



ONSLAUGHT:
ISRAEL'S ATTACK ON GAZA &
THE RULE OF LAW

DECEMBER 27, 2008 - JANUARY 18, 2009

REPORT OF THE
NATIONAL LAWYERS GUILD
DELEGATION TO GAZA
FEBRUARY 2009



Copyright © 2009 National Lawyers Guild
All rights reserved.
Printed in the United States of America.
Cover design by Adam Shapiro.

National Lawyers Guild
132 Nassau Street, # 922
New York NY 10038
Phone: (212) 679-5100
Fax: (212) 679-2811

Web site address: <http://www.nlg.org>

For media/press inquiries, please contact NLG office.



**ONSLAUGHT:
ISRAEL'S ATTACK ON GAZA AND THE RULE OF LAW**

Table of Contents

Executive Summary	1
I. Introduction	3
II. Background	5
III. Targeting Civilians and Civilian Infrastructure	8
A. Targeted Civilians.....	9
1. <i>Khaled Mohammed Abed Rabbo</i>	
2. <i>Ibtisam al-Sammouni</i>	
3. <i>Rouhiya al-Najjar</i>	
4. <i>Ahmad Mubarak Hussein Shrahi</i>	
5. <i>Atiyeh Hilmi al-Sammouni</i>	
6. <i>Ibtisam Ahmad Farrah al-Ganou'</i>	
<i>Analysis: Targeting Civilians</i>	13
B. The Use of Human Shields.....	14
C. Targeted Civilian Infrastructure.....	16
1. <i>American International School in Gaza</i>	
2. <i>The United Nations Relief and Works Agency</i>	
3. <i>Homes Destroyed</i>	
4. <i>Medical Centers</i>	
<i>Analysis: Targeting Civilian Infrastructure</i>	18

IV. Illegal Use of Weapons	19
A. Prohibited Weapons.....	20
B. Illegal Use of Conventional Weapons – White Phosphorous.....	21
1. <i>Saima Sulman al-Minay’ah</i>	
2. <i>Sabah Abu Halima</i>	
3. <i>UNRWA Headquarters</i>	
<i>Analysis: Illegal Use of Weapons</i>	24
V. Prevention of Access to Medical and Humanitarian Aid	25
A. Denial of Medical Care.....	25
1. <i>Al-Zaytoun Neighborhood, Beit Lahiya</i>	
2. <i>Al-Shurrab Family</i>	
B. Attacks upon Medial Facilities and Personnel.....	27
1. <i>Al-Quds Hospital</i>	
2. <i>Union of Health Care Committees</i>	
<i>Analysis: Prevention of Access to Medical and Humanitarian Aid</i>	30
VI. Violations of United States Law	31
A. Arms Export Control Act.....	32
B. Foreign Assistance Act.....	32
C. Mutual Defense Agreement.....	33
<i>Analysis: Violations of United States Law</i>	36
VII. Conclusion	34
VIII. Recommendations	36
Annex	
NLG Delegation Itinerary.....	38
NLG Delegation Members.....	40

Executive Summary

During its 22 day offensive, Israeli forces killed more than 1400 Palestinians, including at least 288 children, and injured over 5300, of which at least 1606 were children. The majority of those killed were civilians. Two weeks after Israel declared a unilateral ceasefire, a National Lawyers Guild Delegation of seven attorneys and one law student traveled to Gaza to investigate the circumstances that led to the massive Palestinian casualties, and to determine what, if any, violations of international law occurred, and whether U.S. domestic law was violated as a consequence.

The Delegation found more than ample evidence to establish a *prima facie* case that the Israeli military committed significant violations of international law in Gaza from December 27, 2008, to January 18, 2009. Specifically, the delegation found that Israeli forces appear to have violated:

- the principle of distinction by engaging in the willful killing of a number of Palestinian civilians;
- the principle of proportionality by carrying out a number of attacks where the “collateral damage” that resulted was vastly disproportionate to the direct military advantage that could have been achieved by Israel;
- customary international law on the use of weapons by misusing certain weapons, including the use of indiscriminate weaponry in residential and other heavily-populated civilian areas;
- the obligation to provide medical care to the wounded by deliberately denying or delaying access to medical care for wounded people; and
- the prohibition on attacking medical facilities and personnel.

As such, the National Lawyer Guild Delegation to Gaza calls for:

1. The United Nations to establish a commission of inquiry to conduct a comprehensive and independent investigation into the gross violations of international humanitarian law reported herein and to recommend the establishment of an International Criminal Tribunal for Israel (ICTI) as a ‘subsidiary organ’ under U.N. Charter Article 22 to prosecute Israel’s top generals and other military and political leaders for gross violations of the law;
2. The United States envoy to the United Nations and, more generally, the Obama Administration, under the obligations of the Geneva Conventions and general principles of humanitarian law, to support a full United Nations investigation of Israel’s conduct during Operation Cast Lead;
3. The Directorate of the Defense Trade Controls, in the Bureau of Political-Military Affairs of the Department of State to conduct a thorough investigation of defense articles supplied by this government to Israel in

order to determine Israel's compliance with conditions imposed by the United States for receipt of military assistance pursuant to Section 2778 of the Arms Export Control Act: End-Use Monitoring of Defense Articles and Defense Services;

4. The United States Congress to withhold any further military assistance to Israel until the investigatory findings are reviewed and the Department of State makes a determination as to how to proceed with the sale of defense articles and services to Israel;
5. The United States Congress to establish an independent commission to monitor Israel's compliance with the AECA and FAA;
6. United States citizens and residents to meet with their Senators and Representatives in Congress to share the NLG's investigatory findings and to encourage them to call on the Department of State to conduct an Arms Export Control Act investigation.

I. Introduction

A National Lawyers Guild delegation of seven attorneys and one law student traveled to the Gaza Strip from February 2-8, 2009, to investigate the 22-day Israeli military offensive into Gaza that began on December 27, 2009. This Israeli offensive led to the death of 1417 Palestinians, including at least 313 children, and to the injury of 5303, of which at least 1606 were children.¹ The objective of the Delegation was to investigate the circumstances that led to the massive Palestinian casualties, to determine what, if any, violations of international law occurred, and whether U.S. domestic law was violated as a consequence.²

The Delegation conducted its work using international legal principles as a guide. International humanitarian law establishes rules for situations of armed conflict and military occupation with the purpose of minimizing civilian suffering and casualties. The rules regulate methods of warfare and include special provisions to protect civilians caught in conflict regions. Furthermore, these rules apply to a country engaged in an occupation of territory not its own and apply to states and non-states alike.

The cornerstone of international humanitarian law can be found in the four Geneva Conventions of 1949 and the two additional protocols adopted in 1977. Israel is a party to the four conventions but not the protocols. However, Additional Protocol I and provisions of Additional Protocol II are widely regarded as stating principles of customary international law, and therefore bind all states, including Israel. While these conventions provide the most recent and comprehensive codification of international humanitarian law during hostilities, customary law on this matter was developed over time and has been codified in various treaties and conventions throughout the last two centuries. The Hague Conventions of 1899 and 1907 were some of the first and most

¹ Palestinian Centre for Human Rights, *Confirmed figures reveal the true extent of the destruction inflicted upon the Gaza Strip; Israel's offensive resulted in 1,417 dead, including 926 civilians, 255 police officers, and 236 fighters*, Mar. 12, 2009, available at <http://www.pchrgaza.org/files/PressR/English/2008/36-2009.html>. The Palestinian Ministry of Health in Gaza cited different figures. As of 1600 hours on 19 January, 412 children dead and 1855 injured. See U.N. Office for the Coordination of Humanitarian Affairs, *Field Update on Gaza from the Humanitarian Coordinator, 20-21 January 2009, 1700 hours*, available at <http://www.ocha-opt-gaza-humanitarian-situation-report-2009-01-21-english.pdf>.

² This report does not address the legal foundation for Israel's assault on Gaza (*Jus ad bellum*), but rather focuses on how Israel conducted its military campaign (*Jus en bello*). This approach should not be taken to concede that Israel had legitimate grounds for claiming the right of self-defense. Whether Israel's onslaught was a prohibited, non-defensive use of force, constituting a war of aggression, a crime under customary international law, warrants a separate inquiry. Richard Falk, UN special rapporteur on human rights in the Palestinian territories, has said that Israel's aggression was not legally justified and may represent a "crime against peace." Richard Falk, Special Rapporteur, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967*, U.N. Doc. A/HRC/10/20 (Mar. 17, 2009), available at <http://domino.un.org/unispal.nsf/47d4e277b48d9d3685256ddc00612265/f0a9f3e9fad114d38525757e00628b1e!OpenDocument>.

notable codifications of the international law of war and their provisions are also regarded as customary law.³

Delegates visited neighborhoods in Gaza City, Beit Lahiya, Jabaliya, Rafah, and Khan Yunis to examine three issues: 1) whether Israel had targeted civilians and civilian infrastructure, 2) whether Israel had used weapons illegally, and 3) whether Israel had deliberately or arbitrarily blocked or prevented medical and humanitarian assistance to civilians. The material in this report was gathered almost exclusively from first-hand interviews of people who witnessed the events described. The delegation selected interviewees based on information provided by non-governmental organizations (NGOs), the Palestinian Red Crescent Society, Palestinian Ministry of Health officials, ambulance drivers, hospital officials, and others in a position to have a broad overview and understanding of the effects of the onslaught. Delegates substantiated accounts by interviewing eyewitnesses, bystanders, and other third parties.⁴

When conducting interviews, delegates used a standard incident report form developed in advance for the purpose of eliciting specific objective facts.⁵ While interviews often went well beyond the scope of the inquiries set forth in the form, the form provided a basic framework to ensure that interviews followed a uniform format in order to capture contextual information. Delegates always asked witnesses whether they saw or knew of Palestinian fighters in the area at the relevant time, as that question has significant bearing on the legal issues explored by the Delegation.

Just prior to the release of this report a number of Israeli soldiers deployed in Gaza during “Operation Cast Lead” corroborated that the Israeli military had indeed engaged in the types of actions described herein.⁶

³ See, e.g., International Committee of the Red Cross, *Introduction on the Hague Convention Respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land. The Hague, Oct. 18, 1907*, available at <http://www.icrc.org/ihl.nsf/INTRO/195?OpenDocument> (the introduction states, “[t]he provisions of the two Conventions on land warfare, like most of the substantive provisions of the Hague Conventions of 1899 and 1907, are considered as embodying rules of customary international law. As such they are also binding on states which are not formally parties to them.”)

⁴ While in Gaza and Egypt, the Delegation was not able to interview Israeli generals, commanders, or soldiers. Because Israel was severely restricting access to Gaza from Israel, the Delegation was obliged to enter Gaza through the Egyptian crossing at Rafah. Egypt has since barred other delegations of attorneys attempting to cross into Gaza at Rafah.

⁵ The form was provided to the Delegation by U.K. lawyer Daniel Machover.

⁶ See, e.g. Jeffrey Haller, *Israeli soldiers break ranks over Gaza war*, REUTERS, Mar. 19, 2008, available at <http://www.reuters.com/article/middleeastCrisis/idUSLJ974036>; and *Israeli soldiers affirm Palestinians’ accusations* (National Public Radio broadcast Mar. 26, 2009), available at <http://www.npr.org/templates/transcript/transcript.php?storyId=102371101>. See also James Hider, *Israeli Soldiers Admit to Deliberate Killing of Gaza Civilians*, Times (London), Mar. 20, 2009, available at http://www.timesonline.co.uk/tol/news/world/middle_east/article5939611.ece (citing soldiers’ statements claiming rules of engagement so lax that one combatant said that they amounted on occasion to “cold-blooded murder.”)

II. Background

The Gaza Strip is 140 square miles (25 miles long and from 4 to 7.5 miles wide) and home to 1.5 million people, making it one of the most densely populated areas on earth. The majority of Gaza's 1.5 million residents are refugees from Palestine who were displaced from their towns and villages by Israel's creation in 1948. As a result of the 1967 war and recent Israeli military operations in Gaza, including the demolition of many homes in Rafah from 2002-2005, Israeli forces displaced many of these refugees for a second or third time. Fifty-six percent of Palestinians in Gaza are children under the age of 18.⁷

Gaza has been under Israeli military occupation since 1967. Although Israel maintains that it ended its occupation of Gaza in 2005 when it evacuated its troops and approximately 8000 Jewish settlers, Israel retains effective control over Gaza, and has the ability to enter at will.⁸ Israel exercises territorial dominance and imposes restrictions on the movement and lives of the Strip's residents. It controls Gaza's air space, territorial waters, all border crossings with Israel, and indirectly monitors passage through the Rafah crossing between Gaza and Egypt. Palestinians in Gaza require Israel's consent to travel to and from Gaza, to take their goods to Palestinian and foreign markets, to acquire food and medicine, and to access fuel, water and electricity. Without Israel's permission, the Palestinian Authority (PA) cannot perform basic governmental functions such as providing social, health, security, and utility services, developing the Palestinian economy, and allocating resources. In addition, Israel still maintains control of Gaza's population registry. Thus, Gaza effectively remains under Israeli military occupation, a position that is widely recognized under international law.⁹

⁷ U.N. Office for the Coordination of Humanitarian Affairs, *Flash Appeal for occupied Palestinian territory - Gaza 2009*, Feb. 2, 2009, available at <http://ochaonline.un.org/cap2005/webpage.asp?Page=1740>.

⁸ Article 42 of the Hague Convention states that a "territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised." Hague Convention Respecting the Laws and Customs of War on Land and its annex art. 42, Oct. 18, 1907, 36 Stat. 2277 (1908), U.S.T.S. 539, 1 Bevans 631, available at <http://www.icrc.org/ihl.nsf/FULL/195?OpenDocument>. The test for applying the legal regime of occupation is not whether the occupying power fails to exercise effective control over the territory but whether it has the ability to exercise such power, a principle affirmed by the United States Military Tribunal at Nuremberg. *U.S.A. v. Wilhelm List (the Hostage Case)*, Nuremberg Military Tribunal, 1948, available at: <http://www.ess.uwe.ac.uk/WCC/List1.htm>.

⁹ "Israel remains an occupying power in the Gaza Strip even though it withdrew its military forces and illegal civilian settlers in August and September 2005." Human Rights Watch, *Israel: Threatened Sanctions on Gaza Violate Laws of War*, Sep. 20, 2007, available at <http://hrw.org/english/docs/2007/09/20/isrlpa16920.htm>; "Statements by the Government of Israel that the withdrawal ended the occupation of Gaza are grossly inaccurate. . . In effect, following Israel's withdrawal, Gaza became a sealed off, imprisoned, and occupied territory." John Dugard, Special Rapporteur, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967*, U.N. Doc. A/HRC/4/17 (Jan. 2007) available at <http://domino.un.org/UNISPAL.NSF/22f431edb91c6f548525678a0051be1d/b59fe224d4a4587d8525728b00697daa!OpenDocument>. See also Gisha, *Disengaged Occupiers: The Legal Status of Gaza*, Jan. 2007, available at <http://www.gisha.org/index.php?intLanguage=2&intSiteSN=119>.

In the January 2006 elections, judged to be open, fair, and honest,¹⁰ Hamas won 76 of the 132 seats in the Palestinian Legislative Council and thus became the governing authority of the Palestinian Authority in the West Bank and Gaza.¹¹ Despite these results, Israel and its international allies declared their unwillingness to work with Hamas, calling it a terrorist organization and refusing to recognize it as a valid political actor.¹² The international community froze aid to the PA and Israel tightened restrictions on the occupied Palestinian territory, which included instituting closures on the Gaza Strip that, among other things, prevented travel and obstructed the delivery of aid to Palestinians there. This closure denied residents of Gaza adequate food, fuel, medical supplies, parts, and other essential commodities.¹³

Hamas' electoral victory sparked tensions between the two major political parties in the PA, Hamas and Fatah. In March 2007, after many months of clashes between the rivals, Hamas and Fatah negotiated a unity government that Palestinians hoped would end factional violence, garner international support, and reduce the restrictions Israel had imposed on the occupied Palestinian territory. The unity government failed, however, and on June 7, 2007, clashes erupted in Gaza between Hamas and Fatah forces over control of the Strip.¹⁴ Hamas emerged in control of Gaza, while Fatah asserted its political dominance in the West Bank.

After Hamas took over internal control of Gaza, Israel tightened its closure on the Strip even further. This comprehensive closure destroyed the already feeble Gaza economy, further increased the number of Palestinians needing international humanitarian assistance from 60 to 80 percent,¹⁵ and created a situation of chronic malnutrition. Forty-five percent of children in Gaza today suffer from acute anemia.¹⁶ The closure depleted Gaza hospitals of basic medicine and medical supplies leaving them, and Gaza's infrastructure as a whole, unequipped to handle the casualties that

¹⁰ Former President Jimmy Carter, who was present in the West Bank as an election observer during the January 2006 elections, stated, "the election was completely honest and fair." President Jimmy Carter, Opening Remarks to the 2006 Human Rights Defenders Policy Forum (May 23, 2006) (available at <http://www.cartercenter.org/news/documents/doc2348.html>).

¹¹ See, e.g., *Hamas sweeps to election victory*, BBC NEWS, Jan. 26, 2006, available at http://news.bbc.co.uk/2/hi/middle_east/4650788.stm.

¹² See *id.* at http://news.bbc.co.uk/2/hi/middle_east/4650788.stm.

¹³ Doug Struck, *Israeli Siege Leaves Gaza Isolated and Desperate*, WASH. POST FOREIGN SERVICE, Aug. 28, 2006, available at http://www.washingtonpost.com/wp-dyn/content/article/2006/08/27/AR2006082700768_pf.html.

¹⁴ See David Rose, *The Gaza Bombshell*, VANITY FAIR, Apr. 2008, available at <http://www.vanityfair.com/politics/features/2008/04/gaza200804> quoting David Wurmser, who resigned as Vice President Dick Cheney's chief Middle East adviser in July 2007, a month after the Gaza coup: "Wurmser accuses the Bush administration of 'engaging in a dirty war in an effort to provide a corrupt dictatorship [led by Abbas] with victory.' He believes that Hamas had no intention of taking Gaza until Fatah forced its hand. 'It looks to me that what happened wasn't so much a coup by Hamas but an attempted coup by Fatah that was pre-empted before it could happen,' Wurmser says."

¹⁵ U.N. Office for the Coordination of Humanitarian Affairs, *Field Update on Gaza from the Humanitarian Coordinator 30 January-2 February, 1700 Hours*, ¶ 2 (Jan. 30-Feb. 2, 2009).

¹⁶ Statement, Richard Falk, Special Rapporteur for the Palestinian Territories, Occupied Since 1967, for Presentation to the Special Session of the Human Rights Council on Gaza, ¶ 4, (Jan. 9, 2009) available at www.driesvanagt.nl/p_gaza_statement_falk.pdf.

resulted from Israel's assault.¹⁷

On June 19, 2008, Israel and Hamas entered into an Egyptian-brokered six-month ceasefire agreement that was supposed to end Israeli military incursions into the Gaza Strip as well as ease economic restrictions on Gaza.¹⁸ Under the agreement, Palestinians were in turn to halt rocket and mortar fire from Gaza into Israel and move toward releasing captured Israeli corporal Gilad Shalit.¹⁹ For more than four months the ceasefire was largely successful for residents of neighboring Israeli towns.²⁰ Rocket and mortar fire declined from an average of about 400 rounds per month to single digits, falling each month of the ceasefire and reaching a low of one rocket and one mortar in October.²¹ However, according to United Nations Relief and Works Agency (UNRWA) Director of Gaza Operations, John Ging, instead of easing restrictions, Israel actually tightened them during this period.²² Then on November 4, 2008 an Israeli military raid into the Gaza Strip killed six Hamas members. Hamas responded by firing rockets into southern Israel that wounded no Israelis. Shortly after the ceasefire officially expired on December 19, 2008, Hamas offered to renew the ceasefire with Israel.²³ Israel refused and a few days later began its offensive by launching a massive air assault on the Gaza Strip.

Around noon on December 27, 2008, as a graduation ceremony was underway for police cadets, children were returning from school, and women were shopping in outdoor markets, Israel launched an attack on the Gaza Strip, which it dubbed "Operation Cast Lead." Over 225 Palestinians were killed on that first day alone.

¹⁷ This report does not analyze Israel's policies towards Gaza before the December 27, 2008, military offensive. However, other legal and humanitarian organizations have classified these policies as collective punishment which is strictly prohibited under Article 33 of the 1949 Fourth Geneva Convention. Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 28, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 973 [hereinafter "Fourth Geneva Convention"]. For more on Israel's closure policy and violations of international law, see Gisha, *Gaza Closure Defined: Collective Punishment*, Dec. 2008, available at <http://www.gisha.org>.

¹⁸ *Israel Agrees to Truce with Hamas on Gaza*, N.Y. TIMES, Jun. 18, 2008, available at <http://www.nytimes.com/2008/06/18/world/middleeast/18mideast.html?hp>.

¹⁹ *Id.* at <http://www.nytimes.com/2008/06/18/world/middleeast/18mideast.html?hp>.

²⁰ *Id.* at <http://www.nytimes.com/2008/06/18/world/middleeast/18mideast.html?hp>. See also Israeli Ministry of Foreign Affairs, *One Month of Calm Along the Israeli-Gaza Border*, Jul. 27, 2008, available at <http://www.mfa.gov.il/MFA/Terrorism->

[+Obstacle+to+Peace/Hamas+war+against+Israel/One+month+of+calm+in+Gaza+28-Jul-2008.htm](http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/One+month+of+calm+in+Gaza+28-Jul-2008.htm) stating that "During its first month, the lull arrangement resulted in a significant drop in rocket and mortar fire at Israel. A relative calm has settled over Sderot and Israeli population centers near the Gaza Strip, occasionally broken by rockets and mortar bombs fired by terrorist organizations which oppose the lull (mostly local Fatah networks, with the Palestinian Islamic Jihad violating the lull only on one occasion)."

²¹ Total monthly rockets and mortars fired each month in 2008 amounted to 245 in June, 12 in July, 11 in August, 4 in September, 2 in October, 193 in November, 602 in December, and 493 in January. See the Israel Project, *Hamas Continues to Fire Rockets into Israel, Operate Smuggling Tunnels*, Feb. 24, 2009, available at http://www.theisraelproject.org/site/apps/nlnet/content2.aspx?c=hsJPK0PIJpH&b=3587015&content_id={990CAC69-4588-4C10-AFF9-B47938568CEB}¬oc=1.

²² Interview with John Ging, Director of Gaza Operations, United Nations Refugee and Works Agency, in Gaza City, Gaza (Feb. 2, 2009).

²³ See, e.g. Roe Nahmias, *Hamas: Willing to renew truce*, YEDIOTH AHRONOTH, Dec. 23, 2008, available at <http://www.ynet.co.il/english/articles/0.7340.L-3642815.00.html>.

Following six days of intensive aerial bombardment, Israel launched a full-scale ground attack on January 3, 2009. On January 8, the United Nations Security Council passed a resolution calling for “an immediate, durable, and fully respected ceasefire, leading to full withdrawal of Israeli forces from Gaza.”²⁴ The Israeli onslaught, however, continued until January 18, when Israel declared a unilateral ceasefire. During those 22 days Israeli forces killed over 1400 Palestinians and wounded over 5300. The vast majority of these casualties were civilians, and many of them were children.²⁵ Israeli deaths totaled 13 – three civilians and ten soldiers (four of whom were killed by friendly fire) – and 183 were injured during the same period.²⁶

III. Targeting Civilians and Civilian Infrastructure

Much of the debate surrounding Israel’s air and ground offensive against Gaza has centered on whether Israel observed the two international legal principles of distinction and proportionality. The principle of distinction, one of the most fundamental principles in the international law of war, mandates that a belligerent must take care to spare civilians and civilian objects. Article 57(2) of Additional Protocol I to the Fourth Geneva Convention requires that those planning an attack shall “(i) do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives.” In order to further this goal of minimizing civilian casualties, the Additional Protocol requires that a belligerent “(ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.” Moreover, upon a belligerent’s receipt of new information during an attack or its planning, the same law states that:

(b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

The principle of proportionality is a related one, prohibiting the use of disproportionate force. While intentionally targeting civilians is always prohibited, the principle of proportionality focuses rather on the incidental harm to civilians that comes

²⁴ S.C. Res. 1860, ¶ 1, U.N. Doc. S/RES/1860 (Jan. 8, 2009).

²⁵ Palestinian Centre for Human Rights, *supra* note 1 at <http://www.pchrgaza.org/files/PressR/English/2008/36-2009.html>.

²⁶ Jerusalem Newsroom, *FACTBOX-Developments in Gaza fighting, Jan 17*, REUTERS, Jan. 17, 2009, available at <http://uk.reuters.com/article/UKNews1/idUKTRE50F27120090117?pageNumber=1&virtualBrandChannel=0>; U.N. Office for the Coordination of Humanitarian Affairs, *Field Update on Gaza from the Humanitarian Coordinator, 20-21 January 2009, 1700 hours*, (Jan. 20-21, 2009). One soldier was killed on a military base inside Israel. This explains the confusion in counting civilian and military dead and the discrepancy in some articles.

from targeting valid military objectives. The principle holds that a party is to “(iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”²⁷ Both intentionally launching a disproportionate attack and launching an indiscriminate attack are considered war crimes, exposing those that commit such acts to individual criminal liability.²⁸

Israel admitted it was targeting all branches of Hamas, including its government, security structure and leaders.²⁹ During its offensive, Israel targeted Palestinian police officers,³⁰ police stations, the Palestinian Legislative Council building, the Ministry of Foreign Affairs, the Ministry of Interior, and the Ministry of Justice – none of which appeared to be used for military purposes. While such targeting may itself be a violation of international law, this report does not focus on attacks upon such persons and institutions; rather, the report addresses attacks against civilian homes, persons, schools, and humanitarian institutions.

A. Targeted Civilians

International law defines “civilians” as persons not involved in combat. Additional Protocol I, Article 50(1) states, “in case of doubt whether a person is a civilian, that person shall be considered to be a civilian.” Article 48 of the same document mandates:

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian

²⁷ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 57(2)(iii), Jun. 8, 1977, 1125 U.N.T.S. 3 [hereinafter “Additional Protocol I”].

²⁸ See Human Rights Watch, *Indiscriminate Fire*, Jun. 30, 2007, available at <http://www.hrw.org/en/node/10911/section/5>. The report states:

With respect to individual responsibility, serious violations of international humanitarian law, including intentional, indiscriminate, and disproportionate attacks harming civilians, when committed with criminal intent are war crimes. Individuals may also be held criminally liable for attempting to commit a war crime, as well as assisting in, facilitating, aiding, or abetting a war crime. Responsibility may also fall on persons planning or instigating the commission of a war crime. Commanders and civilian leaders may be prosecuted for war crimes as a matter of command responsibility when they knew or should have known about the commission of war crimes and took insufficient measures to prevent them or punish those responsible. (Footnotes omitted).

²⁹ Taghreed El-Khodary & Ethan Bronner, *Israelis Say Strikes Against Hamas Will Continue*, N.Y. TIMES, Dec. 27, 2008, available at <http://www.nytimes.com/2008/12/28/world/middleeast/28mideast.html>.

³⁰ The Delegation believes that Israel’s attack on police officers should be thoroughly investigated. Published reports show that the Israeli military deliberated the attack on the cadet graduation ceremony for months. This may indicate premeditation with regard to launching an attack on a civilian target. See Yotam Feldman, *How IDF legal experts legitimized strikes involving Gaza civilians*, HAARETZ, Jan. 1, 2009, available at <http://www.haaretz.com/hasen/spages/1057648.html>.

objects and military objectives and accordingly shall direct their operations only against military objectives.

The Delegation recorded numerous accounts of Israeli soldiers shooting civilians, including women, children, and the elderly. Another common narrative described Israeli forces gathering civilians into a single location (e.g., a home or a school) that was then shelled by Israeli tanks or warplanes. The Delegation also found that following some of these attacks Israeli soldiers would continue to shoot at civilians as they attempted to flee, even though the civilians were in some cases carrying white flags and had identified themselves to the soldiers. A few of these events are summarized below.

1. Khaled Mohammed Abed Rabbo

On January 7, 2009, Khaled Abed Rabbo, 32, of eastern Jabaliya watched as an Israeli soldier shot and killed his two-year-old and seven-year-old daughters outside of his house. According to the testimony given by Abed Rabbo, four days prior, on January 3, the Israeli military bypassed his neighborhood but invaded and took control of the next neighborhood, Salahidin. There was no resistance activity in his area or around the Abed Rabbo home. Abed Rabbo told delegates that he and his family stayed in their house because, while eastern Jabaliya was a site of frequent Israeli incursions, no harm had ever come to the family because the Israeli military knew that they were not fighters.

On the morning of January 7, three Israeli tanks stationed themselves outside of the Abed Rabbo home, one tank only 10 meters away. At approximately 12:50 p.m., Abed Rabbo heard Israelis soldiers shout in Arabic, "Everyone come out of the house!" Abed Rabbo, along with his mother, wife, and three daughters, came out of the home carrying four white flags among them. The six stood in front of the tank for five to seven minutes awaiting instructions from the soldiers; two of the soldiers were outside of the tank eating chips and chocolates. Then a third soldier emerged from the tank and, without warning, opened fire on the family. Abed Rabbo's two-year old daughter, Amal, and his seven-year old daughter, Suad, were shot and killed. His 60-year old mother, Suad Abed Rabbo, sustained bullet wounds to her left arm and his four-year old daughter, Samar, was shot in the chest. Samar survived but is paralyzed and is currently receiving medical treatment in a hospital in Belgium. Subsequently the Abed Rabbo home was completely demolished.

2. Ibtisam al-Sammouni

Ibtisam al-Sammouni, 31, lived with her children in the al-Zaytoun neighborhood of Gaza City. On January 4, the Israeli army forced approximately 110 of al-Zaytoun's residents into Ibtisam's home. At around 7 a.m. the next morning, Israeli military forces fired two tank shells at the house, without warning, killing two of Ibtisam's children, Rizka, 14, and Faris, 12. When the survivors attempted to flee, Israeli soldiers shot at them. Ibtisam's son Abdullah, 7, who had been injured in the initial shelling, remained in the home among his deceased siblings for four days before Israeli forces permitted a

rescue by medical personnel. After medical personnel removed the injured,³¹ Israeli forces fired a missile at the home, collapsing it over the bodies remaining inside. The dead remained beneath the rubble for two more weeks before the Israeli Army permitted medical personnel to remove their bodies for burial.

3. Rouhiya al-Najjar

Rouhiya al-Najjar, 47, lived in the village of Khoza'a in the Khan Yunis district. On January 13, 2009, Israeli forces ordered residents of her neighborhood to march to the village center. Rouhiya led a group of 20 women out of her home and into an adjoining alley; they all displayed white flags that they had made from sheets and scarves. Upon entering the alley, an Israeli sniper shot Rouhiya in her left temple, killing her instantly. Israeli forces then prevented medical personnel from reaching her body for 12 hours. Other residents of Khoza'a were shot at and forced to march to a school in the village center. There they found hundreds of other residents who had been rounded up from nearby villages. Israeli forces then shot phosphorus shells at the school, forcing the civilians to flee. Palestinian Red Crescent and International Red Cross ambulances then evacuated the civilians to a nearby village.

4. Ahmad Mubarak Hussein Shrahi

Ahmad Mubarak Hussein Shrahi, 72, lived with his extended family on the family farm in the village of al-Qarara in the Khan Yunis district. At approximately 6 a.m. on January 5, Shrahi, walking slowly and with the aid of a cane, was making his way from his olive grove to his son's home, approximately 20 meters away. Less than ten meters from the home an Israeli sniper fired three shots, two of which hit Shrahi. Shrahi fell to the ground, face down, wounded but moving. At that time six Israeli soldiers appeared and ordered his family to come out of the house. When his son, Mubarak, attempted to aid the elder Shrahi, one of the soldiers stopped him by hitting him in the right shoulder with the butt of his rifle. Another soldier then fired three shots into the prone Shrahi's back, killing him. The soldiers then imprisoned Mubarak, his wife and children in a neighbor's farmhouse, without food or water, until 11 p.m. that evening. During this time Mubarak reports overhearing one soldier repeatedly suggest that the soldiers take Mubarak outside and put two bullets in his head.

5. Atiyeh Hilmi al-Sammouni

On the morning of January 4, 2009, Faraj Atiyeh Hilmi al-Sammouni, 22, heard soldiers speaking in Hebrew just outside his house. His entire family of 18 went into a back room for safety. Soldiers then entered the home, shooting at the walls and ceilings as they came in and took positions in the house and in front of the room where the family was sheltered. A soldier then instructed the owner of the house to come out. Faraj al-Sammouni's father, Atiyeh Hilmi al-Sammouni, 46, opened the door and

³¹ Paramedics were not able to remove the dead bodies because Israeli forces only allowed them three hours to work without their ambulances. For a full account, see *infra* Section V, Denying Access to Medical and Humanitarian Aid, Case 1, Al-Zaytoun.

stepped into the room containing the soldiers, his hands raised. At that time one or two of the soldiers commenced firing at Atiyeh, the first bullet hitting his forehead and the second his chest. Faraj reports seeing his father's body shake as it was riddled with bullets, and then fall to the ground. The women and children in the back room began to scream and cry, at which time soldiers began firing at the room hitting Faraj, Ahmed (4), Kanaan (12), Abdullah (9), and Zahwa (43). Faraj pleaded with the soldiers to allow him to seek medical attention for his little brother but the soldiers refused. Four-year-old Ahmed died from his injuries the following day; the others are recovering.

6. Ibtisam Ahmad Farrah al-Ganou'

On January 4, 2009, between 6:30 and 7 a.m., Sami Mahmoud al-Ganou' and his brothers walked down to their front yard to start a fire to boil water due to a shortage of gas. At approximately 7:30 a.m., Israeli forces began firing near the al-Ganou' home, which sheltered 29 civilians – six men, eight women, and fifteen children aged from six months to eight years. At 8:30 a.m., without warning, an Israeli military bulldozer demolished a small dwelling belonging to Zakia Mahmoud al-Ganou's, 75, located approximately ten meters from the Al-Ganou' home. Israeli firing near the home continued for nearly an hour when the family decided that Zakia, the 75-year-old family matriarch, and her eldest daughter-in-law, Ibtisam Ahmad Farrah al-Ganou', a 40-year-old woman and mother of seven, would leave the house with white flags. At approximately 9:30 a.m. an Israeli sniper shot Ibtisam as she exited the home, killing her instantly. The shot came from the second story of a house 200 meters away. Seeking refuge, Zakia returned to the home.

Israeli forces continued to fire at the home until 1:30 p.m. when, what witnesses describe as "hundreds of Israeli soldiers," approached the house. Bassam al-Ganou', a member of the family inside, called to the soldiers in Hebrew, "There are people in here — I will open the door." As he stood to open the door, the soldiers shot at the door. Bassam and the rest of the al-Ganou' family dropped to the floor. Soldiers broke down the door with sledgehammers and sent in two dogs with cameras mounted on them to survey the room. Moments later, dozens of Israeli soldiers entered the room. The soldiers forced the six al-Ganou' men to undress and then tied their hands with plastic cuffs. The family was then taken to the nearby Abu Ja'far al-Mansouri School, where the men were blindfolded and held for nearly 24 hours. The women and children were kept in a separate room from the men at the school. Abed, 4, asked to go to the bathroom and a soldier put a gun against his right temple. Another child, Zaki, asked for water and a soldier gave him a cup filled with urine to drink.

After being held without food, water, and in the men's case, clothing, the family was ordered to Jabaliya's city center at 2:30 p.m. the following day. The men were allowed to take Ibtisam's lifeless body with them, which had remained at the foot of the home's staircase since she was killed the day before. While on their way to Jabaliya's city center, the soldiers fired at the family, hitting Mahmoud, 23, in his head and Zakia in her right side. Both victims survived.

Analysis: Targeting Civilians

Each of the testimonies recounted above indicates intentional targeting of known civilians,³² or at the very least a deliberate failure to distinguish between civilian and military targets,³³ each of which is a war crime under international law. In the case of the Abed Rabbo family, there was no resistance activity around the Abed Rabbo home and Israeli soldiers did not face any kind of danger, evidenced by the fact that two Israeli soldiers were outside of the tank eating chips and chocolate when the soldier shot Abed Rabbo's daughters. Furthermore, the Abed Rabbo family stood in front of Israeli soldiers carrying white flags for several minutes, giving the soldiers ample opportunity to identify them as civilians. Nevertheless, an Israeli soldier opened direct fire at the family.

Similarly, in the Shrahi case, soldiers opened direct fire at a civilian who had already been incapacitated and thus posed no threat to them. Even if soldiers had initially mistaken the elderly Shrahi for a fighter and thus shot him, killing him by firing three more bullets in his body at close range after identifying him as a civilian constitutes willful killing. Moreover, even if Shrahi had been a combatant (which he clearly was not), Israeli soldiers had rendered him *hors de combat* by wounding him and, therefore, Shrahi was a protected person under Article 3 of the Fourth Geneva Convention,³⁴ entitled to immediate medical care and attention.³⁵ The testimonies addressing the death of Rouhiya al-Najjar and Ibtisam al-Ganou' also indicate that Israeli soldiers deliberately targeted a known civilian in each case. Moreover, shooting at fleeing civilians as recounted in the Ibtisam al-Sammouni case, the Ibtisam al-Ganou' case, and the Rouhiya al-Najjar case provides further evidence of directly targeting civilians.

The testimony of Ibtisam al-Sammouni shows Israeli indifference to both the principles of distinction and proportionality³⁶ as well as a failure to provide the warnings to civilians requisite under international humanitarian law.³⁷

³² See Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 973 (defines civilians and lists prohibited acts against them, including "[v]iolence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture"); *id.* art. 32 (prohibits "taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands"); *id.* art. 147 (defines "grave breaches" to include "willful killing," and "willfully causing great suffering or serious injury to body or health,"), available at <http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument>; See also Additional Protocol I, *supra* note 27, art. 51, (providing protection for civilians and prohibition against attack).

³³ See Additional Protocol I, *supra* note 27, art. 48 (stating that "[i]n order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives"). See also *id.* art. 51(4),(5) (prohibiting and defining indiscriminate attacks).

³⁴ See *id.* art. 10, 41 (provides for protection of the sick and prohibition on attacking those recognized as *hors de combat*).

³⁵ *Id.* art. 10.

³⁶ See *id.* art. 57 (stating the requirement of care to protect civilians and civilian objects and lists precautions to be taken, including doing "everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are

The killing of Atiyeh al-Sammouni appears from the circumstances to have been unnecessary and perhaps premeditated. The continuation of the attack after the initial wounding reinforces this conclusion. The firing at a back room of the al-Sammouni home, Israeli soldiers' attack on the school in Khoza'a, and the firing at the al-Ganou' house and through the door – all after knowing that there were civilians inside – represent separate violations of the principle of distinction and may be separate war crimes.

B. The Use of Human Shields

It is a well-established principle that individuals may not be coerced into supporting a belligerent.³⁸ The legal principle requiring distinction between civilians and combatants prohibits the use of civilians as human shields. Article 27 of the Fourth Geneva Convention states that civilians who find themselves in the hands of one of the parties are “entitled, in all circumstances, to respect. . . . They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof.” Article 28 of the Convention expressly prohibits the use of civilians as human shields by placing them alongside soldiers or military facilities with the hope of attaining immunity from attack.³⁹ The Official Commentary to the Convention refers to this practice as “cruel and barbaric.” Articles 31 and 51 of the Convention also prohibit the use of physical or moral coercion on civilians or forcing them to carry out military tasks.⁴⁰ Coerced action in favor of the opposition is a grave breach of the Convention, making those responsible liable for war crimes under international criminal law.⁴¹

military objectives”, taking “all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects”, and refraining “from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”).

³⁷ In many other cases Israel did provide warnings by dropping leaflets or by making phone calls. But each requirement of Article 57 of Additional Protocol I must be satisfied. Warnings alone are insufficient to satisfy its requirements.

³⁸ The Hague Convention states, “[a] belligerent is likewise forbidden to compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent’s service before the commencement of the war.” Hague Convention, *supra* note 8, art. 23.

³⁹ “The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.” Additional Protocol I, *supra* note 27, art. 51(7). See also Fourth Geneva Convention, *supra* note 17, art. 28 (stating that the “presence of a protected person may not be used to render certain points or areas immune from military operations.”); Additional Protocol I, *supra* note 27, art. 51(7), (stating that the human shields prohibition “is expressed in an absolute form and applies to the belligerents’ own territory as well as to occupied territory, to small sites as well as to wide areas”).

⁴⁰ Fourth Geneva Convention, *supra* note 17, art. 31 (stating, “[n]o physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties”); *Id.* art. 51 (stating that “[t]he Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. . . . Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations.”)

⁴¹ Grave breaches include “compelling a protected person to serve in the forces of a hostile Power. . . .” *Id.* art. 147.

The Delegation interviewed several individuals who testified that Israeli soldiers did in fact use Palestinian civilians as human shields and coerced cooperation from them. The most striking testimony was provided by Majdi Abed Rabbo.

Majdi Abed Rabbo, 38, lives with his wife and five children, ages 1-15, in the Jabaliya neighborhood of Gaza City. On the morning of January 5, 2009, three Israeli soldiers entered Majdi's home. After asking questions about the adjoining house (hereafter referred to as "the Hatem house"), the officers ordered Majdi to break through the common wall separating the residences to gain access to the rooftop. Once the wall was removed an officer crossed over to the rooftop of the Hatem house, taking Majdi with him at gunpoint. After viewing militants in the Hatem house, a soldier told Majdi to go inside the house and bring the militants' clothes and their weapons back to the soldiers. When Majdi objected, the officer repeated the instructions and then hit and kicked him. Fearing for his and his family's safety, Majdi did as he was told.

When Majdi entered the house he found three militants. They had heard the soldiers' instructions to Majdi and told him to return and inform the soldiers of exactly what he saw. After Majdi returned, shooting erupted between the militants and Israeli soldiers. After it ceased, the soldiers, apparently assuming that the militants had been killed after the Israeli military had fired rockets at the house, again told Majdi to go to the Hatem house and retrieve the three bodies. When he again entered the Hatem house Majdi found the three men, one injured but the other two unharmed. After bringing back the message that the militants wanted the soldiers to come and face them themselves, the soldiers beat him and bound his hands and feet.

During the course of the evening, Israeli forces launched several missiles that destroyed both the Hatem house and Majdi's own house. After the final missile attack, an Israeli officer told Majdi that he was certain that the militants were now dead and that Majdi must go and confirm their deaths before the army would permit him to see his family again.

Majdi thus was forced to go to the Hatem house yet again. When he reported that the militants were in fact not dead, the officers doubted his account. The Israeli military then demolished the house over the three men inside; Majdi was placed in a house with other residents of the neighborhood and kept there for two days. He was ultimately reunited with his family when they were all allowed to leave.

In this case, the Israeli officer coerced Majdi, a civilian non-combatant, into acting on Israel's behalf to achieve a military objective. Requiring Majdi to engage in potentially life-threatening acts helpful to the Israeli military constitutes a war crime and should subject those responsible to prosecution.

C. Targeted Civilian Infrastructure

The Delegation uncovered extensive evidence suggesting that Israeli forces destroyed buildings throughout Gaza that had no links to militant or resistance activity. Civilian infrastructure, such as police buildings, courthouses, and government ministries, are not military objectives even when organized and funded by a government or semi-governmental authority that is engaged in military combat. These, and structures such as houses, schools, hospitals, and buildings might conceivably be military targets but only if used for military purposes. Such structures are presumptively civilian, which means that they are to be assumed civilian objects and therefore off-limits as military targets until evidence is shown that they are being used for military purposes.⁴² Extensive destruction of property that is not justified by military necessity, when done in an unlawful and wanton manner, is also illegal under international criminal law.⁴³

According to the Palestine Center for Human Rights, Operation Cast Lead resulted in the following:

- 2400 homes destroyed, and at least 12,000 homes damaged;
- 60 police stations and 30 mosques completely destroyed;
- 21 private enterprises, including cafeterias, wedding halls, and hotels, damaged;
- 28 public civilian facilities, including ministry buildings, municipalities, and fishing harbors, damaged;
- 121 industrial/commercial workshops destroyed and at least 200 damaged;
- 5 concrete factories and one juice factory destroyed;
- 5 media and 2 health institutions destroyed;
- 29 educational facilities, including schools, damaged or destroyed, and
- Thousands of dunums⁴⁴ of agricultural land damaged.⁴⁵

Guild delegates viewed the remains of hundreds of demolished homes and businesses. Several accounts of this destruction are included below.

1. The American International School in Gaza

⁴² Additional Protocol I, *supra* note 27, art. 52(3), (stating that “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”). See also *id.* art. 52(a)(i) (imposing a duty to determine that the object is in fact being used for military purposes before an attack is launched.)

⁴³ Rome Statute of the International Criminal Court, art. 8(2)(iv), 8(2)(b)(i), July 17, 1998 [hereinafter “Rome Statute”].

⁴⁴ A dunum is equivalent to one-fourth of an acre of land.

⁴⁵ Palestine Centre for Human Rights, *Aftermath (3) “Is this not forbidden?”*, Feb. 19, 2009, available at <http://www.pchrgaza.org/files/campaigns/english/aftermath/3.html>.

The American International School in Gaza (pictured on the cover of this Report) opened its doors in 2000 to provide Palestinian children as well as the children of foreign diplomats with American-style primary and secondary education. According to the school's director, Dr. Ribhi Salem, militants had previously attacked the school on two occasions because they opposed providing Western education in Gaza. On January 3, 2009, at approximately 2 a.m., an Israeli Air Force F-16 fighter jet fired two missiles at the American School, killing the night watchman, Salem Abu Klaiq, 24, and reducing the building to rubble. According to Dr. Salem, the Israelis gave no warning of the attack and no areas adjoining the school were targeted. During his interview, Dr. Salem informed the delegates that the school's administration had come to an agreement with Palestinian resistance groups not to use the school grounds for military activity and that no armed resistance activity had ever taken place on the property. Neighbors confirmed that there had been no militant activity on the school grounds.

2. United Nations Relief and Works Agency (UNRWA)

Israel launched a number of attacks on UNRWA facilities during its offensive. Israeli attacks on UNRWA facilities included missile fire at UNRWA Headquarters in Gaza City and UNRWA schools in Jabaliya and Bet Lahiya. John Ging, the Director of Gaza Operations for UNRWA, noted that all United Nations buildings and vehicles are clearly marked in blue paint visible from above and that during hostilities the UN personnel remained in constant contact with Israeli authorities. UNRWA also confirmed that Israel has the GPS coordinates of all its facilities. Addressing the attack on the UN main compound in Gaza City on January 15, Ging stated that at that time the UN compound was housing over 700 civilians who had sought refuge from heavy shelling in several neighborhoods of Gaza City. Israel attacked the compound with white phosphorus shells, which resulted in the property damage shown below.



*Burned-out UN Warehouse
February 2, 2009 – Gaza City*



*Destroyed Medicines at UN Warehouse
February 2, 2009 – Gaza City*

3. Homes Destroyed

In the course of the three-week offensive, Israel destroyed approximately 2400 Palestinian homes and damaged at least 12,000.⁴⁶ Delegates viewed widespread destruction of homes and sometimes entire neighborhoods in eastern Jabaliya (Izbat Abed Rabbo), al-Zaytoun (al-Sammouni neighborhood), and Khoza'a (Ezzata neighborhood). Based on witness testimony, this destruction appears wanton, or at best unnecessary. In Khoza'a, for example, community members recounted witnessing the Israelis' use of earthmoving equipment to bulldoze and systematically destroy one house at a time, some while civilians were still inside. As each home was destroyed the inhabitants fled to neighboring houses. Once all of the houses were destroyed approximately 160-200 townspeople were left huddling together in an alleyway. The bulldozers then began to destroy an alleyway wall, sending the group to seek shelter in a school in the city center. Mohammad Al-Najjar, a resident of the Ezzata neighborhood, told delegates that the entire neighborhood supported Hamas' rival, Fatah. According to Al-Najjar, only two homes in the area were considered sympathetic to Hamas, and the neighbors had come to an agreement with the residents of those houses that there would be no resistance activity from their neighborhood.

4. Medical Centers

Dr. Bashar Ahmed Murad, Director of Emergency Medical Services for the Palestinian Red Crescent Society, reported several incidents where Israeli forces directly targeted medical facilities. Starting on December 27, 2008, the Red Crescent had difficulty operating at the Jabaliya Emergency Center after Israeli missiles hit the ambulance station. On January 15, 2009, the Israeli military fired white phosphorus shells onto the grounds of the Al-Quds Hospital in Gaza City, and fired at least four missiles at the hospital. Also on January 15, an Israeli tank ran over ambulances parked in front of the Gaza City Emergency Center; the Israelis then used these ambulances to block the road. On January 6, three missiles struck the premises of the Union of Health Care Committees, completely destroying three mobile clinics. Attacks on medical facilities are discussed in more detail in Part V.

Analysis: Targeting Civilian Infrastructure

It is a war crime willfully to attack and cause wanton destruction to anything not a legitimate military target.⁴⁷ According to the testimony provided by the Director of the American International School, the school did not appear to be a legitimate military target, yet the Israeli military deliberately attacked and destroyed it. Similarly, the credible information made available to the delegation would most certainly rule out the UNRWA headquarters as a legitimate military target and yet the Israeli military either directly attacked it or fired in the area with willful disregard to the incidental damage that

⁴⁶ *Id.* at <http://www.pchrgaza.org/files/campaigns/english/aftermath/3.html>.

⁴⁷ Fourth Geneva Convention, *supra* note 17, art. 147 (making the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" a war crime). See also Rome Statute, *supra* note 43, art. 8(2)(b)(v).

may come to the civilians and civilian infrastructure. Incidentally causing damage to a protected person or object is not always a war crime, but if the harm is “excessive in relation to the concrete and direct military advantage anticipated,” it is. Regardless of whether Israeli commanders anticipated legitimate military advantage from launching an attack in the vicinity of the UNRWA headquarters, a heavily populated civilian area, based on available information, Israel’s use of white phosphorus in this location cannot be justified. Use of an indiscriminate and incendiary weapon in a civilian area is itself prohibited by international conventions and treaties. Although Israel is not a party to the protocol restricting the use of incendiary weapons,⁴⁸ Israel is bound by customary international law in this regard and could not have legally used such a weapon without taking precautions to protect the civilian population, which it did not. As such, it appears that Israel also violated international law with its attacks on the UNRWA headquarters and, without evidence to indicate the contrary, committed a war crime by willfully launching an attack known to cause excessive incidental damage in relation to the direct military advantage anticipated. The use of white phosphorus is discussed in more detail in the next section.

Israel’s destruction of civilian homes also appears to have been unnecessary and wanton. In all of the cases documented by the Delegation, the interviewees reported that there was no Palestinian fighting from in or around the homes. Furthermore, many of the instances of home demolition took place after the Israeli military took control of an area, meaning that there remained little or no Palestinian fighting from the locale. Consequently a military necessity argument is diminished. Therefore, it is more likely that Israeli soldiers engaged in willful attacks on civilian homes and thus are guilty of war crimes.⁴⁹

IV. Illegal Use of Weapons

International law heavily regulates belligerents’ use of weaponry. While using any weapon intentionally against civilians is prohibited, certain weapons are particularly restricted because of their extremely harmful nature.

The Delegation’s investigation focused on two issues: (1) whether Israel used prohibited weapons in its assault on Gaza, and (2) whether Israel used conventional weapons illegally. There was no weapons expert among the Delegation members; delegates did, however, collect eyewitness civilian testimony, testimony from medical personnel, and shrapnel and munitions casings from the sites of Israeli attacks. The delegation also interviewed munitions experts in Gaza in order to draw our conclusions.

⁴⁸ Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) art. 2(2), Oct. 10, 1980, 1342 U.N.T.S. 171, available at <http://www.icrc.org/ihl.nsf/FULL/515?OpenDocument>.

⁴⁹ Fourth Geneva Convention, *supra* note 17, art. 53 (stating that “Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations”); *Id.* art. 147 (making the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” a war crime). See *also* Rome Statute, *supra* note 43, art. 8(2)(b)(v).

A. Prohibited Weapons

The Delegation did not find any indication that Israel used weapons that have been explicitly prohibited. Rather, it found that experimental weapons may have been used and that conventional weapons (some of which are highly controversial) were used in a prohibited manner.

Addressing experimental weapons, delegates heard repeated claims that Israel used “Dense Inert Metal Explosives” (DIME) in Gaza. Doctors interviewed reported being baffled by the nature of the weapon-caused amputations that they saw. Most notably, doctors reported a large number of amputation injuries where the wounds looked to be cauterized with little bleeding and no shrapnel or metal fragments in the body. Such wounds exhibited symptoms of severe burning.⁵⁰

DIME is a “low collateral damage” weapon developed at the U.S. Air Force Research Laboratory. The weapon reduces the amount of collateral damage in an area by reducing the radius of the blast. Instead of having a metal casing that distributes shrapnel on impact, DIME weapons have a warhead that consists of a carbon fiber casing filled with a mixture of explosives and a very dense powder of a heavy tungsten metal alloy (HMTA). Upon detonation, the carbon casing disintegrates into extremely small particles; the tungsten alloy acts like micro-shrapnel that is lethal at close range but loses momentum quickly and therefore avoids more widespread damage.⁵¹ Scientific studies have found that HMTA is chemically toxic, damages the immune system, rapidly causes cancer, and attacks DNA.⁵²

It is difficult to determine whether Israel did indeed use DIME because the weapon does not appear to leave behind fragmentation. In addition, Gaza’s hospitals were neither equipped for, nor had the capacity to manage, the large number of daily casualties they treated during Israel’s military operation; as a result, medical personnel did not take tissue samples from victims for analysis. Furthermore, Israel destroyed Gaza’s only forensics laboratory on the first day of its offensive when it bombed the Palestinian police headquarters in Gaza City and therefore no autopsies were performed on the dead before burial. However, delegates interviewed an international weapons expert in Gaza who reported that, even though no conclusive evidence of DIME had been found, because of the low level of collateral damage in some targeted areas, it is highly likely that Israel did indeed use DIME weaponry.⁵³

Although DIME weapons are not currently prohibited under international law, DIME is a new kind of weapon that is still being tested. The carcinogenic effect of the

⁵⁰ Interview with Dr. Shabbir Ahmed Wadee, Doctor and Forensic Pathologist from South Africa, in Gaza City, Gaza (Feb. 3, 2009); Interview with Dr. Hassan Khalaf, Assistant Deputy Minister of Health, Gaza City, Gaza (Feb. 5, 2009).

⁵¹ See, for example, Global Security, *Dense Inert Metal Explosive (DIME)*, Oct. 18, 2006, available at <http://www.globalsecurity.org/military/systems/munitions/dime.htm>.

⁵² See *id.* at <http://www.globalsecurity.org/military/systems/munitions/dime.htm>.

⁵³ Interview with international munitions expert (who asked to remain anonymous), Gaza City, Gaza (Feb. 6, 2009).

tungsten alloy used in the weapon is still being studied by the United States, and therefore the weapon has not yet been licensed for use. If further testing proves that this weapon causes superfluous injury or unnecessary suffering, this may result in absolute prohibition against the use of DIME weapons, even against combatants.⁵⁴ It is not known whether Israel received DIME munitions from the United States or developed its own version. One of the many reports heard by the Delegation about suspected DIME weaponry is recounted below.

On the morning of January 4, 2009, Mahmoud Mashharawi, 11, and his cousin Ahmad Soubaih, 16, were playing on the roof of a house in Remal, a residential neighborhood in Gaza City. A single volley from a drone, believed to be armed with DIME weapons, killed both boys. A witness, Saad Abu Leyla, who had been talking to Ahmad from his location in a neighboring building shortly before the explosion, witnessed the attack. The effect of the rocket was to bisect Ahmad across his abdomen; his limbs were separated from his body and the force of the explosion propelled part of his body several meters from the remainder. Mahmoud suffered severe injuries and ultimately died from damage to his lungs. It is believed that their deaths were caused by the use of DIME munitions; the Delegation understands that some tissue samples have been taken to Norway for analysis and that the families of the victims are awaiting confirmation of the use of DIME munitions.

B. Illegal Use of Conventional Weapons – White Phosphorous

Under customary international law, indiscriminate weapons and incendiary weapons may not be used in the presence of civilians.⁵⁵ Israel itself has acknowledged this prohibition, stating in its Manual on the Laws of War that an “important goal to attain is control over the weapons to ensure the harm they inflict is limited only to the battlefield and the combatants thereon, and does not spread out of control to innocent parties such as civilians. Weapons that do not distinguish between targets are prohibited. . . . Weapons causing needless suffering are prohibited.”⁵⁶

The Delegation documented numerous instances in which Israel appears to have disregarded the prohibition on the use of indiscriminate weapons in civilian areas, thereby causing needless suffering, death, and destruction to civilians and civilian property. Primarily, the Delegation found that Israel used battlefield weaponry in densely-populated civilian areas, including white phosphorus, flechettes, and artillery.

⁵⁴ For more research conducted on the use of DIME munitions in Gaza, see Amnesty International, *Israel/OPT: Fuelling conflict: Foreign arms supplies to Israel/Gaza*, MDE 15/012/2009, Feb. 23, 2009, available at <http://www.amnesty.org/en/library/asset/MDE15/012/2009/en/5be86fc2-994e-4eeb-a6e8-3ddf68c28b31/mde150122009en.html#1.0.9.Arms%20supplies%20to%20Israel%20outline>.

⁵⁵ JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW VOL. I 244 (2005) (Rule 71). See also Rome Statute, *supra* note 43, art. 8(2)(b)(xx) (making the use of “weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict” a war crime.)

⁵⁶ JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW VOL. II 1558 (2005), *citing* Israel, Manual on the Laws of War, 11 (1998).

Originally developed as a flare and smoke-screening agent, the primary military utility of white phosphorus is to mask battlefield movements and deployments. White phosphorus is also a type of incendiary weapon. When it contacts the body, it burns fiercely and can cause immediate death.

Phosphorus burns carry a greater risk of mortality than other forms of burns because phosphorus is absorbed into the body through the burned area, producing liver, heart and kidney damage, and in some cases multiple organ failure.⁵⁷ In addition, white phosphorus continues to burn and eat away at the tissue for as long as it is exposed to oxygen. Consequently, the affected area continues to expand so long as the white phosphorus remains on or in the tissue.



White phosphorous shell exploding over Gaza City.

Source: http://www.timesonline.co.uk/multimedia/archive/00459/gaza-shell_459452a.jpg

treatment. Two weeks into the Israeli offensive foreign doctors who had worked in Lebanon during the 2006 hostilities identified the burns in Gaza as consistent with use of white phosphorous; they instructed doctors at the Shifa Hospital to remove entire areas affected by white phosphorus.⁵⁸

Incendiary weapons are regulated under several international conventions and treaties. According to the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons, it is prohibited to use incendiary weapons against a civilian population.⁵⁹ It is also prohibited, “*in all circumstances* to make any military objective located within a concentration of civilians the object of attack by air-delivered incendiary weapons” (emphasis added).⁶⁰ While Israel is not a signatory to this convention, customary international law dictates similar prohibitions. According to the International Committee of the Red Cross study on customary international humanitarian law, “if

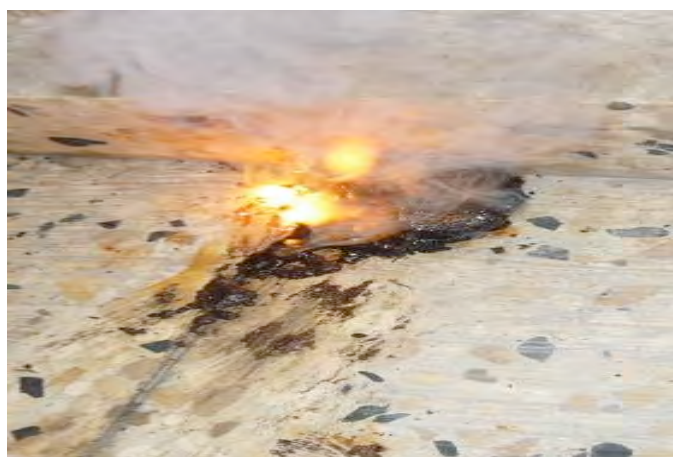
⁵⁷ Agency for Toxic Substances and Disease Registry, *White Phosphorus: Health Effects, Toxicological Profile Information Sheet*, Sep. 1997, available at <http://www.atsdr.cdc.gov/toxprofiles/tp103.html>.

⁵⁸ Interview with Dr. Nafiz Abu Shabaan, Head of Burn Unit, Al-Shifa Hospital, in Gaza City, Gaza (Feb. 5, 2009).

⁵⁹ Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons, *supra* note 48, art. 2(1).

⁶⁰ *Id.* art. 2(2).

incendiary weapons are used, particular care must be taken to avoid and in any event to minimize incidental loss of civilian life, injury to civilians and damage to civilian objects.”⁶¹ Furthermore, “the anti-personnel use of incendiary weapons is prohibited unless it is not feasible to use a less harmful weapon to render a person *hors de combat*.”⁶²



*Burning white phosphorous, ignited spontaneously,
February 5, 2009, Khan Yunis*

Israel used white phosphorus extensively throughout the Gaza Strip during its military campaign. The Delegation documented wide use in civilian areas, usually without prior warning to residents. As white phosphorus does not burn out completely, the Delegation witnessed white phosphorus flaring up in a number of residential areas.

The following portion of this report contains accounts by civilians injured by white phosphorus and attacks on civilian areas.

1. Saima Sulman al-Minay'ah

In Jabaliya at 8 p.m. on January 10, Saima, 16, was sleeping in her bed with her mother when she was heavily burned by white phosphorus. Sixteen other family members were in the house at the time. Saima's older sister reports that there was heavy fire from Israeli drones, Apache helicopters, and F-16s, but no hostile fire or return fire from Palestinians. Three hours into the Israeli onslaught a white phosphorous shell entered the room where Saima and her mother were sleeping. Their mattress caught fire and both Saima and her mother were heavily burned; Saima received third-degree burns on both legs and Saima's mother received second-degree burns on her right leg. Saima instantly lost consciousness; her legs continued to burn for 15 minutes as her family used water in an attempt to extinguish the fire. When water proved ineffective, family members threw sand on her legs. Saima was then rushed to the Kamal Adwan Hospital, from which she was transferred to the Shifa Hospital. She has since undergone two surgeries and remains in the hospital; skin has been grafted from her thigh area to replace the burned areas on her lower legs.

2. Sabah Abu Halima

Sabah Abu Halima, 45, lived in Beit Lahiya with her husband, seven boys, and one girl. It was midday during the onslaught and she and her entire family were at home. She felt her home shake and then missiles fell through the roof; Sabah fell to the

⁶¹ HENCKAERTS & DOSWALD-BECK, *supra* note 55, 287 (Rule 84).

⁶² *Id.* at 289 (Rule 84).

ground upon impact. When she looked up she saw her children burning. One of her sons screamed to her, “Fire, mama, fire, fire!” Sabah recalls that she felt she was melting in the fire. Her husband, Saadallah Abu Halima, 45, and her son Abdelrahim Abu Halima, 14, were both decapitated. Her son Hamzi, 8, and daughter Shahid, 15 months, also died. Only she and three of her sons, Ali, 5, Yousef, 16, and Omar, 18, survived.

Following the attack the remaining family members left the home. They were denied medical care because ambulances had been prohibited from entering her neighborhood. Sabah and her surviving sons went to the Omar Ibn al Khattab School where a civilian eventually took them by car to the Shifa Hospital. Doctors confirmed that Sabah’s wounds were the result of white phosphorus, which caused incessant burning of the skin even after treatment.



Sabah Abu Halima’s foot burned by white phosphorous, Shifa Hospital, Feb. 3, 2009 (note cratering)

3. UNWRA Headquarters

At 10 a.m. on January 15, an Israeli shell hit the UNRWA compound, injuring several people and damaging a building. The UN staff immediately established contact and maintained real-time communications with the Israeli authorities, asking for assurances that Israel would not target the compound. The UN staff specifically notified Israeli authorities that there were fuel tanks in the compound that would explode if hit. The Israeli authorities assured the staff that the compound would not be targeted. At approximately 11 a.m., however, Israeli forces hit the compound with white phosphorus shells; burning phosphorus fell in close proximity to the fuel tanks. UN staff risked their lives to move the fuel tanks before the fire reached them, averting a catastrophe. The shelling along with the ensuing inferno completely destroyed several of UNRWA’s warehouses, along with significant stocks of medicine and food aid.⁶³ Photographs of some of the destruction are at page 17, *supra*.

Analysis: Illegal Use of Weapons

Each of the cases detailed above involves the use of white phosphorus, an incendiary weapon, in civilian areas. Although Israel is not a signatory to the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (prohibiting the use of an air-delivered incendiary weapon in civilian areas), customary international law dictates that if incendiary weapons are used, the attacker must take particular care to avoid or at the very least minimize incidental loss of civilian life, injury to civilians and damage to civilian objects.⁶⁴ The Delegation did not find any evidence that the Israeli military took such precautions. Those present testified that the Israeli military did not provide

⁶³ Interview with John Ging, *supra* note 22.

⁶⁴ HENCKAERTS & DOSWALD-BECK, *supra* note 55, 287 (Rule 84).

warning to the civilians in the areas before they attacked with white phosphorus. On the contrary, in the case of the attack on UNRWA facilities, instead of warning UNRWA staff, the Israeli military reassured UNRWA that it was not in danger. That UNRWA staff maintained direct contact with the Israeli military and informed them that Israeli military action compromised the safety of their staff and humanitarian supplies (supplies vital to 900,000 Palestinians that rely on UNRWA for basic food and medical needs)⁶⁵ indicates that the Israeli military was well aware of the potential harm to civilians and civilian objects that could result from use of white phosphorus in the vicinity.

The Israeli military may have used white phosphorus either as an anti-personnel device or as a smokescreen. Use of white phosphorus for anti-personnel purposes is prohibited under customary international law if the attacker's advanced weaponry makes it feasible to use a less harmful weapon to render the adversary *hors de combat*.⁶⁶ Given Israel's superior military power, its familiarity with and previous experience conducting military operations in the area, the lack of Israeli infantry deployment in areas where white phosphorus was used, and Israel's ongoing aerial surveillance, the use of white phosphorus in Gaza for the purpose of masking troop movement appears wholly unnecessary. Without information to the contrary, the circumstances surrounding Israel's use of white phosphorus in heavily populated civilian areas indicate that Israel carried out these attacks without military necessity and with blatant disregard to the harm that would come to civilians. Israeli commanders knew or should have known that the harm to civilians and civilian objects that would result from using white phosphorus was excessive in relation to the concrete and direct military advantage anticipated. Intentionally carrying out a disproportionate attack with disregard for civilian life and property is a war crime.⁶⁷

V. Prevention of Access to Medical and Humanitarian Aid

A. Denial of Medical Care

In addition to a belligerent's duty to avoid injury to civilians, international humanitarian law requires that care be provided to the wounded.⁶⁸ Common Article 3 of the Geneva Conventions states, "the wounded and sick shall be collected and cared for." Additional Protocol I, Article 10(2), widely considered to codify customary international law,⁶⁹ adds that the wounded are "protected persons" and must be given the medical care and attention required by their conditions to the fullest extent

⁶⁵ Interview with John Ging, *supra* note 22.

⁶⁶ HENCKAERTS & DOSWALD-BECK, *supra* note 55, 289 (Rule 84).

⁶⁷ Human Rights Watch issued a 71-page report on Israel's use of white phosphorus. Their report, which found that the repeated use of white phosphorus in civilian areas "reveals a pattern or policy of conduct rather than incidental or accidental usage," provides additional detail and recommendations. Human Rights Watch, *Rain of Fire: Israel's Unlawful Use of White Phosphorus in Gaza*, Mar. 25, 2009, available at <http://www.hrw.org/node/81760>.

⁶⁸ Fourth Geneva Convention, *supra* note 17, art. 13 and 16, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 10, Jun. 8, 1977, 1125 U.N.T.S. 3.

⁶⁹ HENCKAERTS & DOSWALD-BECK, *supra* note 55, 396-7 (Rule 109).

practicable and with the least possible delay. The same Article requires that there “be no distinction among [the wounded] founded on any grounds other than medical ones.” The duty of care for the sick and wounded includes members of the military or militant groups so long as they are not actively engaged in combat.

To achieve this, belligerents are required to ensure the unhindered movement of medical personnel and ambulances to perform their duties and to allow the wounded to have access to medical care. Any restrictions on movement for genuine security grounds must be temporary, subject to regular review, and imposed only to the extent absolutely necessary. In conversations with medical workers and the families of victims, delegates documented many serious violations of the requirement to allow medical access to the injured. The Delegation also found several instances of wounded or ill persons being denied medical treatment or assistance for long periods of time, often days. Two such instances are set forth below.

1. Al-Zaytoun Neighborhood, Beit Lahiya

On January 3, 2009, Israeli forces began a military operation in the al-Zaytoun neighborhood resulting in the destruction of over a dozen homes and the death of dozens of civilians, including the elderly, women and children.

During the Israeli onslaught, the Palestinian Red Crescent Society received 145 calls from Al-Zaytoun for help, but the Israelis refused to allow ambulances to enter. Bashar Ahmed Murad, Director of Emergency Medical Services for the Palestinian Red Crescent Society stated, “a lot of people could have been saved, but they weren’t given medical care by the Israelis, nor did the Israeli army allow Palestinian medical services in.” When paramedics were finally allowed to enter on January 7, Israeli forces for no apparent reason refused to allow them to bring their ambulances. “We had to park the ambulances two kilometers away and go in on foot.” Dr. Murad stated:

We were forced to pile the wounded on donkey carts and have the medical workers pull the carts. The Israelis only gave us three hours; we didn’t really have a choice; we didn’t have many paramedics and we had many people to help. We pulled the wounded on the carts for two kilometers to the ambulances. We only focused on evacuating the people we thought we could save, leaving the dead behind. After the hours were over, the Israeli army started shooting toward the ambulances so that they would leave the area.

The Red Crescent Society was not able to reach that area again to evacuate the dead until January 17, when the Israeli army pulled out of the area.

2. Al-Shurrab Family

On Friday, January 16, between 1:00 and 1:30 p.m., Mohammed Shurrab, 64, and two of his sons, Kassab, 28, and Ibrahim, 18, were making their way by jeep to their

home in Khan Yunis, approximately 5 km away. The three had spent the previous two days in their farm house but decided to return home after they heard on the radio that the Israelis would observe a ceasefire from 10 a.m. to 2:00 p.m. in order to allow the distribution of humanitarian aid.

On their journey home they passed an Israeli tank, and Mohammed waved. After they had gone approximately 200 meters past the tank and about 50 meters from a building where some Israeli soldiers were standing, the Israelis opened fire on the jeep. Mohammad, who was driving, was shot in the left arm and crashed the jeep into a wall. Ibrahim was hit as well. Soldiers began yelling at the three to get out of the vehicle. Kassab, who exited first from the passenger side, was immediately shot seven times in the chest. Kassab staggered forward a few feet then fell face down on the ground, dead. Israeli soldiers then shot Ibrahim in the leg as he left the jeep. Mohammad then jumped from the jeep and rolled over to Ibrahim, who was near a wall, for cover.

Still bleeding from his arm, Mohammad used his mobile phone to call for help. The soldiers yelled at him not to use the phone. Mohammad pleaded with the soldiers either to provide assistance or to allow him to call an ambulance. A soldier told Mohammad to shut up or he would shoot him. Hours later, as Ibrahim continued to bleed, Mohammad ignored the soldier's warning and dialed 101, the emergency number. The soldier responded with a warning shot. Mohammad continued calling for help, the International Committee of the Red Cross, a number of NGOs, and the media. All contacts gave the same answer: Israel would not allow access to the area. Mohammed told the Delegation that during this time Israeli soldiers passed him and his bleeding sons several times but did not offer assistance. Ibrahim died from loss of blood twelve hours later. The soldiers refused clearance to medical relief agencies until sometime between 11:00 a.m. and noon on Saturday, almost 24 hours after inflicting the injuries, and after Mohammad watched both his sons die.

B. Attacks upon Medial Facilities and Personnel

In addition to facilitating access to medical care for the wounded, belligerents must refrain from attacking medical facilities, transport, and personnel. Objects and facilities used for the collection and treatment of the sick and wounded are considered particularly protected.⁷⁰ Attacking, destroying, removing, or rendering useless objects indispensable to the survival of the civilian population is prohibited.⁷¹ The belligerents must allow and facilitate rapid and unimpeded passage of impartial humanitarian relief,⁷² and must respect and protect medical personnel and their means of transport.⁷³ Furthermore, the protected status of hospitals, hospital transport, and other presumptively civilian medical structures is not excepted by the mere presence of

⁷⁰ Fourth Geneva Convention, *supra* note 17, art. 18-21.

⁷¹ Additional Protocol I, *supra* note 27, art. 54(2).

⁷² Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) art. 18, Jun. 8, 1977, 1125 U.N.T.S. 609 [hereinafter "Additional Protocol II"].

⁷³ Additional Protocol I, *supra* note 27, art. 15, 21.

members of an armed group engaged in conflict; rather, the structure is presumed to be civilian until it is used to commit hostile acts and, even in those circumstances, the belligerent must provide warning before an attack and provide time for noncombatants to get out of harm's way.⁷⁴

In addition to denying access to the wounded, Israeli forces often fired on emergency medical teams attempting to reach those in need of help. As stated above, attacks on medical personnel, medical units, and medical transports exclusively assigned to carry out medical functions are prohibited under international humanitarian law. However, the Palestinian Red Crescent Society and the Palestinian Ministry of Health informed delegates that Israeli forces killed 15 Palestinian medics and injured 21 in the course of the December 27 – January 18 assault. In addition, Delegation members saw ambulances seriously damaged and destroyed; according to the Palestinian Red Crescent Society, 16 of their ambulances were damaged and three were completely destroyed.



Palestinian Red Crescent Society Ambulance
Destroyed by Israeli Military – February 3, 2009, Shifa Hospital

⁷⁴ *Id.* art. 13.

1. Al-Quds Hospital

At approximately 8:00 a.m. on January 15, Dr. Bashar Murad reported hearing gunfire near the Al-Quds Hospital, which is operated by the Palestinian Red Crescent Society. Dr. Murad immediately contacted the International Committee of the Red Cross (ICRC) so that the ICRC could communicate to the Israelis the coordinates of the hospital and inform them that Israel's military activity was threatening the hospital. The ICRC told Dr. Murad that the Israelis know the coordinates of the hospital. At that time the hospital was full of medical workers and had approximately 30 patients, including five in intensive care and three infants in incubators. About 15 minutes later, Dr. Murad reported that a massive sound shook the hospital building. Outside, Dr. Murad saw clumps of fire and white smoke everywhere. Worried that the fires would endanger stocks of kerosene and an oxygen machine stored in the hospital, the staff began trying to put out the fires close to these materials. Minutes later a missile hit the hospital, penetrating four walls and lodging in the hospital pharmacy.

Dr. Murad noted that there were no Palestinian fighters on the hospital grounds. He informed delegates that he had on a previous occasion confronted a fighter in the vicinity of the hospital and told him that he must leave because he was endangering the medical workers and the wounded in the hospital.

2. Union of Health Care Committees

The Union of Health Care Committees (UHCC) is an NGO that has a center situated in a residential area near Beach Camp in Gaza City. In 2007 the UHCC received grants from an American⁷⁵ and a Spanish organization to purchase three mobile clinics in order to service the more remote areas of the Gaza Strip. Each of the mobile clinics had a large red cross and crescent painted on the sides and rooftop for easy identification. The clinic center serves approximately 100 patients daily; during Israel's offensive the mobile clinics assisted hospitals and attended to approximately 150 injured each day. The mobile clinics went out at nine each morning and returned by nightfall, parking approximately eight meters from the clinic building. The clinic's night guard, Fareed Abu Hatab, told the Delegation that shortly after midnight on January 6 an Israeli missile struck the clinic, shattering its windows and doors. As the guard scrambled to escape about three minutes after the first missile's impact a second missile hit, and about eight minutes later a third. The missiles completely destroyed the mobile clinics. The guard reported that there was no resistance activity or Israeli soldiers in the area. "I didn't believe that there was even a one percent chance that I was in any kind of danger guarding the premises because I have nothing here. This is a medical center; it's surrounded by homes and families. There was no resistance from here."

⁷⁵ The United Palestine Appeal, a Washington D.C.-based 501(c)(3) organization, reports a contribution of approximately \$40,000 from 225 American donors towards the purchase of these mobile clinics. <http://www.helpupa.com/>.

Analysis: Prevention of Access to Medical and Humanitarian Aid

According to victim and witness testimony the Israeli military deliberately or at least arbitrarily denied Palestinian civilians access to medical care, and launched deliberate attacks on medical facilities, both serious violations of the laws of war.

In the case of al-Zaytoun neighborhood, the Israeli military only once during a two-week military operation that killed and injured scores of people allowed medical workers access to the area to evacuate the wounded and dead. Even if Israel may have had a legitimate security reason for preventing medical personnel from reaching al-Zaytoun during the first few days of its military operation, when it finally did allow access it prevented medical workers from taking ambulances into the area. Such a restriction appears arbitrary and unjustified as, according to witnesses, Israeli soldiers had complete control of the neighborhood. Therefore, if the Israeli military had a concern regarding weapons or fighters being transported in ambulances, the Israelis could have easily alleviated that concern by carrying out a search of the ambulances. Instead, the Israeli military forced paramedics to leave their ambulances two kilometers away from the affected neighborhood and go in on foot to evacuate dozens of injured. Then, after three hours, Israeli soldiers began to fire in the direction of the ambulances. Such action on the part of the Israeli military appears to constitute a violation of the belligerent's obligation to facilitate access to medical care for the wounded, and could constitute humiliating and degrading treatment by Israel of non-combatants and persons rendered *hors de combat*. Both would be violations of Common Article 3 to the four Geneva Conventions.

In the al-Shurrab case, Israeli soldiers, as a matter of customary international law, had a positive obligation to provide care to or to otherwise allow Mohammad al-Shurrab and his two sons to receive the medical attention that their condition required.⁷⁶ Mohammad al-Shurrab's testimony indicates that Israeli soldiers shot and wounded the al-Shurrab family during the three-hour ceasefire that the Israeli military had announced publicly. Because a ceasefire was in place there appears to have been no legitimate reason to prevent ambulances from reaching Mohammad and his sons. Moreover, even if the Israeli military did have a good reason for preventing ambulances from reaching the al-Shurrab family, Israeli soldiers failed to provide care for these wounded civilians; indeed, Israeli soldiers stood by and watched for nearly 24 hours as Mohammad al-Shurrab lay suffering from his wound and Ibrahim al-Shurrab bled to death.

⁷⁶ Additional Protocol I, *supra* note 27, art. 10 (requiring that the sick "be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition"); *Id.* art. 14 (stating that the "Occupying Power has the duty to ensure that the medical needs of the civilian population in occupied territory continue to be satisfied").

The Israeli military's attacks on medical personnel, facilities, and transport appear to constitute a violation of international law.⁷⁷ The attacks on Al-Quds Hospital and on the ambulances of the UHCC do not appear to be justified by military necessity. The Director of Emergency Medical Services at the Palestinian Red Crescent Society informed the Delegation that Palestinian fighters did not use the grounds of the hospital to launch attacks on Israeli forces. Even if, *arguendo*, Palestinian fighters had been located in the vicinity of the hospital, this in itself would not be sufficient to justify Israel's attack on the hospital. The rules of proportionality would preclude firing a missile and white phosphorus at a hospital filled with patients and medical personnel, especially without giving warning and reasonable time for civilians to evacuate.⁷⁸ The Israeli military either deliberately attacked the hospital which, according to available evidence, was illegal under international law⁷⁹, or it disregarded the rules of proportionality and distinction by ignoring the likelihood that high civilian casualties could result in relation to the direct military advantage anticipated, and by using white phosphorus and other indiscriminate weaponry when more precise weapons were available to the Israeli military. Accordingly, it appears that Israel failed to take precautions to protect civilian life and property. Israel's aerial attack on UHCC ambulances, as well as its crushing of PRCS ambulances appear to be direct and deliberate attacks on civilian objects, which are war crimes.⁸⁰

VII. Violations of United States Law

The foregoing sections of this report recount narratives and admissions indicating violations of the laws of war in the Delegation's three areas of inquiry. If Israeli government and military officials violated the laws of war and committed war crimes, it is important that these individuals be made to account for their actions to their Palestinian victims and to the international community. Moreover, Israeli violations of the laws of war necessitate that action be taken by the United States lest it violate its own domestic law.

A weapons expert informed the Delegation that most of the weapons that Israel deployed in its offensive on Gaza were manufactured in the United States. The expert's testimony is supported by Amnesty International's documentation of the enormous amounts of United States military aid that the United States recently provided to Israel.⁸¹

⁷⁷ Fourth Geneva Convention, *supra* note 17, art. 18-21; Additional Protocol I, *supra* note 27, art. 15, 21. See also Rome Statute, *supra* note 43, art. 8(2)(b)(ix) (making it a war crime to "[i]ntentionally [direct] attacks against . . . hospitals and places where the sick and wounded are collected, provided they are not military objectives").

⁷⁸ Additional Protocol I, *supra* note 27, art. 13(1) (requiring warning and when possible, "a reasonable time-limit" before attacking civilian medical units being used to commit acts harmful to the enemy.)

⁷⁹ *Id.* art. 18.

⁸⁰ *Id.* art. 12 (stating that "Medical units shall be respected and protected at all times and shall not be the object of attack"). See also *id.* art. 15; Fourth Geneva Convention, *supra* note 17, art. 147 (making the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" a war crime); Rome Statute, *supra* note 43, art. 8(2)(b)(v).

⁸¹ Amnesty Int'l, *Israel / OPT: Fuelling conflict*, *supra* note 54, available at <http://www.amnesty.org/en/library/asset/MDE15/012/2009/en/5be86fc2-994e-4eeb-a6e8-3ddf68c28b31/mde150122009en.html#1.0.9.Arms%20supplies%20to%20Israel%20outline>. It is

The United States also continued to ship arms to Israel during Israel's offensive⁸² despite the news reports of Israel's illegal conduct in Gaza.

United States law imposes obligations upon countries receiving military aid. Based upon the testimony that Palestinians in Gaza provided to the Delegation, it appears that Israel misused the weaponry provided by the United States by using them to directly attack civilians and in other ways that disregarded harm to civilian life and property. Such misuse, in turn, imposes obligations on both the President and the Congress of the United States.

A. Arms Export Control Act

Restrictions on Israel's use of weaponry and munitions provided by the United States come from one or more of three main sources. First, there is the U.S. Arms Export Control Act (AECA),⁸³ which dictates the limited circumstances under which the United States may provide arms to other countries. The purpose of the AECA is to "strengthen the security of the United States and promote world peace," as well as to further "the purposes and principles of the United Nations Charter"⁸⁴ Moreover, the statute states that "[d]efense articles and defense services shall be sold or leased by the United States Government under this chapter to friendly countries solely for internal security, [or] for legitimate self-defense. . . ."⁸⁵ The AECA requires the President, upon receipt of information of a violation of the statute's provisions, to notify Congress.⁸⁶ The recipient country must be deemed ineligible to receive further defense articles and services until such violations cease and the U.S. receives satisfactory assurances that the violations will not recur.⁸⁷ In 1982, the United States sanctioned Israel for its misuse of American-supplied weapons under the AECA; in that case the Reagan Administration suspended the provision of cluster munitions to Israel after determining that Israel misused those munitions in its 1982 offensive in Lebanon.

B. Foreign Assistance Act

The second source of restrictions on Israeli use of American weaponry is the Foreign Assistance Act,⁸⁸ which forbids assistance to the government of any country that "engages in a consistent pattern of gross violations of internationally recognized

noteworthy that some of the munitions listed in this 2009 report appear to involve DIME technology. See *id.* included table on *Proposed US Foreign Military Sales notified to Congress 2005-2008*.

⁸² Daniel Flynn & Andrew Grey, *Greek Government Under Fire Over US Arms to Israel*, REUTERS, Jan. 13, 2009, available at <http://www.reuters.com/article/latestCrisis/idUSLD640132>.

⁸³ Arms Export Control Act, 22 U.S.C. §§ 2751-2799aa-2 (2009). For a thorough discussion of the AECA in the context of Israeli actions during the Al-Aqsa Intifada, see National Lawyers Guild, *The Al-Aqsa Intifada and Israel's and Israel's Apartheid: The U.S. Military and Economic Role in the Violation of Palestinian Human Rights*, Jan. 2001, available at http://nlq.org/resources/delegations/al_aqsa_intifada.pdf.

⁸⁴ 22 U.S.C. §2751.

⁸⁵ *Id.* § 2751.

⁸⁶ *Id.* § 2753(c)(2).

⁸⁷ *Id.* § 2753(c)(4).

⁸⁸ *Id.* § 2304 et seq.

human rights.”⁸⁹ The AECA includes a provision that “sales [of military equipment] be approved only when they are consistent with . . . the purposes of the foreign assistance program of the United States as embodied in the Foreign Assistance Act of 1961.”⁹⁰ In order to serve these purposes, the AECA allows the United States to provide defense articles and services to a foreign country only for one or more of four following purposes, (i) internal security, (ii) legitimate self-defense, (iii) to permit participation in regional or collective arrangements consistent with the United Nations Charter or when requested by the United Nations for international peacekeeping, and (iv) to assist undeveloped friendly foreign countries to develop public infrastructure. In order to receive assistance under the AECA, foreign countries are required to agree not to use military assistance for purposes other than those enumerated unless the consent of the President of the United States has been obtained. Using United States military assistance inconsistent with the Act will lead to a finding of a “substantial violation” and under such circumstances military assistance to the violator must be terminated.

C. Mutual Defense Agreement

The third source of restrictions on Israel that limit the use of weapons provided by the United States, is a bilateral arrangement between the United States and Israel. The 1952 Mutual Defense Agreement provides that Israel may use United States military assistance for only the following purposes: to maintain its “internal security,” for legitimate self defense, or to permit it to participate in a United Nations peacekeeping endeavor.

Analysis: Violations of United States Law

Although the Delegation did not investigate Israel’s justifications for launching its attack on Gaza, statistics,⁹¹ published reports,⁹² and statements from Israeli leaders contradict Israel’s stated reason for its military operation – to stop rocket attacks into Israel. For example, according to a news report from Israel’s Galey Tzahal (Army Radio), Israel’s Minister of Defense, Ehud Barak is quoted as saying “had Israel accepted the calm [offered by Hamas], the firing of Qassam rockets would have stopped.”⁹³ Accordingly it is unlikely that Israel’s operation and use of U.S.-supplied weapons for such was for internal security or self-defense. Even if Israel’s overall operation was for legitimate self-defense however, Israel’s misuse of weapons – using indiscriminate weaponry in densely populated civilian areas, targeting civilians, and

⁸⁹ *Id.* §§ 2151n(a), 2304.

⁹⁰ *Id.* § 2751.

⁹¹ Israeli Ministry of Foreign Affairs, *supra* note 20, available at <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/One+month+of+calm+in+Gaza+28-Jul-2008.htm>.

⁹² See, e.g., Barak Ravid, *Olmert to Barak: You're negating achievements of Gaza op*, HAARETZ, Mar. 8, 2009, available at <http://www.haaretz.com/hasen/spages/1069467.html> (revealing Israeli Prime Minister Ehud Olmert’s position that Operation Cast Lead was meant to get Hamas to release Gilad Shalit, as opposed to the reasons previously given for the Operation, to stop rocket fire.)

⁹³ Eileil Shachar, *Olmert Neged Barak: "Ain Shom Hasdarah Am Hamas" [Olmert against Barak: "There will be no settlement with Hamas"]*, GALEY TZAHAL, Mar. 8, 2009, available at <http://glz.msn.co.il/NewsArticle.aspx?NewsId=36577>.

launching disproportionate attacks – could not have been for legitimate self-defense purposes, and thus merits investigation by the United States.

Enforcement of the United States laws mentioned herein and arrangements in all cases begins with political leaders in the United States. Enforcement of the AECA is primarily vested in the President with some Congressional oversight. The President is required to report promptly any substantial violation that “may have occurred.” Either a Presidential declaration of substantial violation or a Congressional joint resolution makes the violating country ineligible for further aid. The country will remain ineligible for further assistance until the President determines that the violation has ceased and that he has received adequate assurances that the violation will not recur. In the case of the Foreign Assistance Act, compliance is secured by requiring members of the State Department annually to prepare a “full and complete” report regarding recipients’ observance of and respect for internationally recognized human rights.⁹⁴ The State Department report must address issues such as the commission of war crimes and crimes against humanity.⁹⁵ Again, this puts enforcement of the FAA under the direct political control of the President.

The Delegation and other NGOs have verified that a substantial majority of the weapons that Israel used against the Palestinians during its onslaught were of American origin.⁹⁶ With this predicate and in light of the testimony provided to the Delegation and other available information, it is clear that the formal enforcement procedures in the Arms Export Control Act and the Foreign Assistance Act should be triggered and an exhaustive investigation made into the question of whether the United States may continue to provide arms, weapons, and munitions to Israel.

VII. Conclusion

The National Lawyers Guild Delegation traveled to Gaza for the purpose of determining whether adequate evidence exists to warrant the prosecution of Israeli government and military officials for violation of the laws of war. The testimonies elicited during that investigation, ranging from private civilians to doctors, medical technicians, ambulance drivers, leaders of humanitarian organizations, and United Nations officials and employees – none of whom appeared to have a reason to fabricate or embellish the events described – all suggest significant civil and criminal liability. The disclosures attributed to frontline Israeli soldiers at the Rabin pre-military academy seem to corroborate much of the testimony elicited by the Delegation and also indicate permissive rules of engagement promulgated by Israeli military leaders.⁹⁷ Hard physical evidence buttresses most of the allegations, including but not limited to remnants of still burning white phosphorus in residential areas, the destruction of the United Nations

⁹⁴ 22 U.S.C. § 2304(b).

⁹⁵ *Id.* § 2304(b).

⁹⁶ See e.g., Amnesty International, *Israel/OPT: Fuelling conflict*, *supra* note 81, available at <http://www.amnesty.org/en/library/asset/MDE15/012/2009/en/5be86fc2-994e-4eeb-a6e8-3ddf68c28b31/mde150122009en.html#1.0.9.Arms%20supplies%20to%20Israel%20outline>.

⁹⁷ Amos Harel, *Shooting and Crying*, HAARETZ, Mar. 26, 2009, <http://haaretz.com/hasen/spages/1072475.html>.

compound and the American International School, mangled ambulances apparently crushed by Israeli tanks, and the destruction of entire neighborhoods. The evidence further suggests that such liability is not limited to Israel as a state, but also extends to Israeli officials responsible for major decisions before and during the onslaught, and to individual officers and soldiers who may have carried out illegal orders or acted on their own and without authority from their commanders. In sum, the Delegation found more than ample evidence to establish a *prima facie* case that the Israeli military committed significant violations of international law in Gaza from December 27, 2008, to January 18, 2009.

Israeli military commanders and soldiers appear to have violated the international law principle of distinction. Testimony from individual eyewitnesses, again often buttressed by hard physical evidence, provide as yet uncontradicted proof that Israeli military forces engaged in the willful killing of a number of Palestinian civilians, including 75-year-old Shrahi, seven-year old Suad Abed Rabbo, and two-year-old Amal Abed Rabbo. The Delegation also heard evidence, which has been corroborated by Israeli soldiers admissions⁹⁸, that Israel deliberately targeted civilians and civilian infrastructure, both violations of the law of war.

Israeli forces also appear to have violated the international law principle of proportionality.⁹⁹ Evidence collected by the Delegation indicates that the Israeli military carried out a number of attacks in which the “collateral damage” that resulted was vastly disproportionate to the direct military advantage that could have been and was achieved by Israel. Israel brought its immense, sophisticated firepower to bear on the civilian “battlefield” of Gaza, in a manner that seemingly disregarded the potential harm to civilians and civilian infrastructure. To the suggestion that Israel’s actions were justified because it faced the problem of militants who were concealed within the civilian Palestinian population, John Ging, UNWRA Director of Operations, told the Delegation that even if militants had taken civilians hostage, such would not justify the killing of the hostages – a point that seems self-evident to the Delegation. In any event, the Delegation believes that the overall facts surrounding the Operation provide the basis for a claim that Israel regularly, even routinely, used disproportionate force, thereby violating international humanitarian law.

There are strong indications that Israeli forces misused weapons, including using indiscriminate weaponry in residential and other heavily-populated civilian areas, which led to the deaths of hundreds of civilians and injuries to thousands more. Israeli forces

⁹⁸ See, e.g., *id.* at <http://haaretz.com/hasen/spages/1072475.html>; Hider, *supra* note 6, available at http://www.timesonline.co.uk/tol/news/world/middle_east/article5939611.ece; Haller, *supra* note 6, available at <http://www.reuters.com/article/middleeastCrisis/idUSLJ974036>.

⁹⁹ For information on statements by Israeli leaders indicating an intent to use disproportionate force, see, e.g. Kim Sengupta & Donald Macintyre, *Israeli Cabinet Divided over Fresh Gaza Surge*, THE INDEPENDENT, Jan. 13, 2009, available at <http://www.independent.co.uk/news/world/middle-east/israeli-cabinet-divided-over-fresh-gaza-surge-1332024.html> (quoting then Foreign Minister, Tzipi Livni, saying “We have proven to Hamas that we have changed the equation. Israel is not a country upon which you fire missiles and it does not respond. It is a country that when you fire on its citizens it responds by going wild – and this is a good thing.”)

also appear to have deliberately denied or delayed access to medical care for wounded people, and to have attacked medical facilities and personnel.

The evidence uncovered to date and herein presented supports the need for a deeper, more thorough, independent investigation of the events that took place and actions that were carried out during Israel's 22-day offensive. The Delegation is particularly concerned that most of the weapons that were used in the assault on Gaza were both made in and supplied by the United States. The Delegation believes that America's complicity in Israel's use of these weapons may constitute a violation of United States law, specifically the Foreign Assistance Act and the Arms Export Control Act, and the Mutual Defense Agreement of 1952. If a comprehensive investigation confirms the allegations presented herein, Israel's use of United States weaponry in Gaza violates the purposes and policies of the Arms Export Control Act of 1976 and the Mutual Defense Agreement, which allow their use solely for internal security and legitimate self-defense. Furthermore, if confirmed, Israel's violations, combined with abuses documented by various human rights organizations operating in Israel and the occupied Palestinian territory, demonstrate a "consistent pattern of gross violations of internationally recognized human rights." Under these circumstances continued United States export of military arms and training to Israeli forces would be unlawful under the Foreign Assistance Act of 1961.

International norms of humanitarian law are designed to protect the weak and the innocent. It is incumbent upon the signatories to the Geneva Conventions, of which the United States is one, to fulfill their obligations to enforce these laws against those that violate them so as to instill respect for such norms as govern the conduct in situations of armed conflict. Accordingly, the United States must support a United Nations investigation into Israel's conduct during Operation Cast Lead, and efforts to hold liable those responsible for gross violations of humanitarian law. The United States must also conduct an investigation into how Israel used United States supplied weapons in Gaza and take action to ensure that its U.S. foreign assistance is not used to violate international law.

VIII. Recommendations

The Delegation, with the full backing of the National Lawyers Guild, calls upon:

1. The United Nations to establish a commission of inquiry mandated to conduct a comprehensive and independent investigation into the gross violations of international humanitarian law reported herein and to issue recommendations for the establishment of an International Criminal Tribunal for Israel (ICTI) as a 'subsidiary organ' under U.N. Charter Article 22 to prosecute Israel's top generals and other military and political leaders for gross violations of the law;

2. The United States envoy to the United Nations and, more generally, the Obama Administration, under the obligations of the Geneva Conventions and general principles of humanitarian law, to support a full United Nations investigation of Israel's conduct during Operation Cast Lead;
3. The Directorate of the Defense Trade Controls, in the Bureau of Political-Military Affairs of the Department of State to conduct a thorough investigation of defense articles supplied by this government to Israel in order to determine Israel's compliance with conditions imposed by the United States for receipt of military assistance pursuant to Section 2778 of the Arms Export Control Act: End-Use Monitoring of Defense Articles and Defense Services;
4. The United States Congress to withhold any further military assistance to Israel until the investigatory findings are reviewed and the Department of State makes a determination as to how to proceed with the sale of defense articles and services to Israel;
5. The United States Congress to establish an independent commission to monitor Israel's compliance with the AECA and FAA;
6. United States citizens and residents to meet with their Senators and Representatives in Congress to share the NLG's investigatory findings and to encourage them to call on the Department of State to conduct an Arms Export Control Act investigation.

NLG Itinerary in Gaza

Feb. 1: Obtained waiver from US embassy relieving them of responsibility for delegates' life and limb upon entry into Gaza.

Traveled to Al-Arish; overnight in Al-Arish.

Feb. 2: Entered Gaza through Rafah border. Approximately nine hour wait time.

Met with Ashraf Nasrallah and Nafiz Almadhoun, members of "Tawtheq," The Central Commission for Documentation and Pursuit of Israeli War Criminals, Palestinian National Authority – Gaza.

Met with John Ging, UNRWA Gaza Director and Yoonie Kim, Office of the High Commissioner on Human Rights, Gaza. Examined the burned UN compound--the warehouses that were holding food, fuel, and medicines.

Feb. 3: Visited Shifa Hospital and met with white phosphorous burn survivors. Also met with Dr. Nafiz Abu Shabaan, head of the burn unit at Shifa and Dr. Shabbir Ahmed Wadee, Doctor and Forensic Pathologist from South Africa.

Met with Jabr Wishah, Deputy Director, Palestine Center for Human Rights.

Met with Mahmoud Abu Rahma, Al Mezan Center for Human Rights and Khalil Abu Shammali, Addameer Center for Human Rights

Visited al-Zeitoun, neighborhood outside of Gaza City, and met with Palestinian residents who described death, injury, and destruction of property.

Met with relief workers at the Palestine Red Crescent Society in Gaza City.

Met with Dr. Eyad Sarraj, Director, Gaza Community Mental Health Program.

Feb. 4: Visited the demolished site of the American International School in Gaza and met with Director of the School, Ribhi Salem.

Visited Izbit Abed Rabbo, a neighborhood of Jabaliya and interviewed several Palestinian residents who described death, injury, and destruction of property.

Visited Atatra in northern Gaza and met with Palestinian residents who described death, injury, and destruction of property.

Visited Kamal Adwan Hospital

Feb. 5: Met with Dr. Hassan Khalaf, Assistant Deputy Minister, Palestinian Ministry of Health.

Visited Khoza'a, a neighborhood in Khan Yunis and met with Palestinian residents who described death, injury, and destruction of property.

Visited other parts of Khan Yunis and met Palestinian residents who described death, injury, and destruction of property.

Feb. 6: Met with international weapons expert.

Traveled to Rafah refugee camp and met with Palestinian residents who described death, injury, and destruction of property.

Feb. 7: Held a press conference in Gaza City to share our preliminary findings.

Delegation splits up and a group of Delegates heads to Cairo.

Feb. 8: Part of the delegation spends day in Gaza.

Part of the delegation provides a report at the American University in Cairo, School of Law.

Feb. 9-11: Delegation travels home.

NLG Gaza Delegation Members

Huwaida Arraf (New York, Washington, D.C) received her Juris Doctor from the American University Washington College of Law, where she focused on international human rights and humanitarian law. Prior to becoming a lawyer she spent four years in the West Bank training and coordinating volunteers to monitor and report human rights abuses as well as organizing international campaigns against arbitrary detention, home demolitions, movement restrictions, and violence against civilians. Ms. Arraf co-founded the International Solidarity Movement (ISM), which has twice been nominated for the Nobel Peace Prize. From 2007 – 2008 Ms. Arraf taught in a human rights law clinic at Al-Quds University in Jerusalem, the first legal clinic in the Arab World.

Noura Erakat (Washington, D.C) is a Palestinian-American attorney and activist. She is currently an adjunct professor of international human rights law in the Middle East at Georgetown University. Most recently she served as Legal Counsel for a Congressional Subcommittee in the House of Representatives. Prior to her time on Capitol Hill, Noura received a New Voices Fellowship to work as the national grassroots organizer and legal advocate at the US Campaign to End the Israeli Occupation. Noura holds law and undergraduate degrees from the University of California at Berkeley. She has worked and studied in the region: she interned at Adalah: The Center for Arab Minority Rights in Israel; studied at Hebrew University; and co-led Global Exchange's Reality Tours throughout Iran as well as the Occupied Territories and Israel.

James Marc Leas (Vermont) is a Jewish-American patent lawyer in solo patent law practice. A graduate of the Massachusetts Institute of Technology (MIT) Leas was an engineer and inventor in IBM's Microelectronics Division for over 10 years before beginning his patent law practice; he then served as in-house patent agent for almost 9 years. During his time at IBM, Leas was very involved in opposing the company's sales to apartheid South Africa, as well as participating in a campaign that mobilized thousands of workers against IBM slashing pensions that began 1999.

Linda Mansour (Ohio) has been a practicing attorney for over 30 years. Ms. Mansour is known for her active role in Arab American and Palestinian civil and human rights issues and has led several delegations to the Middle East. Having successfully litigated many cases of national importance Ms. Mansour has been featured in a swathe of national and international television, radio, and newspaper outlets as well as a guest lecturer. Ms. Mansour has acted as resident associate in charge of the Chicago-based law firm Sidley & Austin's, Abu Dhabi office, representing multinational corporations and institutions. This past year Ms. Mansour was appointed by the Ohio Democratic Party as its delegate-at-large for Presidential candidate Barack Obama. Presently Ms. Mansour has an active law practice in Toledo, Ohio focusing on immigration, civil rights, children's issues, employment, as well as domestic and international transactional matters.

Rose Mishaan (California) is a third-year law student at the University of California – Hastings College of the Law, where she is focusing on American criminal law and international humanitarian law. Rose spent her two summers during law school working in the occupied Palestinian territory, first with the Israeli Committee Against House Demolitions and then as a legal intern with Hamoked: Center for the Defense of the Individual. She first went to Palestine on a “Birthright Israel” trip for young Jewish Americans and then went to Hebron to work with the International Solidarity Movement, monitoring human rights abuses. As an undergraduate at Columbia University, Rose organized and participated in four human rights delegations to Chiapas, Mexico and served as a human rights observer in several indigenous Zapatista communities.

Thomas Nelson (Oregon) is a senior partner in his own firm, focusing on utility law, international transactions, American Indian law, international human rights, and national security matters. Before law school, Mr. Nelson worked in Iran with the American Peace Corps. Subsequently he worked for the U.S. State Department as an interpreter. After getting his J.D. from Valparaiso University Law School and L.L.M. from Yale, Mr. Nelson taught law at the University of Connecticut and then entered private practice in the field of utility law and litigation. He has also authored pieces on topics ranging from administrative law and federal antitrust laws and state regulation to ethical issues involves in the National Security Agency warrantless interception of attorney-client communications.

Radhika Sainath (California) is an attorney at Hadsell Stormer in Los Angeles, California, where she specializes in civil rights, housing and human rights law. Prior to becoming an attorney, Ms. Sainath served as an organizer with the Union of Needletrades, Industrial and Textile Employees (UNITE). From 2002-2003, Ms. Sainath lived and worked in the West Bank, where she worked with Palestinian and Israeli nonviolent resistance groups. Ms. Sainath traveled to Pakistan in January 2008 - days after Bhutto's assassination - on a fact-finding mission to assess the status of the judiciary and the prospect of free and fair elections. Ms. Sainath received her J.D. from the University of California Berkeley, School of Law (Boalt Hall) and her B.A. in political science and sociology from the University of California, San Diego.

Reem Salah (California) is a lawyer specializing in national security and civil rights. She was a Bridge Fellowship recipient at the National Security and Immigrants' Rights Project at the American Civil Liberties Union of Southern California. Prior to becoming a lawyer, Ms. Salah spent two years traveling and studying in the Middle East. She was a Fulbright Fellow in Amman, Jordan from 2004-2005. Ms. Salah spent the summer of 2006 working as a legal intern in the West Bank where she assisted Palestinian and Israeli lawyers in representing Palestinian political prisoners in Israeli Military Courts. In March 2001, Ms. Salah traveled to Iraq on a fact-finding delegation to assess the impact of the decade-long U.N. imposed sanctions. Ms. Salah received her J.D. from the University of California Berkeley, School of Law (Boalt Hall) and her B.A. in International Development Studies from the University of California, Los Angeles.