March 18, 2011

VICTIMHOOD AND PERPETRATION IN GAZA: CONTEXTUALIZING ISRAEL'S WAR CRIMES DURING OPERATION CAST LEAD

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Available at: https://works.bepress.com/john_engers/1/
Between December of 2008 and January of 2009, the streets and buildings of the Gaza strip appeared less like a city and more like the ghostly ruins of an urban battle zone. Three weeks of rocket and mortar fire, incendiary chemicals, and aerial bombardments had decimated the infrastructure and left thousands of civilians dead or injured. The destruction was the result of Israel’s “Operation Cast Lead,” which was purported to be a defensive response to Hamas’ rocket fire directed at the civilian infrastructure of Southern Israel.\(^1\) Soon following the conclusion of the operation, the international community began to voice concerns as to the legality of its execution under International Humanitarian Law (IHL). This paper analyzes the United Nations’ response to the international outcry following Operation Cast Lead, and attempts to elucidate the ways in which that response both succeeded and failed.

#### II. BACKGROUND

##### A. History

The State of Israel was created in 1948 after the United Nations proposed the establishment of a Jewish state following the Holocaust.\(^2\) Since its creation in 1948, tensions

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2 [http://news.bbc.co.uk/2/hi/events/israel_at_50/history/78601.stm](http://news.bbc.co.uk/2/hi/events/israel_at_50/history/78601.stm)
mounted between Israel and its Arab neighbors, finally coming to a head on June 5, 1967. The West Bank, including East Jerusalem, and the Gaza Strip were captured by Israel following the Six-Day War of June 1967. The two non-contiguous areas had been administered by Jordan and Egypt, respectively, since the establishment of the “Green Line” along the 1949 Armistice demarcation, separating the newly founded State of Israel and its neighbors. Following the Six-Day War, Israeli military forces began administering the West Bank and the Gaza strip, and in 1980 the Knesset passed a law which declared that "Jerusalem, complete and united, is the capital of Israel.” According to the U.N., the Six-Day War displaced 500,000 Palestinians who fled to Egypt, Syria, Lebanon, and Jordan. With Security Council resolution 478 (1980), the United Nations declared this law “null and void,” condemning any attempt to “alter the character and status of Jerusalem.” The resolution was adopted by 14 votes to none, with the United States abstaining. No member of the United Nations, apart from Israel, recognizes the annexation of East Jerusalem.

In the decades that followed, the fighting continued. In 1973, Egypt and Syria launched major offensives against Israel on Yom Kippur (the Jewish festival of the Day of Atonement). In 1979, Israel and Egypt made peace and a UN Resolution was passed, calling for “a just and durable peace in the Middle East.” The Camp David Accords were signed in September 1978, which outlined limited autonomy for Palestinians. However, Arab states boycotted Egypt for

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3 [http://news.bbc.co.uk/2/hi/events/israel_at_50/history/78608.stm](http://news.bbc.co.uk/2/hi/events/israel_at_50/history/78608.stm)
5 Id.
6 Id.
8 Goldstone Report, ¶ 177.
9 Id.
10 [http://news.bbc.co.uk/2/hi/middle_east/7381358.stm](http://news.bbc.co.uk/2/hi/middle_east/7381358.stm)
11 [http://news.bbc.co.uk/2/hi/middle_east/7381362.stm](http://news.bbc.co.uk/2/hi/middle_east/7381362.stm)
its treaty with Israel, and Islamist elements assassinated Egyptian President Anwar Sadat, who had negotiated the peace treaty with Israel.\textsuperscript{12} In 1982, following an assassination attempt on the life of Israeli Ambassador to London Shlomo Argov, Israel launched a massive military incursion into Lebanon in order to wipe out Palestinian guerrilla bases near Israel’s northern border.\textsuperscript{13} 1987 saw the Palestinian intifada against Israel’s occupation of the Gaza strip and the West Bank, but 1993 brought the “Declaration of Principles,” in Washington in which the Palestinians consented to recognize Israel as a state in return for the beginning of a phased ending to Israel’s occupation.\textsuperscript{14} 1995 marked the first year of Palestinian self-rule, but fighting between Palestinian militants and Israeli forces continued. However, that year the Oslo II agreement was signed (1993 marked Oslo I), which allocated 7% of the territory to full Palestinian control, 21% to joint Israeli-Palestinian control, and the rest to Israel.\textsuperscript{15} As the century came to a close, the violence returned with the emergence of the Islamic militant group Hamas and suicide bombings.\textsuperscript{16} In the 21st century, the violence continued with a second intifada, and in 2006, after years of disassociation from the Oslo process, Hamas changed its position about the legitimacy of the Palestinian Authority and decided to participate in the elections of January 2006. The List of Change and Reform, of which Hamas represented the main component, won the elections for the Palestinian Legislative Council and formed a Government.\textsuperscript{17}

On December 27, 2008, Israel set into motion a three week operation in Gaza known as “Operation Cast Lead.”\textsuperscript{18} Israel initially justified the attack as a necessity in halting rocket fire

\begin{itemize}
\item \textsuperscript{12} http://news.bbc.co.uk/2/shared/spl/hi/middle_east/03/v3_ip_timeline/html/1979.stm
\item \textsuperscript{13} http://news.bbc.co.uk/2/shared/spl/hi/middle_east/03/v3_ip_timeline/html/1982.stm
\item \textsuperscript{14} http://news.bbc.co.uk/2/hi/middle_east/7385301.stm
\item \textsuperscript{15} http://news.bbc.co.uk/2/shared/spl/hi/middle_east/03/v3_ip_timeline/html/1995.stm
\item \textsuperscript{16} http://news.bbc.co.uk/2/shared/spl/hi/middle_east/03/v3_ip_timeline/html/1996_99.stm
\item \textsuperscript{17} Goldstone Report, ¶ 188.
\item \textsuperscript{18} http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf P 29.
\end{itemize}
from the Gaza Strip into Southern Israel, and it was therefore an exercise of Israel’s sovereign right to self-defense.\textsuperscript{19} By late 2008, according to Israel, Hamas’ rocket fire was capable of reaching some of Israel’s largest cities and strategic infrastructure, threatening one million Israeli civilians, including nearly 250,000 schoolchildren.\textsuperscript{20} The operation, which lasted until January 18, 2009, consisted of two main phases: an air phase and an air-land phase.\textsuperscript{21} More than 1,200 Gaza residents reportedly died during this time (although exact accounts vary; Israel reports 1,166, Gaza authorities report 1,444), and over 5000 were injured. Israel reported 13 dead and several others wounded.\textsuperscript{22} Based on the data collected by both Israel and the Gaza authorities, as well as several non-government organizations, there was cause to believe that serious violations of International Humanitarian Law (IHL) had occurred during Operation Cast Lead.\textsuperscript{23}

\section*{B. The U.N. Fact Finding Mission}

In response to these concerns, on April 3, 2009, the President of the Human Rights Council established the United Nations Fact Finding Mission on the Gaza Conflict with the mandate “to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after.”\textsuperscript{24} As a normative framework, the Commission used general international law, the Charter of the United Nations, international humanitarian law,

\begin{footnotesize}
\begin{enumerate}
\item Id. – security council report
\item Goldstone Report ¶ 30.
\item Id. at ¶ 1.
\end{enumerate}
\end{footnotesize}
international human rights law and international criminal law.\textsuperscript{25} To lead the Mission, the President appointed Justice Richard Goldstone, former judge of the Constitutional Court of South Africa and former Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda. The President appointed three other members to the Mission: Professor Christine Chinkin, Professor of International Law at the London School of Economics and Political Science, Hina Jilani, Advocate of the Supreme Court of Pakistan, and Colonel Desmond Travers, a former Officer in Ireland’s Defence Forces and member of the Board of Directors of the Institute for International Criminal Investigations.\textsuperscript{26}

The members of the Mission met several times in Geneva between May and August of 2009. The Mission also notified all Member States of the United Nations (U.N.) as well as the U.N.’s organs and bodies about the Mission, and issued a call for submissions from all interested parties, persons, and organizations to submit relevant information and documentation to the Mission. It also conducted three field visits between May 30 and July 3, 2009. The first two of these visits were to the Gaza Strip, and the third was to Amman, Jordan.\textsuperscript{27}

The Mission chose to investigate 36 specific events, conducting 188 interviews and taking 1200 photographs.\textsuperscript{28} In the Opening Statement of Judge Goldstone’s presentation of the Mission to the Human Rights Council on September 29, 2009, he summarized the information-gathering procedures taken by the Mission:

The Mission consulted with a wide range of interlocutors. They included victims and witnesses, Palestinian, Israeli and international NGOs, United Nations and other international organizations, community organizations, human rights defenders, medical and other professionals, legal and military experts, authorities and other sources of reliable information relevant to the Mission’s mandate. These

\textsuperscript{25} Id. at ¶ 15
\textsuperscript{26} Id. at ¶ 2
\textsuperscript{27} Id. at ¶ 5-6.
interlocutors were both within and outside Israel and the occupied Palestinian territory.\textsuperscript{29}

Although the Mission requested cooperation from Israel, Israel refused, preventing the members from meeting with Israeli Government officials and Israeli victims, as well as preventing the Mission from meeting with Palestinian authorities and victims in the West Bank.\textsuperscript{30} Israel had also barred Western reporters from entering the Gaza Strip during most of the fighting on the grounds of security.\textsuperscript{31} Israel’s lack of cooperation was likely due to an overarching feeling of mistrust towards the U.N. Human Rights Council. Indeed, on an official Israel website dedicated to responding to the findings of the Goldstone Commission, Israel stated that the “UNHRC, an organization, headed and manned by representatives from nations who are systematic violators of their own people’s human rights, and whose hypocritical obsession with condemning Israel to the exclusion of all other human catastrophes is a matter of justifiable satire.”\textsuperscript{32} It goes without saying that such sentiments do not beget full cooperation with the UNHRC.

The Mission made findings with respect to Israel’s use of white phosphorous during Operation Cast Lead, the use of human shields, deliberate attacks on civilian objects such as hospitals and mosques, and the deliberate destruction of the civilian infrastructure.\textsuperscript{33} These allegations will be discussed in detail below.

C. \textbf{Israel’s Response}

In response to the Goldstone Report, Israel released a paper in July of 2009 entitled “The Operation in Gaza: Factual and Legal Aspects.” It followed this paper in January of 2010 with

\textsuperscript{29} Id.
\textsuperscript{30} Goldstone Report, ¶ 20.
\textsuperscript{32} Understanding the Goldstone Report, \url{http://www.goldstonereport.org/controversies},
\textsuperscript{33} See Goldstone Report, Part Two, Section A, XI-XIV.
“Gaza Operation Investigations: An Update.” These responses to the Goldstone Report focused on the actions taken by Israel to investigate various allegations of violations of human rights and humanitarian law. Israel stated that the Israeli Defense Forces (IDF) had launched 150 investigations arising out of the Gaza operation, 36 of which had been referred for criminal investigation in which “criminal investigators have taken evidence from almost 100 Palestinian complainants and witnesses, along with approximately 500 IDF soldiers and commanders.”

For each of the 34 allegations of harm to civilians or damage to civilian property discussed at length in the Goldstone Report, the IDF stated that it had initiated an investigation. Further, 22 of such allegations had been pursued by the IDF before the report’s publication, and twelve of which it promptly referred for investigation after the report aired them.

Israel’s response also emphasized its own victimization at the hands of Hamas. It stated that before the Gaza war began, Israel had made serious appeals to the U.N. to bring international pressure on Hamas, “including urgent appeals to the UN Secretary General and successive Presidents of the Security Council to take determined action, and diplomatic overtures, directly and through intermediaries, to stop the violence.”

Israel also defended Operation Cast Lead in a March 2010 report by its Intelligence and Terrorism Information Center (ITIC) that stated, inter alia, that:

The Report does not deal with the nature of Hamas, particularly its terrorist aspects. It focuses on severe criticism of Israel and presents an openly pro-Palestinian version of the Israeli-Palestinian conflict. It does not deal with Hamas’ ideology, its strategy, the military-terrorist infrastructure it constructed, its radical Islamic nature, the way it relates to the West and the pro-Western Arab regimes, the brutality with which it treats its Palestinian opponents, the direction and aid it receives from its headquarters in Damascus, and its record as the

34 Israel Update, ¶ 9.
35 Id. at ¶ 11.
36 Israel Response, ¶ 5.
terrorist organization which led suicide bombing terrorism against Israel and fired rockets at its civilians over a period of many years.  

Additionally, Israel emphasized the fact that other countries such as Canada, The United Kingdom, Australia, and the United States all use a courts-martial system based within the military justice framework to adjudicate criminal indictments alleging violations of the Law of Armed Conflict just as Israel does. This was in response to the Mission’s finding that “the Mission found major structural flaws that in its view make [Israel’s court-martial] system inconsistent with international standards.” Additionally, the IDF heavily stressed its adherence to IHL:

The IDF’s mode of operation reflected the extensive training of IDF soldiers to respect the obligations imposed under international law and to adhere to the IDF Code of Ethics. Further, the conduct of the IDF in the Gaza Operation evidenced the longstanding efforts in the IDF to reinforce awareness of these obligations among commanders and soldiers, to investigate alleged infringements, and to punish violations.

With such drastically diverging opinions evolving from the same conflict, many difficult questions arise. Some are purely factual, such as whether or not Israel attacked the Al Bader flour mill with an aerial strike or if the damage occurred as a result of land based projectiles. However, other questions are far more subjective, with the answers necessarily residing in the vast grey area that makes the application of international humanitarian law so difficult. For example, if Hamas strategically placed its forces amongst the non-combatant population, how does this unlawful tactic affect Israel’s responsibility to abide by the rules of distinction and

40 Israel Response, ¶ 25.
proportionality? To what extent is Israel constrained from attacking targets such as sewage plants and flour mills if Hamas has placed its bases of operation in close proximity to such areas of civilian necessity? And at what point does the use of incendiary weapons such as white phosphorous, which is legal under international law, become unlawful when used in urban conflict zones? While issues such as these seem to generate more questions than answers, the resolution of these issues is imperative for the safety of civilians caught in the midst of future urban armed conflict. Delineating the boundaries by which parties to armed conflict are circumscribed is the purpose of international humanitarian law, no matter how challenging that burden may be.

III. APPLICABLE LAW

Although the Gaza war was not a true international conflict because it did not involve two separate states, many of the rules of International Humanitarian Law still apply. Additionally, International Criminal Law establishes individual culpability for grave violations of international law, including for war crimes and crimes against humanity. 41 In situations of non-international armed conflict, only Common Article 3 of the Geneva Conventions and Additional Protocol II apply. Israel is a party to the Geneva Conventions of 1949, but it has not ratified either of the Additional Protocols. 42 However, many of the Geneva Conventions and their additional protocols have become part of customary international law (CIL) by way of widespread state practice, and Israel is therefore bound by the rules therein. 43 For example, the principles of distinction and proportionality, as defined in the Geneva Conventions, have become

41 Bisharat, supra note 30 at 43.
42 Goldstone Report, ¶ 279.
CIL. The Goldstone Report contends that *all* of the Geneva Conventions and their additional protocols have become part of CIL, and as such, Israel is simply bound by the Geneva Conventions in their entirety. However, this contention is debatable; even the ICRC itself has not stated that CIL covers every aspect of IHL.

Further, according to the Report, Israel’s High Court of Justice has confirmed that Israel must adhere to the rules of the Fourth Geneva Convention and the aspects of customary international law that are reflected in Additional Protocol I. Under the rules of State responsibility, Israel is responsible for any violations of international law attributable to it. Specifically, under the Fourth Geneva Convention, article 29, “the Party to a conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.” This statement, however, is contingent upon whether or not the Gaza Strip is considered an occupied territory. As such, Israel’s legal status as an occupying authority in the Gaza Strip also bears on the application of the Fourth Geneva Convention, specifically, section III. While this subject is debatable, for purposes of this paper’s analysis, the aspects of IHL that apply to non-international armed conflicts, as well as CIL, provide sufficient legal basis to analyze the legality of Israel’s actions.

Additionally, Israel has ratified many of the most significant International Human Rights Law treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights (ICCPR), the

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45 Goldstone Report, ¶ 272.
46 ICRC Report on CIL, Introduction (“This study provides evidence that *many* rules of customary international law apply in both international and non-international armed conflicts… In particular, the gaps in the regulation of the conduct of hostilities in Additional Protocol II have largely been filled through State practice”) (emphasis added).
47 Goldstone Report, ¶ 272.
48 *Id.*
49 *Id.* at ¶ 273.
50 Bisharat, *supra* note 30 at 46-47.
International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women.\(^{51}\) Although the continuing application of human rights law in times of armed conflict is a source of great international debate, the Goldstone Commission, relying on the International Court of Justice’s Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, contends that human rights treaties continue to apply in situations of armed conflict.\(^{52}\) Moreover, aspects of the above human rights treaties have become CIL by way of state practice.\(^{53}\)

**IV. THE ALLEGATIONS**

**A. White Phosphorus**

The Mission found that Israel had used white phosphorous during Operation Cast Lead, and that its use in built up areas was “systematically reckless.”\(^{54}\) White phosphorous is an incendiary weapon whose use is regulated by Protocol III of the 1980 Convention on Certain Conventional Weapons.\(^{55}\) The ICRC describes the weapon as follows:

> White phosphorous weapons spread burning phosphorous, which burns at over 800 degrees centigrade (about 1,500 degrees fahrenheit), over a wide area, up to several hundred square metres. The burning will continue until the phosphorous has been completely depleted or until it no longer is exposed to oxygen. The weapon has a potential to cause particularly horrific and painful injuries or slow painful death. Medical personnel must be specially trained to treat such injuries and may themselves be exposed to phosphorous burns. If used

\(^{51}\) *Id.* at ¶ 294.
\(^{52}\) *Id.* at ¶ 295.
\(^{53}\) ICRC Report on CIL, Introduction (“there is extensive practice by States and by international organisations commenting on the behaviour of States during armed conflict in the light of human rights law”).
\(^{54}\) *Id.* at ¶ 48.
against military targets in or near populated areas, weapons containing this substance must be used with extreme caution to prevent civilian casualties.\textsuperscript{56}

Israel responded to the Goldstone Report’s allegations, saying that The Military Advocate General determined that the IDF had used such smoke projectiles for military purposes only, for instance to camouflage IDF armor forces from Hamas’s antitank units by creating smoke screens.\textsuperscript{57} White phosphorous alone is not banned under international humanitarian law. Its use as an agent to mark military targets or spread smoke to conceal troop movements is merely constrained by the general IHL principles of distinction and proportionality.\textsuperscript{58} However, its use in highly populated areas is specifically prohibited by Article 2 of Protocol III of the 1980 Convention on Certain Conventional Weapons, which prohibits any use of air-delivered incendiary weapons in areas with a concentration of civilians, and the use of such weapons by other means of delivery unless the military objective is clearly separated from the concentration of civilians and all feasible precautions are taken to limit incidental loss of life and injury.\textsuperscript{59}

The use of a smoke producing agent for purposes of concealing troop movements would make sense in a battle occurring in an open area without other objects to conceal such movements. However, the fighting in Gaza did not occur in an open area; it occurred in an urban city. Many photographs are available that depict white phosphorous shells exploding high above the buildings of urban Gaza, effectively blanketing the city in white smoke.\textsuperscript{60} Such use is not consistent with Protocol III; covering the enemy with incendiary smoke is not the same as using smoke as a screen. Common sense would dictate that using such weapons as a smokescreen

\textsuperscript{56} Id.
\textsuperscript{57} Israel Update, ¶119.
\textsuperscript{58} Herby, supra note 55.
\textsuperscript{60} http://google.com/images (enter “white phosphorous”).
would mean deploying them *in between* the enemy and the troops requiring camouflage rather than on top of the enemy.

However, from a legal perspective, some debate exists as to what constitutes use of white phosphorous as an incendiary weapon versus its use in a non-incendiary context. There is support for the argument that a commander’s reasons for employing white phosphorous dictate its legality per IHL, provided that the principles of distinction and proportionality are still complied with. The argument proceeds as follows: if the commander were using it to conceal troop movements within a city and in the process of using it for this purpose, civilians were burned by the weapon, this use would still (ostensibly at least) comport with IHL. However, if the exact same commander used the weapon in the exact same way, except this time his motivation was simply to terrorize civilians, this use would be banned by IHL.\(^{61}\)

This argument does receive some support from a proportionality perspective. Civilian casualties are not banned by IHL; they must merely be accepted in proportion to the necessity and objective of the mission. From this perspective, if a commander *had* to move troops through a city and the only way to accomplish this task was by concealing those troops as effectively as possible, then the employment of white phosphorous could potentially be seen as a necessity of war. If such a military objective were imperative, then the use of white phosphorous could be legitimate.

However, as with any issue that arises when law and reason are attempted to be applied to the anarchistic reality of war and killing, there are countervailing considerations that yield anything but a clear answer. First, it is dangerous to assign the legality of a physical action (employing white phosphorous in an urban area) to the subjective mind set of one army’s

commander: naturally that commander does not want to lose any of his own soldiers; his allegiance to his men must far outweigh his allegiance to unseen and unknown civilians of the enemy territory. Further, human motives are never as black and white as the above test would indicate, and the effects of a weapon such as white phosphorous are myriad. Terrorizing the civilian population can bring an expedient close to military conflict and in doing so, bring that commander victory and spare the lives of his troops. This motive could very well play a supporting role in one man’s decision whether or not to use an incendiary weapon, especially if the only question of the legality of such use is whether he had a credible military justification for its use. As such, it is imperative that the equation that deciphers the legality of the employment of white phosphorous hold more objective elements than merely a commander’s reasoning.

Furthermore, in a counterinsurgency situation or a situation where an army is facing a terrorist group, which is the way that Israel views Hamas (this designation holds only domestic legal implications; it has no international import62) secular popular support is of the highest importance, and the use of a weapon that causes a great deal of civilian casualties can prove to be detrimental in its unintended and indirect effects.63 A parent who has lost a child at the hands of Israel’s indiscriminate use of white phosphorous will be far more likely to allow her home to store weapons or hide Hamas soldiers. Civilian casualties necessarily breed outrage, which always breeds action, which serves to perpetuate the violence that, presumably, Operation Cast Lead was intended to put an end to. Therefore the civilian population in enemy territory must be seriously considered from a strategic perspective as well as from a humanitarian perspective. In this respect, sparing civilian lives can be as valuable to a commander as taking the lives of enemy combatants.

62 Bisharat, supra note 30 at 75.
63 Reeves, supra note 61 at 86.
In the instant case, the manner in which white phosphorous was used in the urban areas of Gaza supports the credibility of the Mission’s finding that Israel’s use was systematically reckless. Even in a situation where the enemy has purposely relegated the distinction between combatant and non-combatant impossible, it is still unlawful to purposely terrorize those civilians, and here, a plausible explanation for the manner in which Israel employed the use of white phosphorous is simply unsupported by the facts. First, a question exists as to what military objectives were being pursued by the use of white phosphorous in such an urban area: urban warfare would appear to be the least applicable situation for use of a smokescreen because of the degree to which the buildings themselves act as visual impediments. Further, it is unlikely that Israeli troops would be entering the city with white phosphorous raining down; this would only serve to put Israeli troops in danger. Additionally, there are photographs of white phosphorous shells exploding above Gaza at night, which would strain the credulity of the smokescreen defense.64 A Senior military analyst for Human Rights Watch also reported watching white phosphorous munitions exploding over the Jabaliya refugee camp, one of the most crowded areas in Gaza, over the five-day period between January 9 and 14, 2009.65 Other reports indicate that a UN compound was hit in Gaza city on January 15, 2009.66 If such allegations are accurate, there is no question that such a use of white phosphorous violates IHL.

Exploding phosphorous shells high above a city renders any kind of precise use of the weapon impossible. When viewed in this light, it is difficult to argue that Israel’s use of white phosphorous satisfies the requirement of proportionality. If there is an alternate method of concealing troop movements that would produce fewer civilian casualties than blanketing the city with caustic material, then even if the potential danger to Israeli troops was increased to

64 [http://google.com/images](enter “white phosphorous”).
65 Bisharat, supra note 30, at 94.
66 Id.
some degree, this alternate method could prove to be a tighter means/ends fit, so to speak. Although Hamas may have made distinguishing combatants from non-combatants impossible, this does not mean that Israel is permitted to use weapons whose force and destructive capabilities greatly exceed their necessity. The toll of human suffering paid by the civilians of Gaza because of the use of white phosphorous is exponentially higher than the military benefit conferred upon Israel. As such, Israel’s use of white phosphorous was in violation of Article 2 of Protocol III of the 1980 Convention on Certain Conventional Weapons, and the proportionality requirement of International Humanitarian Law.

B. Human Shields

The Mission also concluded that Israeli soldiers used Palestinian citizens as human shields. The use of human shields is generally defined as using the presence of civilians or civilian objects to render military objects immune from attack; as such, military objectives should be located outside civilian areas and away from civilian persons to the extent possible. However, the mere presence of military objects within civilian areas or near protected persons is not dispositive of the use of human shields; the military objects must have been purposefully placed within or in close proximity to the civilian persons or objects with the intent of using this protected class to immunize the military object from attack. According to the Mission, Israel used human shields in a more direct manner: Palestinian men were forced to enter houses ahead of Israeli soldiers and under threat of death or injury to extract information about Hamas, Palestinian combatants and tunnels. If such allegations are true, they constitute violations of IHL.

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67 Bisharat, supra note 30 at 80.
68 Id.
69 Goldstone Report, ¶ 55.
The most damning evidence that the Mission gathered with respect to the use of human shields came from published testimonies of Israeli soldiers who took part in the military operations confirming the continued use of the practice, despite clear orders from Israel’s High Court to the armed forces to put an end to it and repeated public assurances from the armed forces that the practice had been discontinued.70

The Mission also conducted interviews of several Palestinian men who were allegedly used as human shields. Additionally, the Mission obtained sworn statements given to NGOs by one of the men, Majdi Abd Rabbo, visited the neighborhood of another, Abbas Ahmad Halawa, and interviewed a third man, Mahmoud Abd Rabbo al-Ajrami, twice at length.71 The Goldstone Report’s handling of specific instances of the use of human shields was performed in great detail. Approximately fifteen pages of the report were committed to recounting the details of the alleged victims stories. Israel categorically denied the allegations:

Following an examination with the commanders of the forces that were in the area in question, no evidence was found of the cases mentioned. Anyone who tries to accuse the IDF of actions of this kind creates a mistaken and misleading impression of the IDF and its fighters, who operate according to moral criteria and international law.72

However, there are several indications that these stories were in fact true. First, the level of detail contained in the recounting of the stories lends credence to their veracity. For example, in the case of Majdi Abd Rabbo, he was able to retell his story to several NGO’s, journalists, and the Mission without any material inconsistencies.73 Second, although the Israeli military officially denied the truth of these allegations, soldiers interviewed by the NGO “Breaking the

70 Id.
71 Id. at ¶1029-1081.
72 Id. at ¶1085.
73 Id. at ¶ 1087.
Silence” both confirmed the allegations as a whole, and corroborated specific details of the case of Majdi Abd Rabbo.\textsuperscript{74}

All of the aforementioned factors were enough to lead the Goldstone Commission to conclude that these allegations are true, and consequently that this practice violated International Humanitarian Law. It is worth noting that Israel did not offer a defense to these allegations other than a denial; indeed, no defense really exists. Under Common Article III of the Geneva Conventions, the use of human shields is unlawful, even if those being used as the shield are captured enemy combatants because such captured combatants would be deemed \textit{hors de combat} and therefore lawfully entitled to humane treatment.\textsuperscript{75}

While such a practice is deplorable, it is important not to separate these allegations from the context in which they arise. During the Gaza war, Israeli soldiers were moving through the urban dwelling of the enemy, an enemy that could very easily appear as a weapon carrying combatant at one moment and in an instant assume the identity of an innocent civilian. An individual cannot belong to both the combatant and non-combatant class simultaneously; IHL does not permit individuals to enjoy the privileges of the other class.\textsuperscript{76} Further, it has been documented that Hamas utilized tactics such donning the uniforms of medical personnel\textsuperscript{77} for camouflage purposes, an act of perfidy which is expressly forbidden by the Geneva Conventions. Other alleged tactics used by Hamas include hiding in hospitals and humanitarian facilities and shooting at Israeli soldiers from them.\textsuperscript{78} Such tactics constitute the use of human shields on the part of Hamas. This is also why the Geneva Conventions require that members of an armed

\textsuperscript{74} Goldstone Report, ¶ 1087-1089.
\textsuperscript{76} Dr. Barry A. Feinstein, 	extit{Proportionality and War Crimes in Gaza Under the Laws of Armed Conflict}, 36 Rutgers L. Rec. 224, 233 (2009).
\textsuperscript{77} Id. at 236.
\textsuperscript{78} Id.
group wear recognizable insignias during armed conflict and carry weapons. So while the Palestinian men who found themselves the victims of the Israeli practice of using human shields will obviously place the blame on the Israeli soldiers who used them as such, it cannot be overlooked that the reason these soldiers were utilizing such a tactic is because they were seeking an enemy disguised as civilians throughout an urban war zone. When soldiers are performing sweeps of houses and buildings in search of an enemy that can and will very easily disguise itself as a civilian, culpability for using human shields becomes a shared burden.

Israel’s use of human shields elucidates the fundamental conundrum of many urban non-international conflicts; who is the actor in such a situation, and who is the reactor? When a group such as Hamas takes advantage of its urban location and ease of disguise amongst the civilian population, it is inevitable that its enemy will alter its military strategy to combat such a tactic. Under such circumstances, one can easily see that there is no clear right and wrong, nor is there a clear victim and perpetrator; each party to the conflict is simultaneously perpetuating its own victimhood and culpability. The fact that each party to the conflict sees its actions as justifiable and considers itself to be a victim of the other side’s inhumanity is deeply troubling. This, in conjunction with the long history of violence and racial and religious animosity sets into motion a cycle of violence that is seemingly endless. While IHL can attempt to define the bounds of moral warfare (paradoxical as that may be) as precisely as possible, what it cannot do is change the hearts and minds of those who fight and kill in the name of their allegiances.

C. **Deliberate Attacks against the Civilian Infrastructure**

The definition of a military objective contains two main requirements. First, that the proposed target “by their nature, location, purpose or use make an effective contribution to
military actions;”79 and second, that the “total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definitive military advantage.”80 Customary International Law considers military objectives to be combatants, civilians taking direct part in hostilities, as well as physical objects that comport with the above description.81 The legality of Israel’s attacks on certain buildings in the Gaza strip hinges upon how those buildings can be classified using the above criteria.

1. The Al Bader Flour Mill

The Goldstone Commission investigated several incidents that involved the destruction of the industrial infrastructure of Gaza. One such investigation was of an attack on the Al Bader (or el-Bader, according to Israel’s response) flour mill on January 9, 2009, which was the only flour mill in Gaza still operational during the Gaza war.82 If Israeli forces had in fact targeted the Al Bader mill in an effort to discontinue the production of flour and thereby deny sustenance to the population, such a tactic constitutes a violation of the grave breaches provision of the Geneva Conventions. The Mission found that Israel had precisely targeted the crucial machinery of the mill and that the attack was without military justification.83 Israel directly addressed this allegation in its Gaza Operation Investigations Update:

“For the outset of the Gaza Operation, the immediate area in which the flour mill was located was used by enemy armed forces as a defensive zone, due to its proximity to Hamas’s stronghold in the Shati refugee camp. Hamas had fortified this area with tunnels and booby-trapped houses, and deployed its forces to attack IDF troops operating there. For example, 200 meters south of the flour mill an IDF squad was ambushed by five Hamas operatives in a booby-trapped house; 500 meters east of the flour mill another squad engaged enemy forces in a house

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79 Bisharat, supra note 30 at 83.
80 Id.
81 Id.
82 Goldstone Report, ¶ 50.
83 Id.
that was also used for weapons storage; and adjacent to the flour mill, two booby-trapped houses exploded.\textsuperscript{84}

Israel further stated that prior to the strike on January 9 it alerted the civilians in the area and the mill itself with numerous recorded phone calls and warnings.\textsuperscript{85} Israeli commanders had designated the flour mill as a “strategic high point” in the area due to its height and clear line of sight.\textsuperscript{86} Additionally, the Gaza Operation Investigation Update provided before and after photographs of the mill that purported to show that the damage to the mill was inconsistent with an aerial strike; the Israeli Military Advocate General concluded that the damage had occurred as a result of tank shells rather than precise munitions from the air.\textsuperscript{87} The “after” photograph also shows fire trucks visible on the scene, claimed to be evidence that Israel did not in fact intend on destroying the Gaza infrastructure.\textsuperscript{88} The report also noted that “an extensive amount of food and flour” entered Gaza through Israel during Operation Cast Lead, thereby further demonstrating Israel’s compliance with International Humanitarian Law.\textsuperscript{89}

The photographs provided by the IDF of the flour mill after the attack lend credibility to Israel’s position; common sense would dictate that an aerial strike would have left the roof of the mill substantially damaged. However, the photographs provided that were taken on January 11 depict a completely intact roof. This, coupled with Israel’s detailed assessment of the proximity of the mill to Hamas strongholds leads one to believe that the el-Bader flour mill was in fact a legitimate military target.

The Goldstone Commission’s assessment of the attack on the Al Bader flour mill is demonstrative of several aspects of the interplay between the Mission’s conclusions and Israel’s

\textsuperscript{84} Israel Update, ¶164.
\textsuperscript{85} Id. at ¶165.
\textsuperscript{86} Id. at ¶166.
\textsuperscript{87} Id. at ¶ 170.
\textsuperscript{88} Id. at ¶ 172.
\textsuperscript{89} Id. at ¶ 172.
countervailing contentions. First, in a conflict rife with confusion, controversy, and complexities, it is almost certain that aspects of the Goldstone Report are factually inaccurate. To assess a situation after the fact, aided only by one party to the conflict, necessarily leaves the fact finder in an untenable position: make objective findings from subjective evidence. Is it even remotely likely that Palestinians interviewed after the attack on the flour mill would divulge the existence of underground tunnels and a nearby Hamas stronghold to the Goldstone Commission (assuming they knew of such tunnels) thereby forfeiting their status as victims? After all, everyone interviewed by the Mission was either affiliated with, or at least subject to, Hamas.\(^9^0\) One can easily see how difficult this fact finding mission must have been.

However, Israel’s detailed defense of its attack on the Al Bader mill belies its culpability with respect to other accused violations of IHL contained in the Goldstone Report. Assuming that Israel’s defense in this matter is ingenuous, one must ask why Israel failed to rebut many of the other charges with such vigor and candor. It appears that Israel identified a factual incongruity of the report and capitalized on disproving it. So where are the detailed photographs of precise use of white phosphorous to refute the Mission’s allegations of systematically reckless use? Where are the candid and pointed refutations of the use of human shields? If the IDF felt compelled to provide such detail in its rebuttal of the attack on the flour mill, it would be anomalous for it to simply deny the use of human shields without providing evidence, or to simply claim that its use of white phosphorous was consistent with the guidelines of IHL without offering further evidence to bolster such claims. This inconsistency is indicative of the absence of such a credible refutation of the Report’s other allegations.

2. **Attack on the al-Wafa Hospital**

The al-Wafa Hospital was attacked by white phosphorous on January 5 and artillery fire on January 16, 2009.\textsuperscript{91} All of the staff that the Mission interviewed stated that there was no presence of armed resistance within the hospital, but that they could neither confirm nor deny its presence outside of the hospital.\textsuperscript{92} Prior to the attacks, Israel had issued generic telephone warnings and had dropped leaflets in the area that indicated that support of Hamas would be punished.\textsuperscript{93} The damage to the hospital (as a result of the two attacks) is estimated at US $550,000.\textsuperscript{94} Based on its interviews with the senior doctors on staff at the hospital, whom the Mission found to be credible, the Mission concluded that Israel had violated articles 18 and 19 of the Fourth Geneva Convention (prohibiting attacks on civilian hospitals and requiring adequate warning) and articles 57 (2) (b) and (c) of Additional Protocol I (dealing with non-military objectives and adequate warning).\textsuperscript{95}

Israel did not directly respond to the allegations. It did, however, report that the IDF had investigated an incident that occurred on January 10, 2009 involving damage to a mother and child clinic, and it also stated that the IDF intended to investigate allegations of damage to another hospital, the al-Quds hospital.\textsuperscript{96} Israel’s The Military Advocate General found no basis to order criminal investigations of either of these situations, nor of the other 8 incidents under review.\textsuperscript{97}

Israel’s defense of the attack on the mother and child clinic is likely representative of its defense of the attacks on other hospitals (were it to have addressed the specific allegations): its

\textsuperscript{91} Goldstone Report, ¶ 633, 636.
\textsuperscript{92} Id. at ¶ 635.
\textsuperscript{93} Id. at ¶ 632.
\textsuperscript{94} Id. at ¶ 639.
\textsuperscript{95} Id. at ¶ 650.
\textsuperscript{96} Israel Response, ¶ 374, 376.
\textsuperscript{97} Israel Update, ¶ 112.
essential defense was that 1) Hamas was stockpiling weapons in the hospital, 2) civilians were not injured, and 3) adequate warnings were given.98

First, it is troubling that Israel did not even address the attacks on hospitals that the Mission alleged. The UN Office of Coordination of Humanitarian Affairs affirmed that “[i]n many instances, Israel provided no explanation for why a civilian building was attacked.”99 Presumably, if Israel did have intelligence regarding Hamas’ use of specific hospitals, it would have presented such evidence in its response to the Goldstone Commission as it did with the Al Bader flour mill. If such intelligence existed, it would have created a strong argument in favor of the legitimacy of the attacks under Article 19 of the Fourth Geneva Convention. However, in many cases of civilian buildings being attacked, Amnesty field workers found no evidence of “secondary conflagration,” which would be expected had weapons been present, or signs of anything being removed from the rubble.100 However, the Report, in finding that adequate warning was not given, considers the attacks to be in violation of IHL even if Hamas was using the hospitals to store munitions because Article 19 of the Fourth Geneva Convention requires adequate warning prior to even a legitimate attack on a civilian building.

The Mission’s finding that adequate warning was not given in this case raises some difficult questions regarding the balance between effective warning and an effective military strike. Presumably, a warning that specified the exact time and location of a strike would render the strike totally useless; the enemy could simply move the targeted munitions or evacuate its soldiers from the area. Further, there is no legal requirement to warn if doing so might jeopardize the military operation’s success.101 On the other hand, indiscriminate papering and

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98 See, Israel Response, ¶ 374-376
99 Bisharat, supra note 30 at 72.
100 Id. at 73.
101 Feinstein, supra note 76 at 242.
repeated phone calls could serve the counterproductive purpose of giving the impression that the warnings were merely perfunctory and that no strike was imminent. Also, safe evacuation routes, or the lack thereof, are a legitimate concern in a situation such as the Gaza War.\textsuperscript{102} Civilians are unlikely to feel much safer leaving a building such as a hospital to brave the streets or find a house that could be seen by the enemy as far less neutral than a civilian hospital.

Considering that an attack of a civilian building will obviously yield negative publicity and arouse the suspicion of the international community, Israel’s vapid justification for such attacks, or in many cases nonexistent justification, does little to defend or explain its actions. Israel simply denied that there was anything to investigate. Given Hamas’ likely use of some civilian buildings as weapons repositories, a more detailed defense from Israel could have been ostensibly credible. When a defendant in a criminal case chooses not to proffer any defense, it is far more likely that he or she will be found guilty. Here, because there was no concrete evidence presented that the Al Wafa hospital was housing weapons and because attacking a civilian building is a per se violation of IHL absent contrary evidence and appropriate warnings, Israel’s attack violated IHL. The issue regarding the adequacy of warnings is not dispositive because the attack itself was unlawful due to the absence of a clear military objective.

Here, it is again worth noting that the choice to camouflage combatants by mingling them with non-combatants was made by Hamas. Further, once Hamas has chosen to use civilian buildings as storage sites for munitions, the fact that a certain building that was attacked did not actually hold munitions does not leave Hamas with clean hands. This tactic is another form of the use of human shields, which had been occurring long before Operation Cast Lead was ever set into motion. In Israel’s response to the Goldstone Report titled “The Operation in Gaza, Factual and Legal Aspects,” Israel addresses this tactic, stating that Hamas’ tactics include

\textsuperscript{102} Bisharat, supra note 30 at 78.
“launching of rocket attacks from within densely populated areas near schools and protected
U.N. facilities, the commandeering of hospitals as bases of operations and ambulances for
transport, the storage of weapons in mosques, and the booby-trapping of entire civilian
neighbourhoods so that an attack on one structure would devastate many others.” These are
all grave breaches of the Geneva Conventions – grave breaches to which Israel was responding
during Operation Cast Lead. Therefore, Israel’s actions, although themselves grave breaches,
could not have been unforeseeable because they were in response to tactics that were equally
deplorable.

3. **Attack on the wastewater treatment plant in Gaza City**

   The Goldstone Commission also found that Israeli forces also carried out a strike against
a wall of one of the raw sewage lagoons of the Gaza Waste Water Treatment Plant, which caused
the outflow of more than 200,000 cubic meters of raw sewage into neighboring farmland. The
Mission found that the plant was hit with an aerial strike, and came to the same conclusion that
it did with respect to the Al Bader flour mill – that Palestinian armed forces had not been using
the plant for military operations, and consequently the attack violated the laws of war. The
Mission noted that the plant was located on top of a hill that overlooked a great deal of open
land, thus making it a target of strategic interest. The weapon used to cause the breach must
have been powerful; the breach was five meters deep and twenty-two meters wide.

   Israel responded to this specific allegation in its Gaza Operations Update, stating that the
plant was hit on January 10, 2009. According to the Update, The ICRC presented a

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103 Israel Response, ¶ 7.
104 Goldstone Report, ¶ 52.
105 Id.
106 Goldstone Report, ¶ 969.
107 Id. at ¶ 971.
108 Israel Update, ¶ 153.
preliminary report about the basin breach to the Israeli CLA on 12 January 2009 and during the following days, the CLA tried to coordinate the arrival of Gaza’s Coastal Municipalities Water Utility teams to address the situation, but these efforts did not succeed due to the fighting in the area.\textsuperscript{109} Israel also stated that the plant was not designated for an aerial attack, and that the nearest aerial strike on the relevant dates was 1.3 kilometers away from the plant.\textsuperscript{110} In the Update, Israel added before and after photographs of the plant during the relevant time period that depicted the area of the upper basin wall that had been destroyed, allowing for the outflow of sewage. The Update stated that the Military Advocate General had reviewed the findings of Israel’s command investigation regarding the plant, and concluded that the damage resulted from flat trajectory fire (as opposed to either an aerial strike or high-trajectory fire), and that when Israeli armed forces passed the plant, the wall had already been damaged.\textsuperscript{111} Although the Military Advocate General could not definitively rule out the possibility that Israeli forces had caused the damage, he also could not dismiss the possibility that Hamas forces had deliberately damaged the plant in order to hamper IDF movement in the area.\textsuperscript{112} Consequently, he found no reason to order a criminal investigation regarding the sewage plant.\textsuperscript{113}

In this case, as in the case of the flour mill, Israel actually directly addressed the allegations made by the Goldstone commission, publishing the findings of the command investigation and including photographs to support its position. The photographs depict a section of the upper basin wall that was missing after the plant was attacked, which would seemingly support Israel’s claim that the wall was hit with low trajectory fire rather than an aerial strike because a horizontal projectile would, in theory, be easier to use for purposes of destroying a

\textsuperscript{109} Id. at ¶ 154.
\textsuperscript{110} Id. at ¶ 156.
\textsuperscript{111} Id. at ¶ 157-8.
\textsuperscript{112} Id. at ¶ 160.
\textsuperscript{113} Id. at ¶ 162.
wall than a bomb from above. However, the chief of the plant reported what appeared to be unexploded bombs near the area of the wall that had been damaged, and the Mission’s measurements of the depth of damage (five meters deep) supports the theory of an aerial strike.

Assessing what actually occurred at the wastewater treatment plant in Gaza City is an example of how easily truth can be lost or obscured in the “fog of war.” Someone is undoubtedly lying: were undetonated bombs really found around the damaged section of the wall? If this were the case, an aerial strike would appear to have been undeniable (assuming that the term “bombs” refers to those dropped from planes). As such, the Israeli Military Advocate General would have been lying regarding the absence of an aerial strike in the area and the possibility that Hamas had actually damaged the sewage plant on purpose. Most disturbingly, he would have been lying about the IDF’s stringent adherence to IHL. If these statements are in fact lies, then Israel’s credibility with respect to all of its responses to the Mission’s allegations would be seriously damaged.

On the other hand, could Hamas’ tactics of war included destroying crops and damaging the infrastructure of its own civilians? This doesn’t seem entirely unreasonable; firing rockets from civilian-dense areas and storing munitions in hospitals is necessarily jeopardizing the lives of the civilians of Gaza. Given the ruthless tactics employed by Hamas, the Military Advocate General’s claim doesn’t seem too farfetched, especially if the area was a strategic strongpoint. If this were the case, then the presence of unexploded bombs around the damaged area is unlikely. Could the manager of the plant have been exaggerating to emphasize his people’s victimhood at the hands of the IDF? This certainly cannot be ruled out.

A third possibility is that the wall was not deliberately destroyed at all. This would validate the IDF’s position, and discredit the findings of the Goldstone Commission. If this were

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114 Goldstone Report, ¶ 963.
the case, it would bolster criticism that the Goldstone Commission was biased. Because the treatment plant was considered to be a valuable strategic location in the area, it is possible that the IDF was merely attempting to secure the area, encountered resistance while doing so, and in the fighting that ensued the wall was damaged. This theory could be called the “innocent explanation.”

However, in an age where feigned ignorance has become a go-to defense, there is never an innocent explanation, especially not in war. Prior to Operation Cast Lead, Israel had made its intentions of destroying the “Hamas Infrastructure” well known. As Judge Goldstone put it in his Opening Address before the Human Rights Council regarding the Mission, “If ‘infrastructure’ were to be understood in [the way Israel used the term] and become a justifiable military objective, it would completely subvert the whole purpose of IHL built up over the last 100 years and more. It would make civilians and civilian buildings justifiable targets.”

The section of the wall that was destroyed was hit precisely and powerfully; a vast section of the wall was missing. On the other side of the wall was nothing but wastewater. Given that the IDF had aerial photographs of its various targets and that after the plant was hit it was able to obtain aerial photographs of the plant, the IDF likely knew that all that was on the other side of the wall was wastewater. Although the location of the plant could have offered an effective contribution to military actions, the destruction of the wall at the time could not have offered a definitive military advantage, and therefore its destruction violated IHL. Israel has one of the most technologically advanced militaries in the world; it is farcical to ascribe to it such a

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115 Dr. Avril McDonald, Operation Cast Lead: Drawing the Battle Lines of the Legal Dispute, 16 No. 3 Hum. Rs. Brief 25, 8 (2009).
high level of inaccuracy and disorganization. As such, the Goldstone Commission’s factual findings in this matter appear correct.

**V. CONCLUSION**

Israel violated International Humanitarian Law during Operation Cast Lead. Although the Goldstone Commission may not have deciphered the objective truth with respect to every allegation that it investigated, its methods, interviews, and fact gathering were thorough enough that no reasonable person could conclude that all of it was simply inaccurate. However, this conclusion, alarming as it may be, merely scratches the surface of the true problem with the Israel-Palestine conflict.

Hamas has undoubtedly violated IHL as well, and has been doing so for years. This truth has not been lost on critics of the Goldstone Report:

The Goldstone Report goes so far as to assert that “In the framing of Israeli military objectives with regard to the Gaza operations, the concept of Hamas’s ‘supporting infrastructure’ is particularly worrying as it appears to transform civilians and civilian objects into legitimate targets.” That is a perverse inversion: The unlawful transformation of civilians and civilian objects into supporting infrastructure for violent jihad against Israel is, as the ITIC study shows at great length and with massive supporting evidence, a documentable and essential feature of Hamas’s strategy.117

The conflict between these two parties has revealed each side’s willingness to terrorize the civilian population of the other and violate the laws of war. Critics of the Mission stress that the Goldstone Report failed to fairly recognize Hamas’ culpability in instigating the conflict and claim that the fact-finding was biased. Supporters point to Israel’s lack of cooperation and the credentials of Judge Goldstone and the other members of the Mission that warrant faith in their impartiality. Every opinion is politically charged and biased in its own right by the allegiances and agendas that have polarized support for either Israel or Palestine in the first place.

117 Berkowitz, *supra* note 90 (ITIC refers to Israel’s Intelligence and Terrorism Information Center).
Since the creation of the State of Israel, lasting peace within has proven fleeting. The Gaza War is merely another chapter in a book filled with atrocities and conflict. As long as we, as individuals and as a collective race, fail to recognize our common humanity in the face of political allegiances, religious beliefs, and territoriality, such travesties will undoubtedly continue. As such, all that the international community can do is try to bring the truth to light and encourage peaceful conflict resolution. The Goldstone Commission has succeeded in doing this on some fronts; on others it has failed. However, what is of highest import is that the U.N. and the international community as a whole is taking increasingly frequent action in effectuating accountability for such violations of IHL and human rights. In this light, the Goldstone Report reflects a growing international awareness and collective refusal to remain complacent when international law is being transgressed. Consequently, the Mission, in its very creation and implementation, must be viewed as a success, even if its execution warrants criticism.