

Comments on B'Tselem's Civilian Casualty Estimates in Operation Cast Lead

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“Asymmetric warfare now includes asymmetric lawfare.” From the text

.... Israel has very little choice other than to carry on with its military operations until it reaches the conclusion it needs which is to stop Hamas from firing rockets at its people in its territory....I don't think there has ever been a time in the history of warfare when any army has made more efforts to reduce civilian casualties and deaths of innocent people than the IDF is doing today in Gaza.... Hamas, the enemy they have been fighting, has been trained extensively by Iran and by Hezbollah, to fight among the people, to use the civilian population in Gaza as a human shield....

The whole nature of war,is chaos. War is full of mistakes. There's friction all over the place and if you just take for example the way we operate in Afghanistan and in Iraq. it's a real tragedy but it's just what happens when you go to war.”

Source: [British military expert General Richard Kemp comments on the Gaza operation in BBC interview](#)

http://zionism-israel.com/issues/Israel_human_rights_kemp_gaza.htm

Executive Summary:

Background and Objective: On September 9 2009, B'Tselem published an [“Investigation of fatalities in Operation Cast Lead”](#), referring to Israel’s operation in Gaza (Dec 27 2008 to Jan 18 2009). Based on this analysis, the report criticized what the authors consider “disproportionate use of force”, and called for investigation of alleged breaches of international law.

Methods: In this study, we have examined the B'Tselem report on the standpoint of validity of content and context. The study was based on primary data on identity and age and status (combatant or other) of those reported dead from Palestinian, NGO, websites, blogs, military wings of terror groups and Palestinian police and cross checked their findings from the Israel Defense Forces (IDF), the Israeli Foreign Ministry. Following standard practice with respect to request from NGOs, the IDF refused to provide B'Tselem with any primary data, but did publish a composite aggregate list. (<http://dover.idf.il/IDF/English/News/today/09/03/2602.htm>)

We also note that B'Tselem was guided by a restrictive definition of combatants, ([http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-872-p991/\\$File/irrc-872-reports-documents.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/review-872-p991/$File/irrc-872-reports-documents.pdf)) excluding persons who accompany or support an organized armed group, but whose function does not involve direct participation in hostilities, such as recruiters, financiers and propagandists.

Results: B'Tselem reported 1387 killed. Of these, 330 were classified as combatants and 773 were not. In addition, 248 police were killed in attacks on police stations. The IDF states that 1166 were killed, of whom 709 were classified as combatants and 295 were not. The B'Tselem data show a high male-to-female ratio -- greater than 4.0 ---among teens and adults classified as non-combatants. In age 17-18, an age group often involved in hostilities, there is an abrupt increase in M/F ratio to 6.5. These high m/f ratios suggest that many could have been involved in combatant situations, either as shields, fighters, circumstantial helpers, sporadic helpers, or bystanders who were drawn into the goings on, as well as recruiters, financiers and propagandists. The deaths of 119 children reported as under age 11 bespeaks to the conditions of asymmetric warfare: mixing of populations, shielding--either intended or inadvertent, and exposure to the massive firepower used by the IDF.

Discussion: B'Tselem's classifications of combatant-non-combatant status for deaths among Gazans are flawed by restrictive definitions of combatants. Furthermore, B'Tselem equates absence of evidence on combatant status with evidence of absence. The high m/f ratios, especially among males of fighting age, including those in their mid to late teens, suggests that the IDF classifications are combatant and non-combatant status are probably far more accurate than those of B'Tselem. Without access to the IDF data and the B'Tselem data on age-sex distributions of combatants, it is not possible definitively to verify this assessment. B'Tselem's comments are very clear and strong on the fact that Palestinian missile attacks on Israeli civilian communities with the intention to kill are grave breaches of International law, as is the fact that they are fired from sites in which civilians live, but information is not available on whether this organization has ever formally called for investigating these grave breaches. Regrettably, B'Tselem waited 8 years--until Israel had to go to war to stop these breaches.

Errors of Omission: B'Tselem, like other Human rights groups, has been silent on Hamas' genocidal incitement and hate language in the media, TV and texts—and, worst of all, the obscene violation of Gilad Shalit's human rights as a prisoner of war. All are crimes against humanity. The fact that these violations, the certainty of which is unquestioned, preceded Cast Lead is no excuse for not condemning them and calling for international prosecution.

Conclusion: B'Tselem's report is flawed by major errors of commission and omission and possibly major misclassification biases. *Asymmetric warfare now includes asymmetric lawfare.*

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Introduction and Objective

B'Tselem has reported data on Israel's operation in Gaza (Dec 27 2008 to Jan 18 2009, suggesting a greater than 2:1 ratio of deaths among non-combatants to combatants, and has drawn attention to the large number of minors and women killed. At the same time, the report devoted considerable attention to Hamas' rocketing of Israeli towns and cities with intention to inflict damage on civilians, its use of shielding, and the firing rockets from civilian centers. B'Tselem has called for investigation of 20 episodes involving the deaths of 90 Gazans for breach of law. We have examined the B'Tselem report on the standpoint of the validity of its content and its context.

Methodology: The study was based on primary data on identity and age and status (combatant or other) of those reported dead from Palestinian sources, NGO, websites, blogs, military wings of terror groups and Palestinian police and cross checked their findings from the IDF and the Israeli MFA. Followings standard practice with respect to request from NGOs, but did publish a composite aggregate list. B'Tselem's classifications were guided by a restrictive definition of combatants in excluding persons who accompany or support an organized armed group, but whose function does not involve direct participation in hostilities, such as recruiters, financiers and propagandists. Persons "who fulfill a continuous combat function" in hostilities and persons who do not fulfil a continuous combat function but take part in the hostilities (e.g. on way to firing rockets and back) lose protective status accorded civilian. But those who continuously accompany, or support an organized armed group but do not directly participate in hostilities are not legitimate objects of attacks. (See B'Tzelem Report and its Citation of Intenational Committee of the Red Cross)

Results: Overall classifications

B'Tselem reports that 1387 were killed. Of these, 330 were ascertained as combatants and 773 were not. The IDF states that 1166 were killed of whom 709 were classified as combatants and 295 were not. In addition, there were 248 police killed in police

stations. B'Tselem does not categorize this latter group as combatants, but acknowledges IDF information that some were known terrorists. (see Jonathan D. Halevi, ["Palestinian "Policemen" Killed in Gaza Operation Were Trained Terrorists"](http://www.jcpa.org/JCPA/Templates/ShowPage.asp?DRIT=1&DBID=1&LNGID=1&TMID=111&FID=442&PID=0&IID=3081&TTL=Palestinian%20Policemen%20Killed%20in%20Gaza%20Operation%20Were%20Trained%20Terrorists), ([http://www.jcpa.org/JCPA/Templates/ShowPage.asp?DRIT=1&DBID=1&LNGID=1&TMID=111&FID=442&PID=0&IID=3081&TTL=Palestinian "Policemen" Killed in Gaza Operation Were Trained Terrorists](http://www.jcpa.org/JCPA/Templates/ShowPage.asp?DRIT=1&DBID=1&LNGID=1&TMID=111&FID=442&PID=0&IID=3081&TTL=Palestinian%20Policemen%20Killed%20in%20Gaza%20Operation%20Were%20Trained%20Terrorists)), Institute for Contemporary Affairs, Jerusalem, Vol. 9, No. 8; 13 September 2009). We suggest that the burden of proof is on those believing that the police force is restricted to purely civilian non-combatant functions. A name-based investigation carried out by the ICT indicates that 88.4% belong to security-based apparatus of Hamas—i.e. terror. One was involved in an attack on American convoy in 2003. (See http://www.ict.org.il/Portals/0/Articles/ICT_Cast_Lead_Casualties-A_Closer_Look.pdf)

Those reported as non-combatants: Age-sex Subgroups

B'Tselem reports 252 killed who were under age 16. In addition, there were 111 women and girls above age 16 who were killed. For most, there were birth certificates. These figures are much greater than those reported by the IDF for these age-sex categories. The IDF reports that 89 killed were under age 16, and 49 women and girls (presumably above 16). The IDF reports 162 males aged 16-50 whose combatant status is unclear. In other words, B'Tselem reports 163 more deaths among youths under 16, and 62 more women and girls, in comparison to the IDF data.

Some problems in the B'Tselem report

'Data on minors who did not take part in hostilities by age and gender'. This title is misleading. Absence of evidence is not necessarily evidence of absence. It would have been better to have written: *Data on minors reported by Palestinian groups as not taking part in hostilities*. The B'Tselem report also presents a misleading table on cumulative totals for boys and girls which, to the average reader, is confusing and misleading. We corrected this table to give the totals and M/F ratios for age groups < 6, 6-11, 11-17, and 17-18. The corrected raw figures are:

	Total	Male	Female	M/F ratio
<6	60	33	27	1.2
6-11	59	35	24	1.5
Subtotal	119	68	51	1.3
11-17	171	127	44	2.9
17-18	30	26	4	6.5
Subtotal	201	153	48	3.2

These figures show a large increase in the number of males and the m/f ratio with age. The m/f ratio increases some three-fold for youths over the age of 11 compared to younger ages. Among those 17-18, there is an abrupt increase in M/F ratio to 6.5—a highly striking finding. These increasing m/f ratios strongly indicate the possibilities of youths involved, in one form or another, in hostilities.

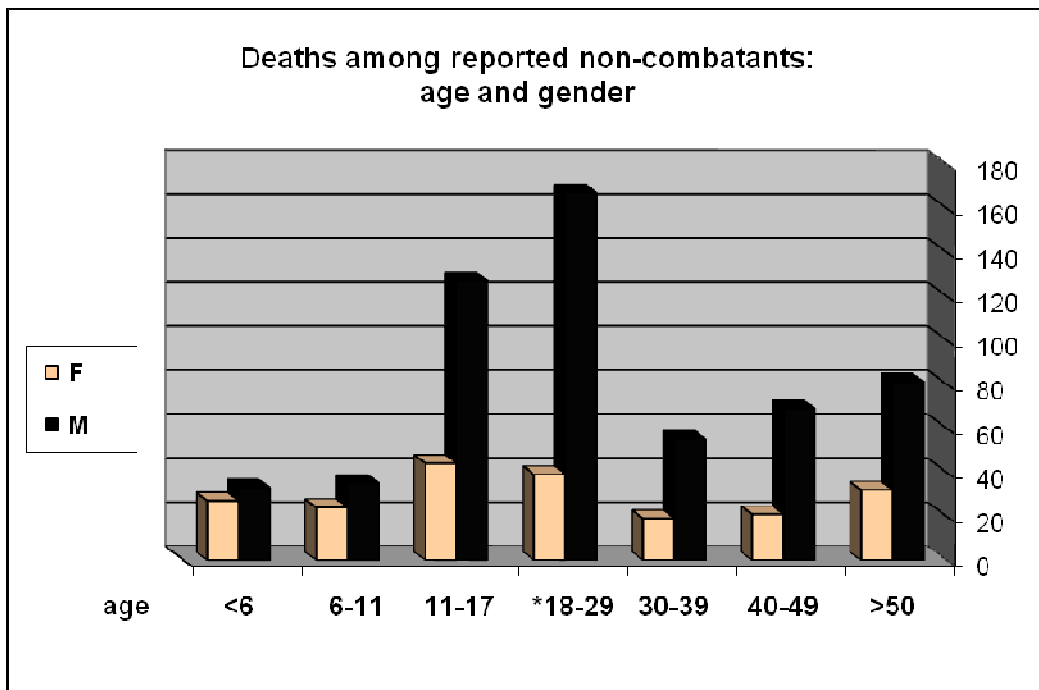
To offset the dangers to non-combatants from its use of massive firepower, the IDF gave advance warnings to civilian populations of areas it intended to strike. Even so, the tragic deaths of 119 children reported as under age 11 bespeak to the conditions of asymmetric warfare (e.g. mixing of populations, shielding--either intended or inadvertent, and exposure to the massive firepower used by the IDF), and their consequences, and the plain chaos of warfare. *Were the IDF to have directed its firing at the population without distinction, we would not expect to see increasing M/F gradients with age, a classic indicator of the involvement of teenagers in fighting.* The findings suggest that a very large proportion of the 153 males, aged 11 to 18, could have been involved in, drawn into or exposed to combatant situations, either as shields, fighters, circumstantial helpers, sporadic helpers, or accidental bystanders. It is absurd to expect an attacking force to distinguish between individual members of these groups, nor should it be expected to do so. Indeed, the fact that 4 (40%) of 10 IDF soldiers were killed by friendly fire speaks to the difficulties of distinguishing not just between combatants and non-combatants, but between friend and foe.

Given the high prevalence of child labor in Palestinian society, especially among boys, the data suggest its penetration into the everyday life of asymmetric warfare. Hamas, like other terrorist organizations world wide, has no inhibitions about using minors as suicide terrorists. Indeed, much of its incitement is directed towards children with the purpose of recruiting them for such missions. At the same time, the data suggest that many killed non-combatants, including children, were victims of the huge amount of firepower which the IDF directed at terror combatants, their use as human shields, or not heeding or hearing warnings to evacuate, or the plain fog of war.

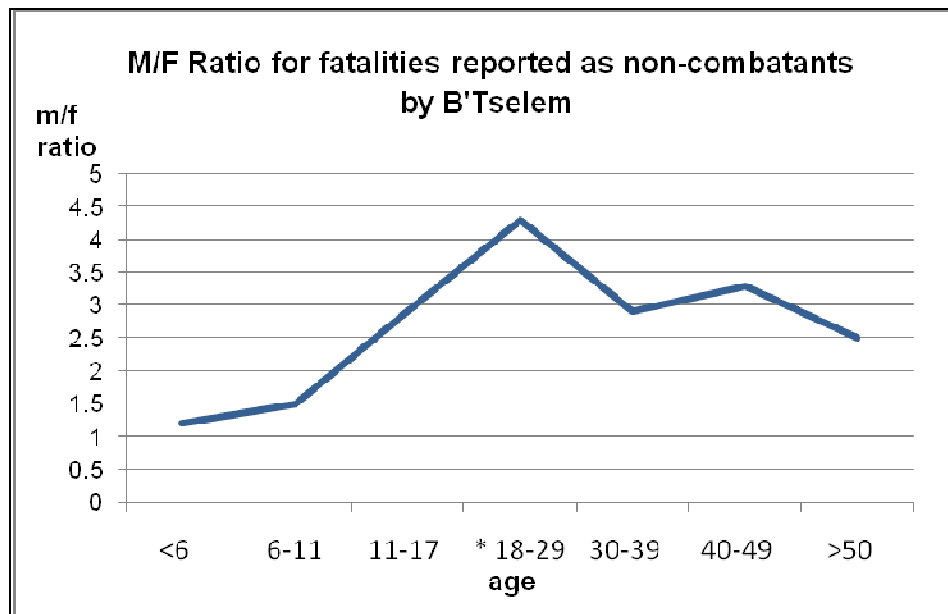
B'Tselem: Data on 'adults killed who did not take part in hostilities'

The title should have read: Data on Adults killed *reported by Palestinians* **who did not take part in hostilities**. As worded, the title is misleading. A clearer more comprehensive picture emerges when we combine the data for all ages and all groups reported as non-combatants. We present these data graphically, and surmise that all combatants were male.

The graphs show higher male numbers and M/F ratios for those reported as non-combatants. These indicate a greater risk for males being in the line of fire. —which is consistent with exposures and tasks associated with combatant status. The fact that the M/F ratio peaks for those reported as non-combatants in the 18-29 age group is consistent with the point that the peak age-sex group for deaths is the peak age group for being a combatant. We do not know if there was involvement of some girls or women as well. Conversely, the data also suggest that most —but not all—deaths from IDF fire--- did not occur in environments where families would hide and take refuge. No data were reported on exact site of death in the B'Tselem report.



* 17-18 yr-old group are incorporated into 18-29 age group



* 17-18 yr-old data are incorporated into 18-29 age group

B'Tselem: Age-sex Data on 330 adults killed who are reported as taking part in hostilities.

This information is not provided by B'Tselem, and it is a major omission, since comparing age-sex distributions in this group with those reported as non-combatants would help clarify the statements concerning the age-sex mix of combatants, non-combatants, and those in mixed categories. We surmise that the frequency distribution for age for combatants will in all likelihood include no youths under the age of 15 and fewer adults over the age of 40. The tolls for males age 18-29 and to a lesser extent, 30-39, sharply increase if we were to include the 248 dead from the police forces—whom, most of whom, as noted, have been proven to have had dual roles.

Comparison with IDF data: IDF states that 1166 were killed of whom 709 were ascertained as combatants and 295 were not. If B'Tselem's list of 248 policemen were to be classified as combatants, then 578 could be considered to be combatants. The decision to exclude this group from the category of combatants seems arbitrary. A more professional assessment would have presented 3 estimates of combatants: one with the police, listed as combatants, one without and one intermediate estimate. In short, overall, this report is not clear on its criteria for combatant-non-combatant status. Also use of terms such as "minors", especially for those 16-18, may be misleading.

At the same time, these data groupings are too general to capture individual episodes in which Israeli forces may have committed violations of the rules of war and, as a result, non-combatants were killed. The IDF has a responsibility to investigate these episodes. But the overall picture suggested by the data is that these episodes, if they occurred, were certainly not part of a pattern of purposeful attempt to kill non-combatants.

Comparisons with other cases of asymmetric urban warfare: Ben-Dror Yemini, in Maariv, (see above), pointed out that in 1999, NATO forces conducted a war, mainly by aerial bombing, against Yugoslavia (Operation Allied Force). 462 soldiers, 114 policemen and 489-512 civilians were killed.(op cit:

http://www.democraticunderground.com/discuss/duboard.php?az=show_mesg&forum=124&topic_id=286298&mesg_id=286623) The somewhat lower ratio of combatants to others compared to what we have seen in Gaza derives from the absence of the conditions of asymmetric warfare. Drones targeting terror bases in Pakistan produced

a civilian to combatant death ratio estimated to be anywhere between 10 to 1 and 15. (<http://www.politicalforum.com/political-blogs/86451-brookings-report-drones-confirms-high-civilian-death-rate-misses-point.html>).

Palestinian Attacks on Israeli Civilians

B'Tselem's comments are very clear and strong on the fact that Palestinian missile attacks on Israeli civilian communities with the intention to kill are grave breaches of international law, as is the fact that they are fired from sites in which civilians live, but it is not clear if this organization has ever called for investigating these grave breaches. It is regrettable that B'Tselem waited 8 years--until Israel had to go to war to stop these breaches. B'Tselem has been loudly silent on Hamas' incitement to genocide, and hate language in the media, TV and school texts and youth camps and—and, worst of all-- the obscene violation of Gilad Shalit's human rights as a prisoner of war. The fact that these certain crimes against humanity go back three years and preceded Cast Lead is no excuse for not formally condemning them. Gilad Shalit's conditions have been ten to hundred times worse than those of the prisoners at Guantanamo

Whatever the true number of children deaths—each of which is a horrible tragedy—have been, the ultimate responsibility for their occurrence rests with those who were willing to put their society at risk—and their enablers--- by using civilian settings as bases for launching rocket and missile terror attacks on Israeli civilians.

B'Tselem's voice has been hesitant in condemning the 8000 rocket attacks going back many years--- and its use of dehumanizing hate language and incitement and calling for the elimination of Israel—direct expressions of intent. Attention is paid to these *certain* major state-based terror assaults on the basic rights to life and security—the short hand term for the sum of individual rights to life and security-- over a long period of time, but only as part of an investigation into *suspected* violations by soldiers involved in much later military attacks to defend and deter.

If Hamas has been violating the UN Convention on the Prevention and Punishment of Genocide, we ask: why has it not been prosecuted, and why Human rights groups have not made this demand. These attacks are not only “war crimes”, but “crimes against humanity”. They are attacks on the most basic human right—the right to life.

Conclusions: B'Tselem's report contains errors of omission, commission and classification bias which result in overestimates of the ratio of non-combatants to combatants. Hamas' genocidal attacks on Israeli populations were a result of choices made by their perpetrators and the silence and inaction of outside bystanders, including human rights groups concerning its mistreatment of Gilad Shalit, its missile and rocket attacks and its incitement to genocide, all of which are crimes against humanity. Israel's ferocious response was the consequence, with all the tragic consequences for the victims in both Gaza and Israel. The death tolls are the bitter harvest of reaped by a society which has freely chosen to be ruled by a terror movement – Hamas – explicitly committed to the destruction of a neighboring country—Israel.

Had the international community, including human rights groups, not been asleep on their watch, there may not have been a need for the chaos of war produced by Cast Lead. *B'Tselem's report is an example of how asymmetric warfare now includes asymmetric lawfare.*

References:

See also: <http://middle-east-analysis.blogspot.com/2009/07/how-ma...>

How many civilians were killed in Gaza? Ben-Dror Yemini
Maariv (original in Hebrew) 20.07.09

http://www.democraticunderground.com/discuss/duboard.php?az=show_mesg&forum=124&topic_id=286298&mesg_id=286623