnic cleansing; and the customary law of self-determination of peoples. But do any of these frameworks stand out as more accurate or helpful in finding redress and protection for the victims of Gaza?

International Armed Conflict Norms

The law of armed conflict is the aspect of international law most often discussed with regard to Gaza. There are two facets to that body of law: the laws of war, which determine when war can legitimately be waged by one state against another; and international humanitarian law (IHL), which also addresses nonstate actors and establishes the rules of combat once an armed conflict has commenced. The focus of the former is to constrain states’ resort to force in the first place,
while the latter constrains the way force is used once an armed conflict has begun. IHL assumes the right to armed combat but places limitations on using armed force against civilians and civilian property, as well as on the treatment of combatants outside of actual combat.

**IHL: THREE BASIC PRINCIPLES**

The main debate about the Israel-Gaza conflicts takes IHL as the starting point—in other words, that Israel has the right to use force—and focuses the debate on how that force has been used, both by Israel and by Hamas. The underlying premise in justifying Israel’s attacks on Gaza is that there is an ongoing armed conflict between two states or territories and that Israel is using self-defense in response to Hamas’s initiation of violence through rocket shelling and other targeting of Israeli civilians and property. The focus on IHL, then, assumes that Gaza is an independent territory governed by Hamas, that Hamas is waging war on Israel, and that Israel is acting in self-defense in invading, bombing, and shelling Gaza.

The key norms of armed conflict that have been the object of heated debate in the context of this IHL framework are three interrelated principles of the Fourth Geneva Convention and its Additional Protocols, notably: the principle of distinction; that of military necessity; and the principle of proportionality. Space limitations permit only brief review of these here.

The principle of distinction requires that military forces distinguish between combatants and civilians and forbids them from killing or injuring civilians. Under the necessity principle, military forces may attack only military targets. The proportionality principle stipulates that combatants may not cause harm to civilians exceeding the military benefit of an attack, that they must take precautions before an attack to minimize civilian casualties, and that they may not use violence in cases where the objective of such violence is disproportionate to the destruction it can be expected to cause. It is viewed from this perspective that many independent and UN reports have concluded that Israeli bombings and other attacks in Gaza during OPE disproportionately targeted civilians and lacked acceptable military justification.

3. Id.
6. Id.
7. Id. at art. 51.
8. Proportionality requires that there be no “indiscriminate attacks” defined by AP I, art. 51, para. 5 as those causing “incidental loss of civilian life . . . excessive . . . to . . . the military advantage anticipated.”
As stated by the International Committee for the Red Cross (ICRC), deliberately causing terror is unequivocally illegal under customary international law.\(^{10}\) In its 1996 Advisory Opinion in the Nuclear Weapons case, the International Court of Justice (ICJ) ruled that the principle of distinction is one of the cardinal principles of international humanitarian law.\(^{11}\) And contrary to Israel’s claims, mistakes resulting in civilian casualties cannot be justified. In case of doubt as to the nature of the target, the law establishes that objects normally dedicated to civilian purposes (such as schools, houses, places of worship, and medical facilities) are presumed as not used for military purposes.\(^{12}\) Even when targeting clear military objectives during OPE, Israel consistently violated the principle of proportionality when its army destroyed hundreds of civilian homes.\(^{13}\) With the declared objective of targeting a single member of Hamas, Israeli forces bombed and destroyed houses occupied by dozens of civilians including women, children, and entire families.\(^{14}\)

It is inherently illegal under customary international law to intentionally target civilian objects, and the violation of such a fundamental tenet is a war crime.\(^{15}\) Issuing a warning, such as the so-called roof knocking, or sending an SMS (text message) five minutes before the attack, does not mitigate this prohibition.\(^{16}\) It is illegal to willfully attack a civilian home without a demonstration of military necessity, and it is a violation of the principle of proportionality.\(^{17}\)

The indiscriminate and disproportionate attacks, the targeting of objectives that provide no effective military advantage, and the intentional targeting of civilians and civilian houses have been persistent features of long-standing Israeli policy in the Gaza Strip. Such attacks, moreover, compound the suffering of a population that has already been imprisoned for eight years due to Israel’s blockade. The eight-year siege of Gaza, through which Israel has completely controlled and severely limited the movement of goods and people into and out of the Strip, constitutes collective punishment—a policy explicitly prohibited under Article 33 of

---

12. See AP I, art. 52, para. 3 (“In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.”)
13. Such actions occurred before OPE as well as during it. Specifically with regard to OPE, however, see http://www.thelawfareproject.org/Hamas_Intl-Law.pdf.
14. See, e.g., Human Rights Watch, Israel: Gaza Airstrikes Violated Laws of War, February 12, 2103, http://www.hrw.org/news/2013/02/12/israel-gaza-airstrikes-violated-laws-war (“Several other strikes may have been targeting military objectives, but the harm to civilians and civilian objects appears disproportionate . . .”).
17. Id.
the Fourth Geneva Convention as well as other IHL instruments to which Israel is treaty-bound.\textsuperscript{18}

The legal regime of international armed conflict requires, however, that each decision to target a particular area would receive individualized assessment, including reviewing the evidence to determine whether such decision or act was justified according to the three main principles outlined above (distinction, necessity, and proportionality)—a painstaking and contentious process that is problematic for the victims.\textsuperscript{19} Because such inquiry focuses on individual decisions to target particular areas or structures, individualized evidence has to be gathered and assessed to refute each claim of military necessity. Thus, many military decisions—if not most—prevail in the contest of evidence, with the vast majority of individual victims seen as unfortunate casualties of justified military targeting. At the same time, if the conflict is \textit{not} an international armed conflict under IHL but an occupation, then a different question must be asked: Is Israel justified in attacking Gaza \textit{at all}?

The rules on occupation, as discussed below, prohibit the military attack of an occupied territory or population by an occupying state—a prohibition underscored most recently by the ICJ in its 2004 Advisory Opinion on the Wall.\textsuperscript{20} If Gaza is still occupied by Israel, then there is no need to consider the IHL principles of distinction, military necessity, and proportionality, as all military attacks on the territory would be prohibited. The specific IHL rules on occupation, then, provide a second legal framework we must examine to determine the respective rights and obligations involved.

\textbf{IHL: THE LAW OF OCCUPATION}

The investigation of Israel’s actions and policies in Gaza to determine whether they constituted war crimes or grave breaches of the Fourth Geneva Convention is primarily relevant under IHL if one posits that the conflict between Israel and Gaza is part of an international armed conflict in which Israel is acting in self-defense, as claimed by the Israelis. Although this entire premise is not widely examined or discussed in either the academic literature or public debate, it has been the focus of a number of important legal decisions and resolutions by the UN system. The claim that there is an ongoing international armed conflict between two separate states or territories—Israel on the one hand and Gaza on the other—is based on the Israeli position that the occupation ended in 2005 when Israel withdrew its remaining troops and settlements from the Gaza Strip. However, according to the factual-legal assessment of what constitutes an occupation under the Fourth Geneva Convention, the UN and majority expert view is that Gaza continues to be occupied. Israel’s complete control over the territory’s borders, airspace, and territorial sea,

\begin{itemize}
\item \textsuperscript{18} Hague Convention No. IV, 18 October 1907, Respecting the Laws and Customs of War on Land, T.S. 539, including the regulations thereto (hereinafter H. IV), Art. 42 (”[T]erritory is occupied when it is placed under the authority of the hostile army.”); id. Art. 50 (”[N]o general penalty . . . shall be inflicted upon the population on account of acts of individuals for which they cannot be regarded as jointly and severally responsible.”)
\item \textsuperscript{19} For a detailed overview of the enforcement of the law of armed conflict, see ICRC, “Practice Relating to Rule 144. Ensuring Respect for International Humanitarian Law \textit{Erga Omnes},” accessed May 11, 2015, https://www.icrc.org/customary-ihl/eng/docs/v2_chapter41_rule144.
\item \textsuperscript{20} Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 59–60 (July 9).
\end{itemize}
including the ultimate authority over what goods and people can enter and exit from Gaza, fulfills
the primary condition in the definition of occupation under international law.21

Based on this view, then, Israel today remains the occupying power in Gaza, a situation that
raises yet more thorny issues not easily answered by the UN or other legal authority. Under
international law, military occupation per se is not necessarily illegal. Israel has made different
arguments about its relationship to the West Bank and Gaza Strip. Concerning the occupied
Palestinian territory in general, Israel has claimed that the Oslo Accord ended its occupation of
most of the West Bank in 1993, that its pullout from Gaza ended the occupation there in 2005,
and that whenever it responds to threats from either territory Israel is simply acting in self-
defense. At the same time, however, Israel has also asserted that to the extent it is still occupying
parts of the West Bank or any part of Gaza, its prolonged occupation has modified the Geneva
Convention rules, authorizing it to take certain actions otherwise considered illegal in limited
belligerent occupations—including military action to stop armed attacks coming from the
Palestinian territories.22

The consensus view so far has rejected the first two arguments, but, with regard to the third, there
is a significant debate on whether the sheer duration of Israel’s occupation has obviated the
application of IHL to Gaza. Thus, even if the conflict in Gaza were to be considered from the lens
of the occupation framework, the legal rules that apply are unclear, and specific IHL prohibitions
may or may not be relevant. In its Wall Advisory Opinion, the ICJ determined that Israel could
not use self-defense as a justification for the use of force against Palestinians in the occupied
territories but it did not address how a decades-long occupation might change the rules regarding
when and to what extent the occupier can use armed force on the territory of the occupied.23

According to the ICJ, an occupying power cannot defend against military aggression from the
territory it occupies.24 That being said, no settled law exists on the issue of what armed force can
be used to control occupied territory or the population in a prolonged occupation such as in the
Israeli-Palestinian situation.25

21. More than twenty-five Security Council resolutions and over one hundred General Assembly
resolutions passed since 1967 hold that Israel is occupying the Palestinian territories of the West Bank
and Gaza Strip and that the Fourth Geneva Convention applies to such occupation. These resolutions
have not been rescinded or amended by subsequent resolutions recognizing an end to occupation in
any of the oPts. See Susan Akram & Michael Lynk, Arab-Israeli Conflict, 1 Max Planck Encyclopedia of
Public International Law 499, at para. 87, Rudiger Wolfrum, ed., Oxford University Press (2012); Sari
Bashi & Tamar Feldman, Scale of Control: Israel’s Continuing Responsibility in the Gaza Strip, Gisha:
Legal Center for Freedom of Movement (Nov. 2011), 16, http://gisha.org/press/1159. (“As such, Israel
continues to have some, if significantly reduced, control over Rafah Crossing.”)

22. Human Sciences Research Council of South Africa, Occupation, Colonialism, Apartheid?: A Re-
assessment of Israel’s Practices in the Occupied Palestinian Territories Under International Law,
Executive Summary, at 7 (May 2009), www.soas.ac.uk/lawpeacemideast/publications/file60532.pdf.

23. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory

24. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory

25. The indeterminate legal consequences of prolonged occupation by Israel were discussed at length in
a report on Birzeit University Institute of Law’s symposium titled “Law and Politics: Options and Strategies
The rules on prolonged occupation are unclear primarily because the legal framework of occupation arose in the context of colonialism, which today is absolutely prohibited under the UN Charter. However, colonialism has never been defined or regulated under an international treaty. International principles concerning colonialism can be found in UN resolutions, such as General Assembly Res. 1514 of 1960, which affirms the right of all peoples to self-determination and condemns colonialism in all its forms. Even though colonialism is absolutely prohibited today, it was not expressly prohibited under international law at the time Israel was established. Since the 1960 Resolution's prohibition does not apply retroactively, the UN normalized preexisting colonial processes. The consensus opinion is that the legal framework of colonialism is not applicable within the borders of existing states, even though the states may have been founded through aggression, colonization, ethnic cleansing, or genocide. An appropriate conclusion from this analysis is found in a Birzeit University symposium report, that “neither the legal framework of IHL, whether the rules of occupation or international armed conflict, nor the framework of colonialism, provide clear enough protections and a forum to redress or protect the victims of the Gaza war.”

**Laws Prohibiting Racial Discrimination and Apartheid**

A second legal framework that has been raised in the Palestinian-Israeli context but not applied by the UN to the Gaza wars is international law prohibiting racial discrimination and apartheid. Although debated in the public sphere and by some of the UN mechanisms, applying the apartheid and systematic racial discrimination frameworks to the conflict is highly controversial. Yet these are legal constructs that provide clear and settled law and a means of redress for Gaza’s victims. Targeting a specific population for persecution and harm is a violation of the Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1969), which prohibits racial discrimination in all its forms, as well as the Convention on the Suppression and Punishment of the Crime of Apartheid (1976). Although derived from the specific South African experience,
the Apartheid Convention does not require identical conditions to be met as those that prevailed in apartheid South Africa. Compatible and universally applicable definitions of apartheid are found in the Apartheid Convention and in the Rome Statute, both of which establish the crimes that can be prosecuted in domestic courts or the International Criminal Court (ICC).

According to these treaties, defining apartheid first requires identifying distinct racial groups on the basis of common national/ethnic origin, self-identification as a distinct group, or the external perception of a group under relevant law in the state in question. Second, the defined groups must be targeted for particular, systemic, and distinct (mis)treatment by the state under consideration. And third, there must also be evidence of the state’s intent to discriminate. The elements of systematic racial discrimination and apartheid readily apply to Israel because Palestinians and Jewish Israelis are treated as distinct racial groups and subjected to separate and disparate treatment under Israeli law according to established international legal criteria. That Israel’s policies target Palestinians as a racial, religious, national, or ethnic group for unequal and inequitable treatment in a wide range of ways can readily be established under the apartheid definition. And the institutionalized racism of Israel’s laws, official statements, and policies provide more than ample evidence of intent, the third prong of the apartheid criteria.

A number of reports and conclusions by UN committees have found systematic discrimination, segregation, and apartheid on both sides of the Green Line. However, since 1991, when the UN revoked its own 1975 General Assembly Resolution 3379 equating Zionism with racism, the Security Council (UNSC) and the General Assembly (UNGA) have not addressed Israel’s institutionalized racial discrimination/apartheid against Palestinians. In addition, the ICJ’s 2004 Advisory Opinion did not examine racial discrimination or apartheid per se. Israel is not a party to the Apartheid Convention but is a party to the CERD, which requires all state parties to “prevent, prohibit and

31. Id. at art. II (defining apartheid as the “policies and practices of racial segregation and discrimination similar to those practiced in Southern Africa.”) Article II goes on to enumerate examples of such inhuman acts, committed for the purpose of establishing and maintaining domination by one racial group or persons over another racial group of persons and systematically oppressing them. They include the denial of the right to life and liberty of person (murder, torture, illegal arrest/detention); deliberate imposition of living conditions calculated to cause physical destruction in whole or in part; legislative or other measures calculated to prevent participation in the political, social, economic, and cultural life of the country and the deliberate creation of conditions preventing the full development of the oppressed group (denial of basic rights and freedoms, including right to return to their country); any measures designed to divide the population along racial lines; or persecution of persons by depriving them of fundamental rights and freedoms because they oppose apartheid. Id.

32. The Rome Statute of The International Criminal Court, July 17, 1998, 37 I.L.M. 999, available at http://www.refworld.org/docid/3ae663a84.html, Art. 7.2(H) (“Inhumane acts of a character similar to those referred to in paragraph 1 committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial groups and committed with the intention of maintaining that regime.”) Inhumane acts of this type include: murder; deportation or forcible transfer of population; imprisonment or severe deprivation of physical liberty in violation of international law; torture; persecution, other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or mental/physical health. Id. at Art. 7.1.

eradicate all [acts of racial segregation and apartheid] in territories under their jurisdiction.\textsuperscript{34} Some scholars of the issue have concluded that the crime of apartheid is an emerging norm of customary international law, which would extend its proscriptions as a prosecutable crime beyond the states party to the Apartheid Convention.\textsuperscript{35}

**The Framework of Ethnic Cleansing and Genocide**

We can also view the conflict in Gaza through another lens, that of ethnic cleansing or genocide. Crimes of genocide were prosecuted and punished at Nuremberg even before the establishment of a treaty codifying such crimes. The Genocide Convention of 1948 affirms in its first article that “genocide, whether committed in time of peace or in time of war, is a crime under international law.”\textsuperscript{36} For an act to rise to the level of genocide, the intent to destroy a group in whole or in part must be established.\textsuperscript{37} Many Israeli actions in Gaza and against Palestinians in general could be shown to fit such a definition.

In Articles 7 and 8, the Rome Statute establishing the ICC (2002) classifies genocide as a war crime and a crime against humanity. In Resolution 47/121, the General Assembly affirmed that ethnic cleansing in Yugoslavia was a “form of genocide.”\textsuperscript{38} Yugoslav ethnic cleansing policies were the basis of a series of indictments at the International Criminal Tribunal for the former Yugoslavia (ICTY) in the judgments against the three prominent Serbian politicians and military commanders, Slobodan Milosevic (2001), Radovan Karadzic, and Ratko Mladic (1995). The ICTY also ruled that certain acts of ethnic cleansing, such as the Srebrenica massacre in 1995, were genocide.\textsuperscript{39}


\textsuperscript{35.} John Dugard and John Reynolds, Apartheid, International Law, and the Occupied Palestinian Territory, 24 Eur J Int Law 867 (2013); doi:10.1093/ejil/chto45 (“The movement of the international crime of apartheid towards customary status reinforces the fact that the prohibition itself is established as a rule of customary international law.”) [Citing to former ICJ judge Cassese and colleagues who have made the same argument, Antonio Cassese et al., Cassese’s International Criminal Law, 25 (Oxford: Oxford University Press, 2013)].


\textsuperscript{37.} Id. at art. II.


\textsuperscript{39.} Prosecutor v. Karadžić and Mladić (Trial Chamber) Case No IT-95-5/18-R61 (11 July 1996) [94] (Review of the Indictments Pursuant to Rule 61 of the Rules of Procedure and Evidence) (defining “ethnic cleansing” as “a purposeful policy designed by one ethnic or religious group to remove by violent and terror-inspiring means
The Genocide Convention is perhaps the most important treaty for the Palestinian case, in general, and for Gazan victims of Israeli attacks, in particular. Article VIII of the Convention requires UN organs to take action to prevent and suppress acts of genocide. Every state party is required to seek out and prosecute individual perpetrators of genocide found in their territory, whether under domestic law or through referral to the ICC. In the case of Bosnia-Herzegovina against Serbia and Montenegro, the ICJ ordered provisional measures against Yugoslavia as reparations for its ethnic cleansing policies.\textsuperscript{40} The ICJ’s decision was an application and interpretation of the Convention’s inclusion of forced population transfer in its definition of genocide.\textsuperscript{41}

\textbf{The Law of Self-Determination}

The right to self-determination is the right of all peoples to freely determine, without external interference, their political status and to pursue their economic, social, and cultural development. Self-determination was incorporated expressly into the UN Charter under Article 1 and described as a fundamental legal right in two important resolutions passed by the UNGA in 1960, Resolutions 1514 and 1541. In asserting the right to self-determination and independence of “non-self-governing peoples,” these Resolutions prohibited “the partial or total disruption of the national unity and the territorial integrity of a country [as] incompatible with the purposes and principles of the Charter of the United Nations.”\textsuperscript{42} The Resolutions also prohibited colonialism because it subjected indigenous peoples to subjugation, domination, exploitation, and the denial of self-determination, but no treaty was drafted to incorporate the prohibition.

Many Israeli measures against the Gazan population and Palestinians in general can be seen as a denial of the right to self-determination, which is grounded in three additional UN Charter’s provisions, namely Articles 55, 73, and 76, in Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights, as well as in numerous UNGA resolutions. Furthermore, there is a large body of specific UN resolutions relating to the Palestinians’ right to self-determination, and the community of states has already recognized Palestine as a nonmember state of the UN. In the ICJ’s Advisory Opinion on the Wall, the court found that all states have an affirmative duty not to acquiesce in gross violations of human rights, including the denial of self-determination and acts constituting crimes against humanity and genocide. Thus, ongoing siege, bombardment, persecution, and theft of the civilian population of another ethnic or religious group from certain geographic areas”); see also David Turnns, Application of the Convention on the Prevention and Punishment of the Crime of Genocide: Bosnia and Herzegovina v. Serbia and Montenegro, 8 Melbourne J. of Intl L. No. 2, (Oct. 2007) (“The purpose of ‘ethnic cleansing’ is the removal of the targeted group from a particular geographical area, not (as in genocide) its physical destruction, although the latter may well be an incidental result of the action.”)


\textsuperscript{41} Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide.

\textsuperscript{42} UNGA Res. 1514, Declaration on the Granting of Independence to Colonial Countries and Peoples.
territory and resources against Palestine as a state or self-determined territory, can be identified as crimes of aggression, ongoing since the 1948 and 1967 belligerencies. The obligations of states to prohibit and punish universally defined crimes are referred to as *erga omnes* (toward all) obligations and the ICJ spelled those out in explicit terms in the Wall opinion.

Under the framework of self-determination law, Israel’s actions violating that fundamental right of the Palestinians in Gaza and the West Bank include Israeli acquisition of territory by force and the fragmentation of the Palestinian territories through settlements, settler-only roads, the Wall, the annexation and closure of occupied East Jerusalem, the blockade of Gaza, and the treatment of Gaza as a separate entity from the West Bank. The same conclusion can be drawn about Israel’s many violations of Palestinian sovereignty over natural resources through its expropriation and exploitation of Palestinian land and water and the imposition of taxes and import-export restrictions that have transformed the Gazan economy into a dependent economy that relies mainly on Israeli goods to survive. Other evident violations of self-determination include Israel’s destruction of cultural sites and institutions; restrictions on Palestinians’ right to develop and practice their culture; and deprivation of their capacity or ability to self-govern.43 Looking at the conflict in Gaza from the perspective of the denial of fundamental rights to self-determination and statehood under the UN Charter triggers additional important consequences that I turn to shortly.

*Limitations of the Prevailing Legal Frameworks*

As noted earlier, the current IHL framework is inexact, inefficient, and under-inclusive. If the goal is to provide meaningful redress to the victims of Gaza and prevent future repeated invasions of Gaza such as OPE, and other creatively labeled acts of mass destruction, then IHL is the wrong legal regime to apply, at least if applied exclusively of other legal regimes. The absence of a clear application of IHL as a framework for international armed conflict and the lack of a mechanism for enforcement against the state of Israel both point to IHL’s limited utility in the case of Gaza. The cumbersome evidence-gathering required to determine whether individual acts meet the criteria of necessity, proportionality, and military distinction means that the vast majority of crimes are not likely to be successfully prosecuted and that every conflict will require this mostly futile repeat exercise. And the reality is that no mechanism has been found to obtain a single prosecution of Israeli crimes in Gaza.

In contrast, colonialism, apartheid, and ethnic cleansing/forced population transfer are legal frameworks that not only encompass the totality of the Palestinian people’s experience but they are preferable to focusing on individual instances of the Gazan conflict (and specific atrocities within them) as war crimes under IHL or as violations of the obligations of an occupier vis-à-vis an occupied population. While colonialism, apartheid, and ethnic cleansing may all be prohibited under IHL and human rights law, colonialism has the disadvantage of having no treaty basis for prohibition or a current clear legal framework to provide redress. IHL rules on occupation similarly fail to provide either a settled legal framework or a mechanism for enforcement. Viewing

the victims in Gaza from the vantage point of an occupation framework is the weakest of all available options, with the weakest foundation for triggering the international community’s responsibility. As mentioned earlier, occupation can be lawful under IHL, and whether armed attack can be legitimate in a prolonged occupation has no easy answer. Moreover, the occupation framework shifts the focus from the massive refugee displacement that began in the 1947–48 conflict and continues to this day, and highlights only the 1967 displaced in Gaza to the detriment of millions of 1948 Palestinian refugee victims who remain outside the area of occupation.44

In other words, the occupation framework addresses only Palestinian victims within the 1967-occupied areas of the West Bank and Gaza, and ignores Palestinian victims of violations within Israel proper, or in the diaspora. The application of IHL overall addresses only one small part of the legal violations experienced by Palestinians as an entire people and reduces their struggle to one that views Israelis and Palestinians as equal participants, as parallel and equivalent victims and rights holders in an armed conflict. Applying the legal constructs of IHL or occupation law precludes the historical experience of Palestinians from 1948 onward and does nothing to address the segregation of Palestinians in Israel and the occupied territories. To sum up, this framework completely fails to address the enormity of the legal case to be made for Palestinians as a people, as refugees, as stateless persons, and as decades-long victims of a systematic regime of oppression.

**Applying Optimal Legal Frameworks: Opportunities and Ways Forward**

**Prosecutions and Civil Actions for Genocide and War Crimes in Individual States**

States that have ratified the Apartheid and Genocide Conventions have a legal responsibility under those treaties to adopt legislative or other measures necessary to suppress the crimes of apartheid and genocide; to investigate, prosecute, and punish those responsible, irrespective of where the crime was committed or the nationality of the person charged; and to cooperate in the implementation of decisions adopted by the UNSC or other competent organs of the UN to achieve the purposes of these conventions. Any State Party may call on a competent organ of the UN to take such action under the UN Charter as appropriate for the prevention and suppression of these crimes. Using the widespread adoption of these conventions worldwide, Palestinians who are citizens of second or third states can pressure those states to institute prosecutions against Israeli individuals and institutions, and raise claims for compensation and restitution. These might be similar to claims prosecuted by the special units within the U.S. Department of Justice established for Jewish reparation and Cuban restitution/compensation claims.

44. Persecution or harm to an internally displaced population, however, does violate civil, political, economic, social, and cultural rights guaranteed in international human rights treaties to which Israel is a party. Israel is party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR) since 1991. For the state’s obligations pursuant to the ICESCR, see id. at paras. 102 et seq., 130. So far, the strongest legal norms on the rights of the internally displaced per se can be found in the guiding principles developed by Deng and Pinheiro, and in the treaty-based review mechanisms of ICCPR and ICESCR. UNHCR, *Guiding Principles on Internal Displacement: Introduction-Scope and Purpose*, para. 2, U.N. Doc. E/CN.4/1998/53/Add.2 (June 2001) (reprinted Oct. 2004). Neither the guiding principles nor the review procedures could be enforced with anything more than state-party review in the treaty bodies. Israel has not signed on to any of the individual complaint mechanisms in the human rights treaties, so no meaningful enforcement mechanisms are available.
Using Jewish claims of Holocaust victims as precedent, Palestinians residing in third states can seek property restitution from organizations that are part of the Zionist establishment and parastatal institutions like the Jewish National Fund and banks that hold the accounts of such institutions.45

**Prosecutions under International and Domestic Criminal Law**

The recognition of Palestine as a state for the purposes of exercising jurisdiction in the ICC has opened up the possibility of OPE-related prosecutions.46 The problems of utilizing the ICC against Israel, which is a nonparty to the Rome Statute, are manifest, but it is important to recognize that the ICC is not the only venue for criminal prosecutions. Palestinians living outside of Israel and Palestinian territories, who have suffered expulsion, forced transfer, or property expropriation at the hands of the Israeli state and other actors could bring their individual claims under the domestic criminal laws of states where they reside or under the Apartheid and Genocide Conventions. Criminal cases have been brought against Israeli defendants in the United Kingdom—although unsuccessfully, so far—on the basis of the UK’s assertion of universal jurisdiction over war crimes through its 1957 Geneva Conventions Act.47 In 2005, a London tribunal issued an arrest warrant for Doron Almog, a retired Israeli general, on the basis of a claim that he committed grave breaches of the Geneva Conventions through his involvement in the indiscriminate destruction of 59 houses in the Rafah refugee camp on 10 January 2002.48 In 2004, a similar request for the arrest of General Shaul Mofaz was lodged.49 As a result of a 2011 amendment to the universal jurisdiction law in Britain, the consent of the British Director of Public Prosecutions would be required before arrest warrants could be issued against foreign agents investigated for war crimes in the UK.50


48. Silvia Nicolaou Garcia, *European Efforts to Apply the Principle of Universal Jurisdiction Against Israeli Officials*, Middle East Monitor (MEMO), (Jul. 28, 2009), https://www.middleeastmonitor.com/reports/by-silvia-nicolaou-garcia/54-universal-jurisdiction-against-israeli-officials. ("[Metropolitan] police waited at . . . at Heathrow airport for Doron Almog to disembark from a flight . . . from Tel Aviv . . ., but due to leaked information he did not disembark from the plane and the police failed to board the plane to arrest him[,] . . . Almog then flew back to Israel and escaped justice in the UK.")


change could undercut the effectiveness of criminal prosecutions against Israeli officials in British courts, but it does not eliminate the possibility of such cases.

Palestinian claimants residing in other European states have filed court cases under universal jurisdiction statutes in Belgium, Spain, and Switzerland. Unfortunately, these cases engendered political pressure and resulted in the progressive weakening of the respective states’ universal jurisdiction legislation.\textsuperscript{51} The Belgian case concerned the indictment of former Israeli Prime Minister Ariel Sharon for crimes committed in the course of the 1982 massacres at the Sabra and Shatila refugee camps in Beirut. The case was dismissed and transferred to Israel in 2003 under intense political pressure from the United States.\textsuperscript{52} In Spain in 2009, another investigation was opened against seven Israeli politicians implicated in the 2002 targeted bombing of Gaza as a result of which Salah Shehadeh and fourteen others were killed.\textsuperscript{53}

Attempts in the United States to prosecute Israeli officials have been unsuccessful, primarily because of the limited application of universal jurisdiction under domestic law, resulting from first, the political question doctrine according to which “federal courts will not adjudicate certain controversies because their resolution is more proper within the political branches”\textsuperscript{54} and, second, statutory law provisions extending immunity to state agents and instrumentalities acting in their official capacity.\textsuperscript{55} However, these states are by no means the only ones with universal jurisdiction

\begin{small}
\begin{enumerate}
\item See, Garcia, European Efforts, supra n. 45.
\item Id.
\item The case was dropped later the same year, following intensive diplomatic efforts on part of Israel. Id. at 10. (“On 30th May 2009 the Spanish National Court decided to shelve the investigation and drop the charges against the Israelis in the wake of diplomatic tensions that had arisen between Israel and Spain.”)
\item \textit{Matar v. Dichter}, 500 F. Supp. 2d 284, 287 (S.D.N.Y. 2007) affirmed, 563 F. 3d 9 (2d Cir. 2009) (granting motion to dismiss by defendant, former director of Israel's General Security Service, in a case concerning targeted killings in Gaza beginning in 2000 on political question and foreign sovereign immunity grounds). The order of the District Court is available online at https://ccrjustice.org/files/Matar%20v.%20Dichter_Decision.pdf. A prior attempt to challenge Israeli officials in U.S. courts was the so-called Qana Case, resulting from the 1996 shelling by the IDF in Southern Lebanon during which Lebanese civilians and UN soldiers were killed. \textit{Belhas v. Y’alon}, 466 F. Supp. 2d 127 (D.D.C. 2006) (granting motion to dismiss by defendant, former head of Israeli Army Intelligence, on foreign sovereign immunity grounds). In both cases, plaintiffs represented by the Center for Constitutional Rights alleged that defendants violated the U.S. Federal Torture Victim Protection Act and committed a number of crimes under international law. For further background on Qana, see Democracy Now, “Survivors of 1996 Qana Massacre Sue Israel Military Chief For War Crimes;” Democracy Now!, Aug. 1, 2006, http://www.democracynow.org/2006/8/1/survivors_of_1996_qana_massacre_sue. Corrie v. Caterpillar, Inc., 503 F. 3d 974 (9th Cir. 2007) (granting motion to dismiss by defendant, Caterpillar, Inc., an Illinois-based corporation that manufactured a bulldozer that killed 23-year-old activist Rachel Corrie in Israel in 2003, on political question grounds). This case illustrates an alternative litigation strategy of pursuing claims against corporate agents whose actions implicated them in human rights violations in Israel and Palestinian territories. The strategy has so far been unsuccessful. The Corrie family also filed a case in Israeli court, which was ultimately dismissed by the Israeli Supreme Court in February 2015. For background, see http://rachelcorriefoundation.org/trial.
\end{enumerate}
\end{small}
or modified universal jurisdiction statutes that open up the possibility of prosecutions against Israeli defendants for apartheid, genocide, and war crimes. Nor are these the only states with civil statutes allowing individual claims for property expropriation against Israeli defendants. Comparative mapping of such laws remains to be thoroughly explored, and Palestinian statehood has now made these viable options for both civil society and the Palestinian leadership to explore.

**STATEHOOD RAMIFICATIONS**

Palestinian leadership, but also civil society, can seek sanctions against Israel in all states that have recognized Palestinian statehood. This would require a diplomatic effort in tandem with a robust Boycott, Divestment and Sanctions (BDS) campaign as in the earlier cases of Namibia and South Africa. But most importantly, the apartheid and genocide frameworks give a solid legal basis for claims against Israel for the illegal acts of apartheid throughout Israel and the occupied territories and for violations of the Genocide Convention. The ICJ has already declared the *erga omnes* obligations vis-à-vis the land seized for construction of the Wall, a finding that provides the foundation for a subsequent Advisory Opinion concerning the *erga omnes* obligations toward Palestinian victims of ongoing Israeli apartheid and genocide.

**IMPLICATIONS FOR NEGOTIATIONS**

Palestinian negotiators should turn toward demanding that the legal norms of return, restitution, and compensation could be applied to reverse or mitigate the effects of ethnic cleansing, apartheid, and genocide. Further, negotiators could insist on the incorporation of the Dayton principles applied in the case of Bosnia and Herzegovina regarding future negotiations on Palestinian refugees and displaced persons. The Palestinian leadership could also seek another ICJ advisory opinion on whether actions of forced transfer/expulsion are ethnic cleansing or genocide.

**Conclusion**

It is time for a strategic movement incorporating a clear legal framework that unifies the Palestinian population in a single experience of mass expulsion, ethnic cleansing, and genocide; a movement that rejects further fragmentation of the Palestinian people by its occupiers, its donors, its public representatives, or international agencies. It is time to get the law right so that every single killing in Gaza in every new conflict there does not have to be individually scrutinized as a violation of IHL or regarded as an act of occupation or an act of international armed conflict. In sharp contrast to IHL, apartheid, population transfer, and genocide provide a sound legal basis for proscription, and trigger legal responsibility and obligations for all states. Apartheid, ethnic cleansing in the form of forced population transfers, and genocide are also international criminal acts that entail individual responsibility as well as absolute obligation on all states under the


57. *Id.* at 106 et seq.
relevant treaties to search out and prosecute the individuals responsible under universal jurisdiction.  

Apartheid, ethnic cleansing, and genocide are also important legal labels that are readily understood by the general public and in the legal community globally. They are critical labels for grassroots and legal mobilization. They provide legal mechanisms and help move forward many types of legal and nonlegal actions and strategies. It is past time to get the law right so that this movement can find traction in all the ways that law and grassroots efforts, utilized jointly, make possible.

**About the Author**

Susan M. Akram is clinical professor of law at Boston University School of Law. The author thanks her research assistant, Yoana Kuzmova, for her invaluable help in finalizing this paper for publication.

---

58. Forced population transfer, or expulsion, also entails gross violations of human rights. The UN High Commissioner for Human Rights José Ayala Lasso stated in a speech in 1995 to the Assembly of German Expellees at the Paulskirche in Frankfurt that “[t]he right not to be expelled from one’s homeland is a fundamental right” (de Zayas [2001] 286), and in an introductory statement at a conference on population transfer of 17 February 1997 in Geneva that compulsory population transfers . . . violate the whole gamut of civil and political rights, economic, social and cultural rights . . . . Expulsion by its very nature deprives victims of the exercise of many rights and is frequently accompanied by physical abuses and even by the ultimate violation of the right to life” (de Zayas [2001] 279–80).