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# EXPERTS OR IDEOLOGUES?

A Systematic Analysis of  
Human Rights Watch's  
Focus on Israel

**NGO MONITOR**

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NGO Monitor's mission is to provide information and analysis, promote accountability, and support discussion on the reports and activities of NGOs claiming to advance human rights and humanitarian agendas in the framework of the Arab-Israeli conflict.

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# **Experts or Ideologues?**

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Human Rights Watch's Focus on Israel

## Executive Summary

**S**ince its founding as Helsinki Watch in 1978, Human Rights Watch (HRW) has greatly expanded its scope. While continuing its core mission in promoting human rights in closed regimes such as China, HRW devotes a large portion of its resources to issues related to international law in armed conflicts, asymmetric warfare, and responses to terrorism. In this process, HRW relies on its “halo effect” and the perception of expertise, morality, and objectivity as a non-governmental organization (NGO) to become an influential political and ideological actor.

Its impact is particularly pronounced in the Arab-Israeli conflict: HRW exerts major influence on the UN and on the policies of governments through condemnations of Israel for alleged violations and demands for “independent investigations.” These allegations then become amplified through the media.

In this detailed, empirical research study, we present and analyze HRW’s activities concerning the Arab-Israeli conflict in a systematic manner, from 2001 through the middle of 2009. Our investigation shows a consistent pattern of ideological bias, lack of professional qualifications, and unsupported claims based on faulty evidence and analysis on the part of HRW. These are then replicated by governments and international organizations, including the United Nations, that adopt these allegations.

The report consists of three main sections:

- 1) An examination of the key HRW staff members with respect to their professional backgrounds, research expertise, and ideological bias concerning Israel.
- 2) Five detailed case studies of HRW campaigns and publications between 2001 and 2009 which reflect consistent bias, false and contradictory statements, and the use of irrelevant evidence and inappropriate methodologies, including sources (“eyewitness testimony,” NGO and journalist reports, “weapons assessments”) that are neither credible nor verifiable.

- 3) A broader quantitative analysis of HRW publications from 2002 to 2009, showing greatly disproportionate emphasis on Israel in the Middle East and North Africa (MENA) Division, double standards in the use of terminology such as “war crimes,” “collective punishment,” etc., and in distorted uses of international legal terminology.

**Section 1** reviews HRW’s history, structure, and funding, followed by a detailed analysis of the professional qualifications of key staff members, as well as an examination of quotations from publications and speeches which reflect a strong ideological bias.

This analysis begins with Kenneth Roth, who has been executive director since 1993. Roth was a prosecutor before joining HRW, and is responsible for greatly expanding the organization’s agenda and claimed expertise to include international humanitarian law, as well as the systematic effort to criminalize warfare. Roth also shifted Helsinki Watch’s original mission from one of pressuring closed societies to remove their limitations on freedom, to HRW’s current emphasis on criticizing the policies of open and democratic systems, specifically regarding responses to terror.

In expanding HRW’s Middle East and North Africa Division, Joe Stork was hired in 1996, and Sarah Leah Whitson joined in 2004 and was appointed director. Both had been anti-Israel activists before joining HRW. Stork was a founder and editor of the radical and post-colonial MERIP (Middle East Reports), and Whitson was on the steering committee of the American Arab Anti-Discrimination Committee (ADC), an organization heavily involved in pro-Palestinian and anti-Israel activity.

Under Whitson and Stork, HRW has become disproportionately focused on criticism of Israel, using allegations of human rights and international law violations. Whitson was active in supporting the “Caterpillar” boycott campaign, and Stork promoted the anti-Israel boycott movement in conferences and other venues. They also expanded the MENA staff, adding other radical activists such as Lucy Mair, who had written anti-Israel pieces for the *Electronic Intifada*; Nadia Barhoum,

who organized pro-Palestinian activities at the University of California, Berkeley; and Darryl Li, who also spent time working with MERIP and with Gaza-based Palestinian Center for Human Rights (PCHR) – a prominent anti-Israel NGO.

Other ideologically biased activists among HRW’s leadership include Reed Brody, who led the delegation to the NGO Forum of the 2001 Durban Conference, where he joined in preventing pro-Israel participants from speaking. He also played a major role in the effort to bring Israeli Prime Minister Sharon to trial on war crimes charges in Belgium.

**Section 2** presents five case studies in detail, demonstrating the impact of HRW reports and campaigns involving Israel, Palestinians (including Hamas during the recent Gaza War), and Hezbollah (in the 2006 Lebanon War) between 2006 and 2009. These case studies illustrate the absence of the professional methodologies and expertise required for fact-finding related to violent conflict.

The nature and circumstances of the four armed conflict cases – Gaza Beach (2006), the numerous reports during and after the 2006 Lebanon War, the “Reuters Cameraman Incident” (2008), and multiple publications related to the Gaza War (December 2008-January 2009) – vary significantly. But they share a reliance on questionable sources and interested parties (“eyewitnesses” in areas dominated by Hamas and Hezbollah), an absence of an appropriate methodology, deviations from universal human rights norms, and sweeping allegations of Israeli “war crimes” or “indiscriminate attack” based on inadequate and/or insufficient evidence, all tied to HRW’s ideological agenda.

These analyses reflect HRW’s consistent pattern of:

- Distortion and inconsistent application of international legal standards and rhetoric, especially terms like “collective punishment” and “human shields.”
- Reliance on problematic eyewitnesses and local NGOs with limited credibility, acceptance of unverifiable “forensic” evidence provided by

Palestinian officials, and rejection of Israeli evidence as inherently biased.

- Omission of evidence that does not support the ideological conclusions, including videos of Hamas and Hezbollah using civilians as human shields to protect military assets and activities.
- Artificial narrowing of legal terms, which frame Israeli guilt from the beginning, and erasure of the wider context of Palestinian attacks and legitimate self-defense (*Razing Rafah, Gaza Beach, Lebanon, and Gaza War reports*).
- Inclusion of irrelevant technical, legal, and medical details to create the façade of expertise.
- Repeated campaigns for ostensibly independent investigations focused solely on allegations against Israel.

**Section 3** applies quantitative measures to analyze HRW’s relationship with Israel, in comparison to the resources, agendas, and emphases regarding other countries and non-state actors (Hezbollah, Hamas) in the Middle East Division. The weighted methodology illustrates a disproportionate and obsessive focus on Israeli military actions, with concomitantly less attention given to the absence of fundamental freedoms and totalitarian rule that are endemic to other countries in the region. To expand the analysis, NGO Monitor studies have also examined the use of language in relation to various Middle Eastern states. Here too, Israel is consistently singled out for condemnation, using particularly harsh language, while Palestinian and Arab human rights violations are minimized.

**Recommendations:** On the basis of this analysis, and the clear findings of bias, double standards, and inappropriate methodology in HRW’s activities related to Israel, we suggest a number of critical changes to be implemented by the board of directors.

- a) Formation of a governing board independent of the executive director, with direct involvement in top employment and related personnel decisions.

b) Review of HRW's mission and priorities, to decide which activities and areas of concentration are compatible with HRW's professional capabilities and resources. HRW must also determine whether its mission ought to be devoted to the grave human rights abuses that are endemic to closed, undemocratic societies, or whether it should continue to devote scarce donor resources toward investigating democracies.

c) Professional guidelines are needed at every operational level and division to ensure that decisions are made strictly on a professional, rather than ideological, basis. Accuracy before advocacy.

d) An independent ombudsman should be employed to monitor the implementation of these guidelines, including the removal of ideological and other bias. This position should be filled without the input of the executive director, and funded with five percent of HRW's overall budget. The ombudsman should have the authority to prevent publication of any document or the implementation of any program.

e) Transparency in HRW's process of agenda setting is essential to restoring the universality and moral credibility of human rights.

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# H

## Introduction

### Origins

Human Rights Watch (HRW) was founded in 1978 in New York by Random House publisher Robert Bernstein, lawyer Orville Schell,<sup>1</sup> and American Civil Liberties Union national director, Aryeh Neier. Initially supported by the Ford Foundation, and called Helsinki Watch, the organization monitored compliance with the 1975 Helsinki Accords by the signatory countries: the U.S., Soviet Union, Canada, and Europe. These accords, the culmination of the 1973 Conference on Security and Cooperation in Europe (CSCE), aimed to reduce tension by consolidating the status quo in Europe, and included commitments to respect human rights and basic freedoms, and to abide by international law.

Americas Watch followed in 1981, chaired by Orville Schell, with a focus on Central American human rights issues and conflicts, including U.S. involvement. Under Bernstein and Neier's leadership, and with funding from the McArthur Foundation, Asia Watch was formed in 1985, Africa Watch in 1988, and Middle East Watch in 1989. These "Watch Committees" formally coalesced in 1988 to form Human Rights Watch, a response from those "uncomfortable with the slowness and conservatism of AI [Amnesty International] in responding to changing patterns of [human rights] violations" (Welch 2001). Yet as Robert Charles Blitt (2004) argues, despite its founders' intentions, HRW's massive expansion in the 1980s resulted in reduced oversight and review, leaving it less reliable than Amnesty.

The end of the Cold War had two primary effects on HRW: first, the diminished world attention given to East-West tension brought increased focus on other regions; second, the reduced threat of nuclear annihilation created opportunities for more emphasis on the human rights principles that had been established following the Second World War through the Universal Declaration of Human Rights. On this basis, the human rights community, including HRW, became deeply involved in the anti-Apartheid movement in South Africa. After the success of this effort, the movement expanded activities in other parts of the world, particularly in the context of protracted ethno-national conflicts, including the Middle East.

Throughout this period of expanding influence and resources, HRW remained a U.S.-centered NGO. Robert Bernstein was the founding chair

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<sup>1</sup> <http://www.law.yale.edu/intellectuallife/SchellCenter.htm> Schell died in 1987.

of a 33-member (now 35) board of directors, which meets in New York and consists largely of Americans.<sup>2</sup> Kenneth Roth, who had been deputy director since 1987, replaced Aryeh Neier as executive director in 1993. Neier left to head George Soros' Open Society Institute, a major HRW funder. Unlike Amnesty International, which stresses its wide membership base and multiple national branches, HRW is highly centralized – with offices in Washington and New York, and fundraising branches in Chicago, London, Los Angeles, San Francisco, and Toronto.<sup>3</sup>

### Funding

In 2008, HRW assets totaled over \$122m, and its annual spending exceeded \$42m, of which \$31.8m went to “program services,” \$1.9m to “management and general,” and \$10.6m – one quarter of its total budget – to fundraising.<sup>4</sup> Much of this income has come from established philanthropies, including the Ford Foundation, Carnegie Corporation of New York, the MacArthur Foundation, and George Soros' Open Society Institute (Welch 2001). HRW publishes the names and amounts provided by some of its donors, but others remain hidden.

Although HRW claims to refuse funding from government organizations, Oxfam NOVIB, funded largely by the Dutch government, provided approximately \$1 million in 2008 (HRW 990 Form 2009 and HRW Annual Report 2008, p. 50).<sup>5</sup> Since some HRW donors and their contributions are not listed, it is possible that other direct or indirect government funders are among them. A highly controversial HRW dinner held in May 2009 in Riyadh, Saudi Arabia that included members of the government Shura Council, has been described as a fundraising event (Salti 2009).

Other donors acknowledged in HRW financial reports include Hassan Elmasry (a member of the board of directors involved in HRW's May 2009 Saudi Arabian

fundraiser<sup>6</sup>), Rasha Mansouri, the Lisbet Rausing Charitable Fund, the Sigrid Rausing Trust, the Moriah Fund, the Oak Foundation, the Streisand Foundation, the Silverleaf Foundation, the Banky-LaRocque Foundation, the Schooner Foundation, the Jacob and Hilda Blaustein Foundation, the Chicago Foundation for Women, and the Gruber Family Foundation.

### Human Rights Watch – an NGO Superpower

With its global reach, plentiful funds, wide access to media, and the contacts to influence policy makers in the United States, HRW has become an NGO superpower. As NGOs marketed themselves as human rights researchers, fact-finders, and investigators, the growth in post-Cold War NGO power has prompted questions about the sources and scope of NGO influence, and the problem of accountability.

Human rights NGOs exert influence primarily through political advocacy – “mobiliz[ing] shame” (Blitt 2004) – to pressure governments and demand policy changes. NGOs often set global political agendas on complex environmental issues, international law, and questions of war and peace. Powerful NGOs, including HRW, were among the main movers behind the creation of the International Criminal Court and the Land Mine Convention, established in the Ottawa Treaty of 1997 (Davenport 2005).

NGOs' perceived moral authority, known as the “halo effect,” amplifies their power significantly. Sikkink (2002) identifies four prerequisites for making this power legitimate: impartiality, reliability, representativeness (i.e., people subscribing to the beliefs and world view of the NGO), and transparency. However, NGO authority and power is most often assured by the *appearance* of these factors rather than any objective moral standing, a situation gravely compounded by the lack of adequate oversight. This monograph argues that while HRW

<sup>2</sup> As of August 2009, Mr. Bernstein remains Founding Chair Emeritus, but is known to have differences with the organization's policies and actions in the Middle East.

<sup>3</sup> See HRW “Community” website section, <http://www.hrw.org/en/community/network>.

<sup>4</sup> “Financial Statements” Human Rights Inc. Year ended June 30, 2008. [http://www.hrw.org/sites/default/files/related\\_material/FinancialStatements2008.pdf](http://www.hrw.org/sites/default/files/related_material/FinancialStatements2008.pdf).

<sup>5</sup> The eight donors listed on HRW's 2009 990 form are Sandler Family Supporting Foundation; Sigrid Rausing Trust; Open Society Institute; Vanguard Charitable Endowment Program; Arcadia; Donald Pels; Oxfam Novib; John D. and Catherine T. MacArthur Foundation. HRW 990 Form 2009 [http://www.hrw.org/sites/default/files/related\\_material/Form990.pdf](http://www.hrw.org/sites/default/files/related_material/Form990.pdf).

<sup>6</sup> Ibid.

appears to fulfill Sikkink's criteria of "transparency" and "representativeness," the "impartiality" and "reliability" are largely absent, particularly in relation to the Arab-Israeli conflict.

Blitt (2004) illuminates the NGO network's substantial role and influence in the international system, noting that the "human rights NGO community at large boasts an imperfect track record regarding objectivity and accurate reporting, particularly when operating in conflict situations." He highlights the "inconsistent fact finding standards" in NGO investigations, which are inconsistent with their "quasi-adjudicative aura," noting that NGO fact-finding missions remain ad hoc affairs that tend to operate fast and loose as far as procedural standards are concerned." The importance of these dimensions is addressed in detail by the authors of the *Guidelines on International Human Rights Fact-Finding Visits and Reports*, known as the "Lund-London Guidelines" (2009).

Blitt (2004) also examines the role that internal dynamics and pressures play in NGO reporting. In order to remain influential and attract donors, NGOs must maintain a high public profile, which means the number and frequency of reports can be a more pressing concern than their professional quality and accuracy. As will be demonstrated below, all of these problems are clearly exhibited in HRW's efforts in the Middle East between 2000 and 2009.

### Political Agendas or Universal Human Rights?

Human rights discussions and advocacy since the 1960s and the Vietnam War have been closely linked to political agendas and ideological debates.<sup>7</sup> Like much of the NGO network in this period, the human rights movement was anti-establishment, suspicious of state power, and influenced by post-colonial ideology (Steinberg 2009).

In some cases, this agenda can indeed have positive effects on some human rights situations. However, such an *a priori* ideological commitment, broadly applied, compromises the credibility and neutrality of an organization. Blitt (2004) highlights the danger of politicization, noting that in this environment, NGOs risk "being manipulated as

political pawns" or "co-opting the language and moral value of human rights as a veil for partisan objectives." A 1986 report on human rights missions written by Hans Thoolen and Berth Verstappen, and published by the Netherlands Institute of Human Rights, found that "in quite a few instances the sending of a mission is determined not so much by the objectively assessed need of the human rights situation elsewhere as by home-generated considerations." Similar critiques based on anecdotal evidence have been published on HRW's reports on Venezuela (Emersberger 2008) and Sri Lanka (AFP 2009). The Lund-London guidelines for NGO fact finding missions make the same points.

HRW's approach to terrorism similarly reflects strong ideological and political agendas. Following the attacks on the World Trade Center on September 11, 2001, HRW immediately issued a statement (HRW News Release, Sept. 12, 2001) rejecting President Bush's commitment to "make no distinction between the terrorists who committed these acts and those who harbored them." Soon after, HRW further stated that, "Like the office workers in the World Trade Center, the ordinary women and men of Afghanistan do not deserve to die" (HRW News Release, Oct. 20, 2001), thus effectively condemning U.S. counter-terror military operations before they had begun.

HRW's ideological and political agendas, particularly in combination with the resources and power they possess to gain media and diplomatic influence, are central issues for analysis. Kenneth Roth regularly appears on platforms with diplomats and government leaders in political contexts that include the United Nations, the Munich Security Conference,<sup>8</sup> and the World Economic Forum (Economic Forum 2008), making pronouncements on the major political conflicts and issues of the day. HRW press releases and campaigns are widely publicized in the media, which habitually quote HRW staff on international law and human rights.

This monograph presents evidence of HRW's systematic bias in their Middle East activities between 2004 and 2008. Using both qualitative and quantitative measures

<sup>7</sup> Anti-Vietnam protesters sought to highlight abuses by America's allies, in order to delegitimize U.S. involvement and pressure the government to withdraw. Soviet immigration laws provided yet another platform for anti-détente lobbyists.

<sup>8</sup> File: Kenneth Roth at 44th Munich Security Conference jpg. [http://commons.wikimedia.org/wiki/File:Kenneth\\_Roth\\_at\\_44th\\_Munich\\_Security\\_Conference.jpg](http://commons.wikimedia.org/wiki/File:Kenneth_Roth_at_44th_Munich_Security_Conference.jpg)

of HRW's own statements and published material, this detailed research shows that HRW's broader ideological agenda results in severe distortions in this region, and against Israel, in particular.

We carefully investigate three dimensions to illustrate this bias: 1) HRW's staff and the clear evidence of hiring practices that favor anti-Israel activists, particularly in the Middle East Division; 2) HRW actions and claims from five case studies, revealing consistent lack of professional methodology, inadequate evidence, and biased conclusions; and 3) HRW's agenda, uncovering the ways that HRW disseminates its anti-Israel ideology hidden beneath a façade of objective research. This study of the Middle East region is envisioned as a first step towards a broader analysis of HRW's worldwide activities and impact.

## Part One: Experts or Ideologues: HRW Staff and Board Members

# A

s will be demonstrated below, HRW activity concerning Israel exhibits a strong and consistent bias, reflecting a post-colonialist ideological paradigm, which *a priori* defines Palestinians as victims and paints Israel as a perennial aggressor (Divine and Salzman 2008; see also Steinberg 2009). This bias is

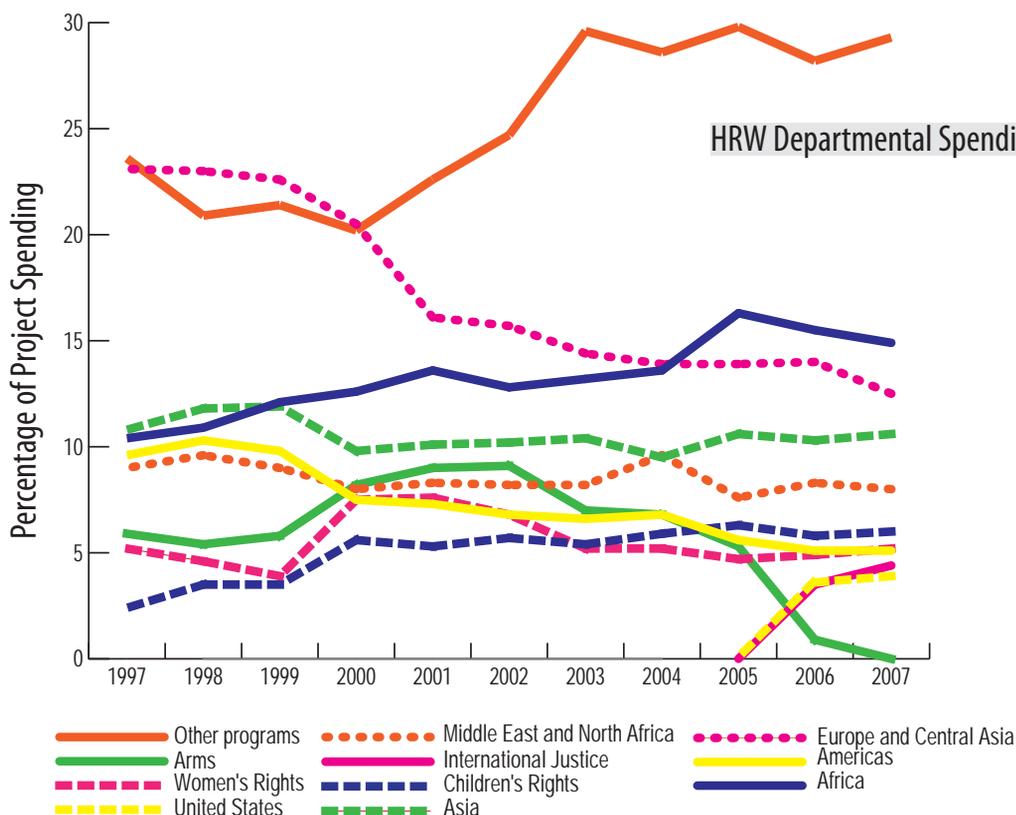
both a reflection and a cause of staff composition which includes a number of pro-Palestinian activists in key posts dealing with the Middle East, rather than human rights and international legal experts with a more universalistic approach.

Such blatant prejudice inherent in the structure of this NGO is entirely inconsistent with the “rigorous, objective investigations” that HRW claims to undertake and publish. It is also a *prima facie* violation of the Lund-London fact-finding guidelines (2009), which state that NGO officials “must comprise individuals who are and are

seen to be unbiased. The NGO should be confident that the delegation members have the competence, experience and expertise relevant to the matters pertaining to the terms of reference.” In this section we analyze the anti-Israel ideological backgrounds and activities of a number of prominent HRW officials.

### 1a. The Middle East and North Africa (MENA) Division in Context

Analysis of HRW’s spending and publications reveals that the Middle East Division receives a roughly constant allocation of resources compared to other divisions, but that there is disproportionate focus on Israel within the division itself. Also, other departments such as Emergencies contribute significantly to HRW reports on Israel. The graph below shows the percentage of project spending that went to various HRW departments between 1997-2007.<sup>9</sup>



<sup>9</sup> It should be noted that the “Europe and Central Asia” category includes the “Helsinki Watch” department, which originally launched Human Rights Watch. In 2000 Helsinki Watch was incorporated into the broader “Europe and Central Asia” department. The source for these figures is HRW 990 forms over the period 1997-2007.

The data show that spending on Asia, the Middle East, Children's Rights, and Women's Rights remained largely constant in those ten years. Spending on Arms ("to curtail arms transfers") peaked in 2002 but then fell sharply in 2006, and was no longer listed as a separate division in 2007. Spending on Africa rose marginally, while allocations to the Americas fell slightly. The focus on Europe and Central Asia (formerly Helsinki Watch) fell dramatically after 1997, reflecting the shift from a post-Cold War perspective to a more global focus. The International Justice division grew in significance from 2006, having previously been subsumed under Other Programs. This indicates HRW's support for international legal mechanisms to pursue redress for human rights violations.<sup>10</sup> The "United States" was established as a separate division in 2006, reflecting HRW's concerted campaign against U.S. policy in Iraq, Afghanistan, and elsewhere following the attacks of 9/11. Furthermore, the growth of the Other Programs division, which includes counterterrorism, LGBT rights, Refugees, and Business, reflects a growing recognition that many human rights are threatened by cross regional factors.

### 1b. Kenneth Roth, Executive Director of HRW

As executive director for more than 15 years, the development and approaches taken by Human Rights Watch are closely tied to Ken Roth's personal ideology and agenda. He joined HRW as deputy director in 1987, and has been executive director since 1993. Roth was formerly a federal prosecutor for the U.S. Attorney's Office in New York and is responsible for greatly expanding HRW's agenda and claimed expertise to include international humanitarian law, which HRW distorts and uses inconsistently in seeking to criminalize warfare.

Roth claims expertise in "issues of justice and accountability for atrocities committed in the quest for peace; military conduct in war under the requirements of international humanitarian law; counterterrorism policy, including resort to torture and arbitrary detention; the human rights policies of the United States, the European Union, and the United Nations; and the human rights responsibilities of multinational businesses."<sup>11</sup>

Under Roth's leadership, HRW's activities have shifted towards an emphasis on reports, allegations, and campaigns that criticize democracies, rather than addressing the systematic violations of basic freedoms and human rights in closed, totalitarian societies. This change was in part a response to the end of the Cold War. But it also reflects Roth's post-colonial ideological framework, as shown by the prominence HRW gives to questioning the responses of democratic societies to mass terror and asymmetric warfare, including the human rights policies of the United States and the European Union. This ideological filter has been expressed in publications and interviews, including cases in which Roth attempted to justify HRW's overemphasis on Israel on the grounds that it is "the most powerful actor in the conflict." Roth has also acknowledged the application of double standards, which he excuses as a "tendency to judge Israel as a Western democracy," and "while the international human rights standards are the same, the expectations of compliance with those standards are higher for Western democracies than some tin-pot dictators" (Krieger 2004). Roth's direct involvement in HRW campaigns that condemn Israeli responses to terror include media interviews, publication of letters and op-ed articles, and participation in press conferences.

Roth's personal agenda is also evident both in his rhetoric with respect to Israel and his recruitment of the staff detailed in this section. He often cites his father's experience fleeing Nazi Germany in 1938, and the imposition of martial law in Poland in 1981, as motivating factors for his involvement in human rights activism.<sup>12</sup> In defending his condemnations of Israel, Roth frequently refers to the Holocaust (Roth 2006), his family history, and Jewish themes in order to bolster the credibility of his claims. In one revealing response to a critique of HRW's reporting of the Lebanon War (Roth 2006), Roth states: "An eye for an eye – or, more accurately in this case, twenty eyes for an eye – may have been the morality of some more primitive moment. But it is not the morality of international humanitarian law..." *The New York Sun* (2006) decried this statement as a

<sup>10</sup> See "International Justice section" of HRW website, <http://www.hrw.org/en/category/topic/international-justice>

<sup>11</sup> <http://www.hrw.org/en/bios/kenneth-roth> (accessed August 18, 2009).

<sup>12</sup> See for example, Hoffman 2009; Krieger 2004; <http://bigthink.com/kennethroth/re-who-are-you-31> (video interview), November 4, 2004; <http://hrw.org/about/bios/kroth.htm>, (accessed October 3, 2006). This biography was replaced in 2009 with a text which does not refer to his father.

*slur on the Jewish religion itself that is breathtaking in its ignorance... To suggest that Judaism is a 'primitive' religion incompatible with contemporary morality is to engage in supersessionism, the de-legitimization of Judaism, the basis of much antisemitism.*

In this context, Roth and HRW have demonstrated little interest in addressing antisemitism,<sup>13</sup> and Roth turned down an invitation from former Israeli Minister Natan Sharansky to participate in the Global Forum on Antisemitism in 2004, writing:

*...we tend to focus on violence. We have sort of decided not to get involved around attitudes per se... For [antisemitism] to be a human rights violation one would need to see governments in Europe either embracing antisemitism, condoning antisemitic violence, not genuinely trying to stop the violence...*

This position ignores the promotion of antisemitism by Hamas and by the governments in Iran, Egypt, the Palestinian Authority, and the Gulf States, and ignores significant work done by other human rights organizations in this area.

Roth's attitude toward antisemitism reinforces the concern that under his leadership, HRW has been motivated primarily by goals other than universal human rights. His recruitment of many of the staff members described below, most with strong pro-Palestinian and anti-Zionist positions, indicates a disregard for the most minimum standards of impartiality and universality.

### **1c. Sarah Leah Whitson, Director of the Middle East and North Africa Division**

Prior to joining HRW, Whitson was a board member of the New York chapter of the Arab-American Anti-Discrimination Committee (ADC). She, together with the New York chapter and the national organization, were very active in pro-Palestinian, anti-Israel political

causes (ADC Times 2002).<sup>14</sup> These include participation in demonstrations, and a high-profile meeting with then UN Secretary-General Kofi Annan to promote Palestinian issues (ADC Press Release Apr. 29, 2002). Less than one month after the Park Hotel "Passover Massacre" in which Palestinian terrorists murdered 30 Israeli civilians and injured another 140, the President of the ADC at the time, Ziad Asali, asserted in an ADC Press Release (April 19, 2002) that,

*The President [Bush] has not acknowledged the human tragedy that has been inflicted on Jenin, Nablus and other Palestinian towns, and seems prepared to tolerate any level of brutality Israel cares to inflict on the Palestinian people.*

Whitson was also involved with other anti-Israel NGOs in the past: MADRE and the Center for Social and Economic Rights (CESR). MADRE's "Palestine" webpage employs rhetoric such as "apartheid," "cantons," and "matrix of control," and describes terrorism ("armed attacks") as a Palestinian "strategy" to achieve "self determination."<sup>15</sup> CESR accuses Israel of "brutality," "siege," and "depopulation" against Palestinians, and initiated a lobbying effort to pressure the U.S. government to change its policies on Israel (CESR also employed Lucy Mair – see below).<sup>16</sup> The hiring by HRW of a known pro-Palestinian activist to serve as the director of its Middle East division fatally compromises any possibility of neutral, objective attention to real and universal human rights issues in the region.

At HRW, Whitson continues to promote her anti-Israel political agenda, particularly through support of the Boycott, Divestment and Sanctions (BDS) movement. In 2004, immediately after HRW's tendentious *Razing Rafah* report, she joined the "Caterpillar" boycott campaign, writing that the firm's bulldozers "are being used to illegally destroy Palestinian homes..." and "continued sales will make the company complicit in human rights abuses." On December 27, 2005 Whitson attacked Israeli policy in a

<sup>13</sup> In contrast, Human Rights First considers "hate crimes" to be a human rights violation. See <http://www.humanrightsfirst.org/discrimination/index.aspx>. Despite HRW's overall failure to address antisemitism, it should be noted that its 2009 Film Festival included one film on this topic. (See <http://www.hrw.org/en/iff/look-my-eyes>.) The film festival has typically been a forum for the promotion of the Palestinian narrative and demonization of Israel.

<sup>14</sup> David Bernstein August 4, 2009, <http://www.volokh.com/posts/1249369808.shtml>.

<sup>15</sup> MADRE's "Palestine" page, <http://www.madre.org/index.php?s=9&b=28>.

<sup>16</sup> CESR's "Palestine" page, <http://cesr.org/palestine>.

public letter (HRW letter 2005) addressed to President Bush condemning “Expanding Settlements in the Occupied Palestinian Territories,” which invoked a highly distorted and politicized version of international law. Whitson concluded her letter by restating the overriding political objective of HRW’s leadership: sanctions against Israel, including cutting American aid. And in an article she published in *Al-Akhbar* (Lebanon) in 2007, Whitson referred to Hezbollah as the “Islamic Resistance” and portrayed Israel as the aggressor.

In May 2009, Whitson led a trip to seek support in Saudi Arabia, where she emphasized HRW’s “shortage of funds because of the global financial crisis and the work on Israel and Gaza, which depleted HRW’s budget for the region.” She highlighted HRW’s stance of standing up to “pro-Israel pressure groups,” which, she declared, “strongly resisted the report and tried to discredit it.” The irony of using HRW’s highly biased position on Israel to elicit support from those closest to the repressive Saudi regime did not go unnoticed (Bernstein June 16, 2009).

Whitson has reacted strongly and publicly to criticism of HRW and her division’s approach. Her 2007 op-ed published in *Al Akhbar* dismissed NGO Monitor’s comprehensive documentation of HRW biases as equivalent to Hezbollah sympathizers’ “name-calling and invented stories” (Whitson 2007). And in a 2005 response to Professor Gerald Steinberg of NGO Monitor in the *Wall Street Journal Europe*, Whitson accused him of hiding Israeli government connections in an effort to discredit him personally, rather than engage the issues and debate the detailed evidence (Whitson 2005).

#### **1d. Joe Stork – Deputy Director of the Middle East and North Africa Division**

Before joining HRW in 1996, Joe Stork was a highly visible pro-Palestinian political activist involved in the Middle East Research and Information Project (MERIP). He

was also a co-founder and editor of Middle East Report<sup>17</sup> (Safian 2009). MERIP was centrally involved in activities of the radical Left,<sup>18</sup> and its rhetoric reflected Marxist anti-imperialist ideology. *MERIP Reports* carried laudatory interviews with terrorist leaders and other activists. After the murder of Israeli athletes at the 1972 Munich Olympic Games, a MERIP editorial urged socialists to “comprehend the achievements” of the atrocity. “Munich and similar actions cannot create or substitute for a mass revolutionary movement....But we should comprehend the achievement of the Munich action.” While noting that this did not justify the murders, the editorial declared that this action “has provided an important boost in morale among Palestinians in the camps” (MERIP Report 1972). Similarly, after a Palestinian terror attack on an Israeli school on May 15, 1974, MERIP declared that “all Israeli settlers are potential targets of the Palestinian resistance” (MERIP Report 1974).

Detailed research published by Safian notes Stork’s participation in a conference on “Zionism and Racism” at the University of Baghdad in 1976, under the auspices of Saddam Hussein (Safian 2009). Stork’s presentation is published in the conference volume<sup>19</sup> and includes references to the “Zionist colonization of Palestine” (p. 209), the “Zionist settler-colonial enterprise” (p. 214), and the “Zionist theft of the property and productive resources” (p. 218). Referring to the Arab defeat in 1967, Stork declares: “...the single most important cause lay with the failure of the regimes in question to mobilize their societies for the kind of protracted struggle that is critical for the liberation of Palestine” (p. 225).

In his response to criticism that included these quotes, Stork wrote: “Most of them I do not recognize, and they are contrary to the views I have expounded for decades now. For instance, selective excerpts about the Munich massacre come from an unsigned editorial that appeared 37 years ago where at the time I was one of seven volunteers that produced the publication.”<sup>20</sup>

<sup>17</sup> The Middle East Report is published by MERIP, the Middle East Research and Information project, of which Stork was a co-founder. See MERIP: The First Decade, Peter Johnson and Joe Stork, *MERIP Reports*, October-December 1981, cited in Safian 2009.

<sup>18</sup> See “Leaving the Radical Left: Anti-Zionism, Antisemitism, and Jewish Response (Part 2),” New Centrist Blog, <http://newcentrist.wordpress.com/2008/06/28/leaving-the-radical-left-anti-zionism-antisemitism-and-jewish-response-part-2/>.

<sup>19</sup> See *Zionism, Imperialism and Racism*, A.W. Kayyali, editor, Croom Helm Ltd., 1979.

<sup>20</sup> <http://www.examiner.com/x-4814-LA-Middle-Eastern-Policy-Examiner~y2009m8d18-Credibility-of-Human-Rights-Watch-on-Israel-crashes> (accessed August 20, 2009).

But this radical post-colonial rhetoric and distortion of events to fit this framework did not end as Stork matured, but continued through the 1980s and 1990s. In the September 1980 edition of *MERIP Reports* (p. 6), he confused cause and effect referring falsely to Jordan's "Black September attack on the Palestinian resistance in 1970." In this piece, as Safian notes, Stork also refers disdainfully to the Camp David "Peace" Treaty (p. 9) and attacks Jordan as a "classic mercenary state" (p. 10) for failing to sufficiently support the Palestinian cause. Additional articles such as "Nuclear Shadow over the Middle East" (Stork 1986) and "North Africa Faces the 1990s" (Stork 1990) use similar ideological rhetoric to attack Israel. In 1992, Stork wrote a chapter on "U.S. policy and the Palestine Question" for a book entitled *The United States and the Middle East: A search for new perspectives*, edited by Hooshang Amirahmadi (Stork 1992). In this piece he continued to use the same kind of radical vocabulary, attacking "Zionist hegemony," new colonialists, American-Israeli conspiracies, "the elaborate ritual labeled the peace process," and Israel's democratic values.

In examining Stork's publications spanning over twenty years, there is no hint of any expertise or interest in international moral or legal norms in general, or human rights, in particular. Instead, the consistent focus is on attacking Zionism, Israel, and American imperialism in the Middle East, while promoting the Palestinian narrative.

Since joining HRW, Stork has continued to promote this ideological agenda, and as of 2004 he was still included in the "MERIP media resource list." In 2007 the *Washington Report on Middle East Affairs* published an article about a panel discussion on "Academic Freedom and Academic Boycotts," in which Stork joined the other participants in supporting the Durban-based Boycott, Divestment and Sanctions (BDS) movement against Israel (Horton 2007). In a public letter to President Bush (HRW Letter May 11, 2008), Stork and his co-authors distorted international legal terminology, repeated incomplete or false analyses of international law (including the allegation of "collective

punishment"), and minimized or omitted Hamas' attacks on Israeli border crossings where humanitarian aid is delivered, as well as the diversion of that aid by Hamas. Stork's responses to substantive criticism consist of ideological allegations and *ad hominem* attacks.<sup>21</sup>

In these and many other examples, including a January 2008 statement on Gaza (HRW News Release Jan. 25, 2008), Stork's work for HRW reflects an absence of credible methodology, and a lack of accurate and properly-sourced legal analyses, while favoring political diatribe, loosely couched in the terminology of international law. Similar properties characterize the August 2009 HRW report accusing Israel of the morally odious crime of killing Palestinian civilians waving white flags, which Stork co-authored (HRW Report Aug. 13, 2009).

### 1e. Darryl Li

Darryl Li is not listed as a member of HRW's staff on its website, but he is an author of HRW's *Razing Rafah* report (2004), as well as *Rain of Fire, Under Cover of War*, and *Precisely Wrong* (all in 2009). He is listed as a "consultant," although only seems to consult for HRW on the Israeli-Palestinian conflict, despite his experience doing "academic research in Rwanda, Yemen and... Pakistan."<sup>22</sup> Like other members of the MENA division, Li has a strong background in pro-Palestinian advocacy, and sought a "career alternating between scholarship and activist litigation."<sup>23</sup> Like Stork, he has also been involved with MERIP.

From 2001 (Badil Resource Center Press Release Nov. 27, 2001) to 2002 (PCHR Annual Report 2002), Li worked at the Palestinian Centre for Human Rights (PCHR) in Gaza, including representing the NGO at two international conferences (PCHR Annual Report 2002).

PCHR is a highly politicized Palestinian NGO, which occasionally documents intra-Palestinian human rights abuses. PCHR ignores abuses against Israelis and refers

<sup>21</sup> When asked by journalists to respond to NGO Monitor's systematic quantitative analysis of HRW activities in 2007 (NGO Monitor Report April 29, 2008), Stork answered, "... I haven't seen this report from Mr. Steinberg, and he seldom has anything useful or truthful to say - you can quote me on that." (Selig 2008)

<sup>22</sup> "Programme Development and Extra Curricular," The Department of Law and Policy, the Lahore University of Management Sciences website, [http://www.lums.edu.pk/law\\_and\\_policy/programme\\_development.php](http://www.lums.edu.pk/law_and_policy/programme_development.php)

<sup>23</sup> "Fourteen win Soros Fellowships," *Harvard University Gazette*, Feb. 16 2006. <http://www.news.harvard.edu/gazette/2006/02.16/11-soros.html>.

to deliberate attacks on Israeli civilians as “resistance” (PCHR Weekly Report Dec. 14-20, 2006). Most of PCHR’s activities are related to condemning Israel’s self-defense, as reflected in its statements on the 2009 Gaza conflict (PCHR Weekly Report Jan. 15-21 2009, PCHR News Release Jan. 11, 2009, NGO Monitor Report Feb. 12, 2009). This NGO also receives EU funding to lead the campaign of “lawfare” – exploiting legal mechanisms to pursue political goals – against Israeli military officials (Herzberg 2008).

As of 2009, Li is a PhD student at Harvard and a Law student at Yale, where he is a member (Cohn 2006) of the University’s “Alliance for Justice in the Middle East.” Li used his experience at PCHR (Cohn 2006) to promote this organization’s “War Criminals at Harvard” project,<sup>24</sup> which claimed to promote “a set of rigorous and fair practices to screen for war criminals and serious human rights abusers as part of [Harvard’s] admissions and hiring policies.” In reality, this project focused its campaigning on six Israelis and one Guatemalan and publicly harassing them on campus.<sup>25</sup>

Li’s publications include “Disengagement and the Frontiers of Zionism” for MERIP (Li 2008), which completely erases all Palestinian responsibility, rejectionism, and terrorism; describes settlements as “colonies,” and terrorism as “armed resistance”; and makes the wildly inaccurate statement that “Half of the people between the Mediterranean and the Jordan live under a state that excludes them from the community of political subjects.”<sup>26</sup> In March 2009 Li published an article together with Marc Garlasco in *The Nation*, entitled “Remote Control Death” (Garlasco and Li 2009), which makes contradictory arguments,<sup>27</sup> erases relevant background, and distorts international law to promote the authors’ political agenda.

Li’s advocacy for the Palestinian narrative is not limited to the political arena. He introduced a documentary feature film at the 2008 “Boston Palestine Film Festival,” which “documents” how the “Israeli army appears to have attacked [Palestinians] with nerve gas.”<sup>28</sup> He also participated in an event to celebrate the life of Palestinian poet and PLO executive committee member, Mahmoud Darwish, organized by the Alliance.<sup>29</sup> Li recited Darwish’s poem “We Have on This Earth What Makes Life Worth Living” in Arabic and English, including the line “The peoples’ applause for those who face death with a smile.”

#### If. Reed Brody

Reed Brody has held many central positions at HRW. As of June 2009 his official title is “European Press Director,”<sup>30</sup> although this description obscures his extensive involvement across the organization and in many conflict zones throughout the world.

As HRW’s “special counsel” (HRW News Release Apr. 5, 2003), Brody took an active role in the highly politicized effort to bring Prime Minister Ariel Sharon to trial in Belgium in 2001-2003. His advocacy included opinion columns displaying a highly distorted Palestinian narrative of the Arab-Israeli conflict, and of the events in Lebanon. As “advocacy director,” Brody led HRW’s delegation to the NGO Forum of the 2001 UN World Conference Against Racism at Durban. This forum ignored victims of racism throughout the world in singling out Israel for condemnation. Officials from 1,500 NGOs adopted a declaration that branded Israel a “racist apartheid state” guilty of “war crimes, acts of genocide and ethnic cleansing.” Despite Brody’s belated attempt to distance himself from the declaration,<sup>31</sup> Prof. Anne Bayefsky (Bayefsky 2004) has documented Brody’s active role in singling out Jews, and preventing free speech and open debate in the forum:

<sup>24</sup> “War Criminals at Harvard.” <http://harvardwarcriminals.blogspot.com>.

<sup>25</sup> Ibid.

<sup>26</sup> Israeli Arabs have political rights equal to those of Israeli Jews. For more information see Bard.

<sup>27</sup> Drones are described first as “indiscriminate” and then as capable of “targeted attacks.”

<sup>28</sup> Boston Palestine Film Festival 2008 Program Schedule, Oct. 4-12, 2008, [http://www.bostonpalestinefilmfest.org/publicity/brochures/BPFF\\_Program\\_Brochure\\_2008.pdf](http://www.bostonpalestinefilmfest.org/publicity/brochures/BPFF_Program_Brochure_2008.pdf).

<sup>29</sup> Darryl Li reads Mahmoud Darwish’s “We Have on This Earth What Makes Life Worth Living” in Arabic & English at Harvard University, Sept. 28, 2008 <http://www.youtube.com/watch?v=uRzp7bT6gJg>.

<sup>30</sup> HRW, Reed Brody biography, <http://www.hrw.org/en/bios/reed-brody>.

<sup>31</sup> After the conference, Brody reportedly stated that Israel “has committed serious crimes against Palestinian people but it is simply not accurate to use the word genocide and to equate Zionism with racism ... it is now a matter of damage control.” See “Israel branded ‘racist’ by rights forum” CNN.com Sept. 2, 2001.

*As we arrived at our meeting, the chief Durban representative of Human Rights Watch, advocacy director Reed Brody, publicly announced that as a representative of a Jewish group I was unwelcome and could not attend. The views of a Jewish organization, he explained, would not be objective and the decision on how to vote had to be taken in our absence. Not a single one of the other international NGOs objected.*

Congressman Tom Lantos also reported (Lantos 2002),

*What is perhaps most disturbing about the NGO community's actions is that many of America's top human rights leaders — [including] Reed Brody of Human Rights Watch ...participated. Although most of them denounced the NGO document that was adopted, it was surprising how reluctant they were to attack the antisemitic atmosphere...*

While disproportionately focused on Israel, Brody's advocacy campaigns do embrace other issues, including strong and consistent opposition to U.S. policies following the terror attacks of September 11, 2001. He has critiqued America's practices at Guantanamo and in Iraq, and authored an op-ed article criticizing the procedures used in the trial of Saddam Hussein (Brody 2007). Another major theme in Brody's work is the use of national universal jurisdiction statutes to prosecute war criminals from countries that lack functioning judiciaries.

Brody's activities at Durban in 2001 and in the Ariel Sharon case reflect a strong ideological agenda. Taken together, and like Roth, Whitson, and Stork, Brody's campaigns and language reflect an overriding post-colonial bias which excuses war crimes and human rights violations in conflicts perpetrated by the leaders of designated "victims," while condemning Israel and the U.S. for acting to defend their citizens from asymmetric warfare.

### **1g. Lucy Mair**

Hired in 2005 as a researcher, Mair's qualifications included writing for the radical website "Electronic Intifada" and serving as International Program Coordinator for CESR

(NGO Monitor Report Mar. 21, 2005; see also NGO Monitor Report June 19, 2006). Her work at CESR involved sharing a platform with anti-Israel activists such as Phyllis Bennis at a Freedom and Justice for Palestine Conference on March 31, 2001.<sup>32</sup> At a May 2003 meeting of the UN Committee on Economic, Social and Cultural Rights, Mair repeated (UNHCHR May 5, 2003) unsubstantiated Palestinian allegations that

*the Israeli army had destroyed two wells in Rafah, in the Gaza Strip, that provided nearly half of the city's drinking water. Drivers of water tankers and water maintenance personnel had been physically attacked and threatened by the Israeli army and illegal settlers.*

At the same meeting, representing the Palestinian Independent Commission for Citizens' Rights, she alleged that "[t]he military forces were shooting at people, including newborn babies. Patients seeking medical assistance were dying at Israeli checkpoints because they were not given access to hospitals."

Mair's understanding of international law with respect to human shielding is weak. When NGO Monitor's legal advisor pointed out that Mair's interpretation of the law was incorrect and also inconsistent with HRW's own definition of human shields, Mair ceased further contact and more senior HRW staff members intervened, ending the dialogue without engaging its substance.<sup>33</sup>

During her tenure at HRW (she left in 2007), Mair did "field research" for many of the MENA division publications on Israel, and authored *Off the Map: Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages in 2008* (HRW News Release Mar. 30, 2008).<sup>34</sup> NGO Monitor's detailed analysis of this 130-page report examined the deceptive use of human rights terminology, simplification of the complex challenge of integrating the Bedouin community, and the omission or distortion of factors that do not support HRW's political message, including any mention of Bedouin issues related to Egypt or Jordan (NGO Monitor Report May 19, 2008).

<sup>32</sup> Conference details, <http://www.al-awda.org/newyork/events/20010331/index.html>.

<sup>33</sup> See Appendix 4.

<sup>34</sup> Mair wrote an op-ed to accompany this report, which revealed her deep antipathy to Israel and her simplistic understanding of the issues. See HRW News Release March 30, 2008.

## 1h. Nadia Barhoum

The addition of Nadia Barhoum, a pro-Palestinian campus activist, as an “associate” to HRW’s Middle East and North Africa Division in 2008, also reflects and reinforces the political bias of the division. Barhoum was an active member in Students for Justice in Palestine (SJP) at the University of California, Berkeley, and in 2005 she was the group’s publicity chair. Barhoum has used the “apartheid” rhetoric of the Durban Strategy, stating that the SJP’s “message . . . is to resist occupation and end the apartheid-like framework which is found in Palestine-Israel” (Pimentel 2007). Barhoum campaigned at the University of California, calling on the institution to “divest from Israel,” and urging its students to “join the struggle against the occupation of Palestine” (Erakat, Madadi, and Barhoum 2004). This article includes the inflammatory allegation that “Jewish settlements stand atop recently flattened Palestinian homes, schools and hospitals.”

Barhoum was also a student representative to a “right of return” conference run by Al-Awda California,<sup>35</sup> which equates Zionism with racism and is involved in pro-Palestinian advocacy.<sup>36</sup> She spent a year in “Palestine” (Smith 2006) at Birzeit University (Barhoum 2007) and wrote a blog<sup>37</sup> chronicling her travels. The only references to Israelis in her observations are negative ones and in the context of Palestinian suffering. There is no mention of terrorism and its impact.

## 1i. Peter Bouckaert

Peter Bouckaert, “Emergencies Director” for HRW,<sup>38</sup> has a background in research in South Africa. His one-sided approach to the Arab-Israeli context may be the result of drawing a false analogy between the two very different conflict situations of South Africa and Israel. Bouckaert worked at the Constitutional Litigation Unit of the Legal Resources Centre in South Africa from 1994 to 1995 and the South Africa Department of Land Affairs in 1996.<sup>39</sup> He holds a law degree from Stanford University and

received a fellowship at HRW after graduation in 1997. In his position, Bouckaert “is responsible for coordinating [HRW’s] response to major wars and other human rights crises.”<sup>40</sup> An interview with Bouckaert described his “maverick style,” his “urgent headline grabbing activism,” and, as with many other activists at HRW, his anti-establishment approach (Case 2005).

Bouckaert authored a number of tendentious op-eds directed exclusively at Israel during and after the Second Lebanon War. An August 5, 2006 report from Tyre, *For Israel, Innocent Civilians Are Fair Game*, claimed that “Time after time, Israel has hit civilian homes and cars . . . killing dozens of people with no evidence of any military objective. My notebook overflows with reports of civilian deaths...” (Bouckaert Aug. 5-6, 2006). Another op-ed in *The Guardian* described the “carnage in Qana” and Israel’s actions as “war crimes” (Bouckaert July 31, 2006). As noted below in the case study on the Lebanon War (page 25), HRW amplified and distorted the events in Qana by publicizing a false casualty figure and repeating claims of indiscriminate attacks.

Bouckaert also wrote HRW’s September 2007 report on the Second Lebanon War, *Why They Died*. This pseudo-research publication followed HRW’s pattern of highly selective analysis, unprofessional methodology, unverifiable allegations, and grossly disproportionate criticism of Israel that includes 122 pages on alleged Israeli abuses, and just 23 pages on alleged abuses by Hezbollah. This report also reexamines and corrects some of the most blatant errors in the case studies from HRW’s earlier report, *Fatal Strikes*, which Bouckaert co-authored (NGO Monitor Digest Oct. 1, 2007). For example, in *Fatal Strikes* an airstrike on Aitaroun on July 17 is presented as an example of the killing of civilians at a time when “Hezbollah was not operating in the area.” Yet in *Why They Died*, the details are changed. Different witnesses report that “The night of the attack, Hezbollah was firing

<sup>35</sup> “2005 convention program,” <http://al-awdocal.org/convention/prog.html>.

<sup>36</sup> Al Awda, “Points of Unity,” <http://al-awdocal.org/pou.html>.

<sup>37</sup> Nadia Barhoum, “Palestina: my studies abroad in Palestine,” <http://nadiabar.blogspot.com>.

<sup>38</sup> HRW Peter Bouckaert Bio, <http://www.hrw.org/en/bios/peter-bouckaert>.

<sup>39</sup> Woodrow Wilson International Center for Scholars. Contributor Bio, Peter Bouckaert, <http://www.wilsoncenter.org/subsites/ccpdc/pubs/words/18.pdf>.

<sup>40</sup> HRW biography, Peter Bouckaert, <http://www.hrw.org/en/bios/peter-bouckaert>.

from inside the village...At 10:15 p.m., they were firing rockets from near our house. We heard the missiles going out.”<sup>41</sup>

Commenting on Jenin in 2002, following the international campaign to accuse Israel of a massacre and war crimes, Bouckaert alleged that “very serious violations of the laws of war took place” and claimed that Israel “clearly failed in [the] important obligation [to minimize suffering to civilians] by causing the significant loss of civilian life and massive damage to civilian property.” This assertion erased Israel’s decision to send soldiers to fight house to house against terrorist infrastructure, instead of relying on airstrikes, due to the civilian presence in Jenin.

### 1j. Marc Garlasco

Marc Garlasco is the “senior military analyst” in HRW’s Emergencies Division, following seven years serving in various roles with the Pentagon that include senior intelligence analyst on Iraq, and performing target selection and damage assessment in Serbia and Iraq.

Garlasco’s statements are framed by a strong anti-military sentiment, which suddenly appeared in parallel with his departure from the Pentagon (White 2008), as well as sympathy for the Palestinians as victims. He is an avid collector of Nazi paraphernalia – his internet moniker is “Flak 88” and he has published a book on the subject of Flak badges (Ceren 2009, see Garlasco 2008).

Although the level of his expertise and experience are obscure, Garlasco consistently presents himself and is presented as an “expert” on weapons and military technology. He has no combat experience, and his various Pentagon positions were apparently not concentrated on dealing with the details of weapons systems. This has not prevented him from making public statements and authoring reports that project the pretense of both a detailed knowledge of weapons such as unmanned drones

and white phosphorous, and an understanding of the implications of their use under international law.

Garlasco led HRW’s high profile “investigation” into the Gaza Beach incident in 2006. Ignoring evidence that contradicted his conclusions, his reports and numerous press statements were based on unverifiable Palestinian allegations, “evidence” already handled by Palestinian police and his own technical analysis.<sup>42</sup> Garlasco also headed HRW’s highly publicized examination of the use of white phosphorus during Operation Cast Lead in Gaza. As NGO activists were not allowed into Gaza during the conflict, Garlasco’s claims were made on the basis of observations from a “ridge only about a mile from the Gaza border” (HRW News Release Jan. 10, 2009). Moreover, Garlasco’s statements revealed his lack of expertise regarding white phosphorous, as his claims contradict well-established facts regarding the munition.<sup>43</sup>

Garlasco was the lead author of a second report on the Gaza fighting, an investigation of Israeli use of drones to deliver precision-guided warheads. Like other reports, *Precisely Wrong* (HRW Report June 30, 2009) excludes the background of the conflict, including the Hamas attacks and the kidnapping of Gilad Shalit. The report isolates a single and relatively minor aspect of the fighting, in which the allegations against Israel are highlighted in a totally disproportionate manner. The report examines six incidents, charging the Israeli operators of the drones with responsibility for the deaths of 29 Palestinian civilians. The report relies on Palestinian claims of hearing and seeing weapons that are neither audible nor visible from the distances alleged, and technical assertions that cannot be verified about the nature of the weapon carried by this highly classified system (NGO Monitor Press Release June 30, 2009).<sup>44</sup> Equally, the known practice of labeling combatants as civilians, such as the case of Nizar Rayan,<sup>45</sup> requires claims of civilian deaths to be carefully examined.

<sup>41</sup> For more such examples, see Lebanon War case study, page 25.

<sup>42</sup> Garlasco, Marc. E. 2008. *The Flak Badges of the Luftwaffe and Heer*. Richmond, Michigan: B&D Publishing, 2008.

<sup>43</sup> Garlasco claimed the IDF intentionally used white phosphorous as an incendiary weapon even though military experts report that it is completely ineffective if used in that capacity. In addition, Garlasco criticized Israel for airbursting the munition instead of groundbursting it. Groundbursting white phosphorous, however, can lead to greater collateral damage.

<sup>44</sup> For more analysis on the HRW report see NGO Monitor, “Drones Latest Weapon in HRW Campaign Against Israel,” June 30, 2009, [http://www.ngo-monitor.org/article/ngo\\_monitor\\_drones\\_latest\\_weapon\\_in\\_hrw\\_campaign\\_against\\_israel](http://www.ngo-monitor.org/article/ngo_monitor_drones_latest_weapon_in_hrw_campaign_against_israel).

<sup>45</sup> Rayan was a leading Hamas commander who was responsible for planning numerous attacks, including a suicide bombing by his son in 2001. See Abu Toameh 2009.

To promote the condemnations of Israel in this publication, Garlasco used HRW media savvy to gain widespread public attention. With a few notable exceptions, including one Reuters report,<sup>46</sup> his version and “military expertise” were accepted at face value, without probing its weak technical foundation and largely unsupported claims. His ability to marshal “expertise” and uncritically accept evidence, as support for predetermined conclusions has made Garlasco a critical part of HRW’s campaign of condemnation against Israel.

### 1k. Board of Directors

A number of members of the MENA board of directors have a history of pro-Palestinian activism. This raises further questions about bias in the division, and the structural barriers to a balanced or objective examination of the Arab-Israeli conflict by HRW.

*Charles Shamas* is the senior partner and founder of the MATTIN Group, a “voluntary human rights-based partnership in Palestine,” which currently lobbies the EU to impose trade sanctions on Israel. He is also the co-founder of Al Haq, a Ramallah-based Palestinian NGO. Mr. Shamas advised the PLO/PNA on International Humanitarian Law related diplomacy and attended the expert meeting convened by Switzerland in 1999 as a member of the Palestinian delegation.<sup>47</sup> Shamas publicly compares Israeli policy to “apartheid” and “genocide” and distorts international humanitarian law to erase Palestinian terror, which he labels “resistance” (Shamas 2002). He also obscures the immorality of terrorism, describing Palestinian violence as “an uprising of large elements of a civilian population against an Occupying Power’s unlawful and predatory abuses of its control over that population and their habitat” (Dennis n.d.).

*Helena Cobban*, a former news correspondent in Lebanon for *The Christian Science Monitor* and *The Sunday Times*,

has written four books on the Middle East and comments frequently on the Israeli-Arab conflict. Her writings describe “Jerusalem’s apartheid wall” (Cobban 2004) and credit Hamas’ “long reputation for internal discipline and its solid nationalist credentials,” which “could potentially be viewed as an asset in the crafting of a stable peace in the region” (Cobban 2006).

*Gamal Abouali* is a Paris-based lawyer who in 1999 and 2000 “served as legal adviser to the Palestine Liberation Organization during the Palestinian-Israeli peace negotiations.”<sup>48</sup> This followed the publication of two articles on Israel’s alleged violations of international law in relation to Palestinian water supplies (Gamal 1998).

*Ann M. Lesch*, once described as “among the handful of American experts on the Israeli occupation of the Gaza Strip” (Sa’id 1988), is the director of the Palestinian American Research Center and Dean of Humanities and Social Sciences at the American University in Cairo. She has published five books on the Palestinians, and from 1977 to 1984 supervised grant allocations for the West Bank from the Ford Foundation.

*Andrew Whitley* is director of the Representative Office of UNRWA (the United Nations Relief and Works Agency for Palestine Refugees in the Near East) in New York. In 1990 he was the founding director of Middle East Watch.<sup>49</sup>

*James J. Zogby* is founder and president of the Washington, D.C.-based Arab American Institute. In the late 1970s and early 1980s, Zogby was a founding member and leader of the Palestine Human Rights Campaign,<sup>50</sup> and continues to publicize his opinions on the conflict (Zogby 2009).

*Rita E. Hauser* is an international lawyer, and president of The Hauser Foundation, Inc. In her capacity as head of the American branch of the International Center for Peace in

<sup>46</sup> See <http://www.reuters.com/article/latestCrisis/idUSLU55228>

<sup>47</sup> NGO Monitor NGO Index – the MATTIN group. <http://www.ngo-monitor.org/article.php?id=2413>; Source Watch, a project of the Center for Media and Democracy – Charles Shamas. [http://www.sourcewatch.org/index.php?title=Charles\\_Shamas](http://www.sourcewatch.org/index.php?title=Charles_Shamas).

<sup>48</sup> Gamal Abouali Biography, Clearly Gottlieb Steen and Hamilton LLP, <http://www.cgsh.com/gabouali/>.

<sup>49</sup> MIT/Harvard Gaza Symposium Biographies, March 30, 2009 – Andrew Whitley. <http://www.hks.harvard.edu/middleeast/MEIevents/gaza09bios.html>.

<sup>50</sup> James Zogby blog at the Huffington Post, <http://www.huffingtonpost.com/james-zogby/>.

the Middle East (1984–1991), she led a group of American Jews in meetings with PLO Chairman Yasser Arafat in Stockholm and Geneva. As chair of the International Peace Academy, Hauser was invited by the head of the Palestine Elections Commission to serve as an official observer of the 1996 Palestinian elections (Joyce 1992).

*Robert Malley* is Program Director for Middle East and North Africa at the International Crisis Group in Washington, D.C.<sup>51</sup> He published several articles on the failed 2000 Camp David Summit in which he participated as a member of the U.S. negotiating team. In contrast to President Clinton and Dennis Ross, Malley blamed the failure of the Summit on Israeli Prime Minister Ehud Barak, and not on Arafat.

*Phillip Mattar* is president of the Palestinian American Research Center. Formerly he served as executive director of the Institute for Palestine Studies and as associate editor of the *Journal of Palestine Studies*. His book *The Mufti of Jerusalem: Al-Hajj Amin Al-Husayni and the Palestinian National Movement*, revised edition, was published in 1988.

*Gary Sick* is vice chair of the HRW board and director of the Middle East Institute at Columbia University. He was a national security advisor to Presidents Ford, Carter and Reagan, then deputy director for international affairs at the Ford Foundation from 1982 to 1987. Sick was instrumental in inviting Iran's Ahmadinejad to Columbia University in 2007. As a board member of the American Iranian Council, he regularly lobbies the U.S. to reduce its demands on Iran with respect to human rights (Parvin and Daiouleslam 2007).

The backgrounds of staff and board members presented above indicate a strong political agenda shared by Roth and several other officials in the MENA and Emergencies divisions of HRW. Not only are its staff apparently chosen for their demonstrated political prejudice in the region, but this ideology clearly permeates their work, as evidenced

in HRW's publication record, double standards, distorted use of language, and manipulation of international law. This discussion also illustrates how the politicized, international human rights NGO network nurtures and shapes its members, providing them with experience and career development opportunities at other institutions with similar ideological agendas. These results raise fundamental questions about HRW's ability to conduct "rigorous, objective investigations" and the universality of their defense of universal human rights.

## 11. HRW Links with Palestinian NGOs

HRW's *a priori* political agenda is also reflected in its close links with local Palestinian and Israeli NGOs which promote the Durban Strategy (see page 34). HRW relies on local partners to highlight issues and guide research. Information, albeit often unverifiable or inaccurate, and influence flow from local Palestinian and radical Israeli NGOs to HRW, which uses its resources and public relations machinery to target journalists, government officials, and the UN. This close relationship of cooperation and mutual influence is evident throughout HRW's reports and campaigns.

Numerous NGOs are acknowledged in HRW reports, including Al Mezan, Palestinian Centre for Human Rights (PCHR), B'Tselem, Physicians for Human Rights-Israel, Adalah, HaMoked, Al Haq, and LAW.<sup>52</sup> However HRW is rarely transparent concerning the details of this cooperation and the degree to which, if any, HRW independently verifies their allegations and information. The credibility deficiencies and ideological biases of these groups are well documented,<sup>53</sup> although a comprehensive study is beyond the scope of this paper. As illustrated in this section, reliance on these groups seriously undermines the impartiality and professionalism that HRW seeks to convey.

Despite receiving major international funding, these local groups have minimal or no oversight, display inconsistent reporting standards, and are strongly committed to specific

<sup>51</sup> Staff page, International Crisis Group website, <http://www.crisisgroup.org/home/index.cfm?id=1142&l=1>.

<sup>52</sup> For examples see *Rain of Fire*, acknowledgments (Mar. 25, 2009); *Razing Rafah*, acknowledgments (Oct. 17, 2004); and *Jenin*, acknowledgments (May 2, 2002). Following an independent audit, LAW's executive director was accused of embezzling millions of dollars from donor funds. European governments and international foundations withdrew support, and the NGO ceased to function. See Regular 2003.

<sup>53</sup> For more comprehensive and ongoing investigation of NGOs and their ideological biases and research deficiencies, visit [http://www.ngo-monitor.org/articles.php?type=whatsnew&article\\_type=reports](http://www.ngo-monitor.org/articles.php?type=whatsnew&article_type=reports).

political goals.<sup>54</sup> Yet their claims are legitimized and magnified by international superpower NGOs like Human Rights Watch. The result is that HRW reports are selective and distorted, representing local NGO campaigns, rather than an impartial human rights analysis.

One particularly alarming example is HRW's close relationship with Al Haq, a Ramallah-based Palestinian NGO, and a leader both in the boycott (BDS) movement<sup>55</sup> and NGO lawfare against Israel (Herzberg 2008).<sup>56</sup> Al Haq's co-founder Charles Shamas is a senior partner of the Ramallah-based Mattin Group<sup>57</sup> and a member of HRW's Middle East-North Africa advisory board. He has "advised the PLO/PNA on IHL-related diplomacy" and led the effort to lobby the EU "into reversing their de facto acceptance of Israel's administrative annexation of the occupied Palestinian and Syrian territories."

Al Haq's General Director Shawan Jabarin has been denied travel visas by both Israel and Jordan because of his alleged ties to the PFLP terror organization (NGO Monitor Report May 14, 2007). HRW led the campaign to end travel restrictions on Jabarin, utilizing press releases and a letter to the Dutch government.<sup>58</sup> This letter omitted any reference to Jabarin's ties to the PFLP,<sup>59</sup> despite the conclusion of the Israeli Supreme Court that,

*This petitioner is apparently active as a Dr. Jekyll and Mr. Hyde, in part of his hours of activity he is the director of a human rights organization, and in another part he is an activist in a terrorist organization which does not shy away from acts of murder and attempted murder, which have nothing*

*to do with rights, and, on the contrary, deny the most basic right of all, the most fundamental of fundamental rights, without which there are no other rights – the right to life.*

Notwithstanding this condemnation, HRW continues to acknowledge Al Haq's assistance in many of its reports.

Not only have detailed studies unmasked many of these groups' highly politicized agendas couched in the language of universal human rights, but the basic credibility of their research is also regularly challenged. As examples, HRW's Marc Garlasco interviewed a child listed as dead by Al Mezan in January 2009; PHR-I reported a patient had died of cancer while awaiting access to Israeli healthcare, when he was in fact alive (NGO Monitor Update May 6, 2008); and B'Tselem and PCHR have been found to list Hamas military commanders as non-combatant casualties. PCHR's civilian casualty statistics are widely cited, but an in-depth report by the International Institute for Counter-Terrorism found that,

*by checking the names on the PCHR list against Hamas websites, we found that many of those claimed by PCHR to be "civilians" were in fact hailed as "militant martyrs" by Hamas. Others listed by PCHR as "civilians killed in Israeli raids" later turned out to be Fatah members killed by Hamas, some of them in "execution style" killings.<sup>60</sup>*

Key examples include Nizar Rayan (Abu Toameh 2009) and Siam Said (Greenberg 2009), both senior Hamas military leaders who are listed by PCHR as civilians.<sup>61</sup>

<sup>54</sup> For more information on specific NGOs, and their ideological biases and funding, see [http://www.ngo-monitor.org/ngo\\_index.php?letter=A](http://www.ngo-monitor.org/ngo_index.php?letter=A).

<sup>55</sup> See "Palestinian Civil Society's Strategic Position paper for the Durban Review Conference, Geneva 20-24 April 2009," [http://bdsmovement.net/files/English-BNC\\_Position\\_Paper-Durban\\_Review.pdf](http://bdsmovement.net/files/English-BNC_Position_Paper-Durban_Review.pdf).

<sup>56</sup> Al Haq brought cases against UK Secretaries of State in 2006 and 2009 for the "failure to secure the implementation of the 2004 ICJ Advisory opinion" and for the Gaza War. Both cases were dismissed at the initial stages.

<sup>57</sup> See "Panelist: The Intersection of Law and Diplomacy: A Case Study of the EU-Israel Association Agreement," [http://asp.alhaq.org/zalhaq/site/eDocs/Expert%20Seminar/Bios/bio\\_cs.htm](http://asp.alhaq.org/zalhaq/site/eDocs/Expert%20Seminar/Bios/bio_cs.htm).

<sup>58</sup> [http://www.geuzenverzet.nl/index.php?tekst\\_id=12&news\\_id=91&lang=EN](http://www.geuzenverzet.nl/index.php?tekst_id=12&news_id=91&lang=EN).

<sup>59</sup> HRW has declined to mention Jabarin's link to this terror organization in the past. See NGO Monitor Report May 14, 2007, [http://www.ngo-monitor.org/article/hrw\\_fidh\\_omct\\_statement\\_on\\_ngo\\_official\\_linked\\_to\\_terror\\_group](http://www.ngo-monitor.org/article/hrw_fidh_omct_statement_on_ngo_official_linked_to_terror_group).

<sup>60</sup> International Institute for Counter-Terrorism "Casualties in Operation Cast Lead: A Closer Look," 2009, [http://www.ict.org.il/Portals/0/Articles/ICT\\_Cast\\_Lead\\_Casualties-A\\_Closer\\_Look.pdf](http://www.ict.org.il/Portals/0/Articles/ICT_Cast_Lead_Casualties-A_Closer_Look.pdf)

<sup>61</sup> See PCHR casualty list in Arabic, <http://www.pchrgaza.org/files/PressR/arabic/2008/list.pdf>.

## Part Two: The Research Façade: Case Studies of Systemic Anti-Israel Bias

The following examination of some of HRW’s “research reports” on Israel and related press statements demonstrates a consistent pattern of methodological distortion, deviations from universal human rights norms, and sweeping conclusions based on inadequate and/or insufficient evidence. The reports, the lengthy Palestinian “testimonies” which they include, and the recommendations on which they are based are violations of “best practices” standards for human rights fact-finding, as detailed in the Lund-London guidelines. This document states that

*In making their findings the delegation should try to verify alleged facts with an independent third party or otherwise. Where this is not possible, it should be noted.*

*In order to enhance the overall quality and credibility of the report, it must be accurate, clear and drafted objectively so that the processes of the mission are transparent. It should fairly reflect all the information gathered and must refrain from bias. It is good practice to identify the standards against which the delegation members weigh the information obtained.*

(International Bar Association, Human Rights Institute 2009, p. 9)

These case studies, and others not included in this study, such as the 2002 report on the IDF Jenin operation (HRW Report May 2, 2002) and the 2004 *Razing Rafah* publication (HRW Report Oct. 17, 2004), reflect:

- **Double standards** – inconsistent definitions and applications regarding human shields, collective punishment, use of evidence, etc.

- **Reliance on eyewitnesses** with limited credibility due to inherent agendas or intimidation; acceptance of unverifiable evidence provided by Palestinian officials, while rejecting Israeli evidence as inherently biased.
- **Reliance on local political NGOs** – Al Mezan, B’Tselem, PHR-I, PCHR, and others – which themselves lack credibility.
- **Distortion of international legal standards** and rhetoric in an attempt to justify biased claims and double standards.
- **Artificially narrow focus using questionable technical claims** regarding the use of specific weapons and tactics, while stripping away the wider context of Palestinian attacks and legitimate self-defense (*Razing Rafah*, Gaza Beach, Lebanon and Gaza War reports)
- **Repeated campaigns for ostensibly independent investigations** focusing on allegations only against Israel, with the knowledge that these investigations are often guided by their own biased mandates, employ double standards, and rely on staff with partisan agendas.

### 2a. Gaza Beach Incident 2006

*Reliance on eyewitnesses with little credibility and contradictory accounts publicized with certainty by HRW “military expert” Marc Garlasco*

On Friday June 9, 2006, in the midst of ongoing rocket attacks against Israel and the IDF’s artillery responses in the area, eight Palestinian civilians were reported killed in disputed circumstances by an explosion on a Gaza beach.<sup>62</sup> Palestinian allegations, based in part on

<sup>62</sup> From January to May 2006 inclusive, 347 rockets fired from Gaza fell on Israel. See Israel Ministry of Foreign Affairs, July 21, 2009.

video footage that included some crude fabrications and unverified eyewitness claims (Palestinian Media Watch June 12, 2006),<sup>63</sup> brought global condemnation of Israel's "massacre." A few days later, on June 12, Human Rights Watch's "senior military analyst" Marc Garlasco held a press conference. He alleged that Israel was indeed responsible and echoed the Palestinian call for an "independent international investigation." His statement included unverified claims and "forensic evidence" provided by Palestinian "security officers."<sup>64</sup> This was the beginning of HRW's campaign, which gave international legitimacy to unverifiable Palestinian claims, focused on the alleged Palestinian victims, and erased the broader context of ongoing rocket attacks.

On June 13, HRW published a lengthy news release headlined "Israel: Investigate Gaza Beach Killings Artillery Strike Probably Killed Palestinian Family." The condemnatory text echoed Garlasco's indictment and repeated the claim that the evidence "overwhelmingly supports the allegations that the civilians were killed by artillery shells fired by the IDF" (HRW News Release June 13, 2006). This statement cited the claims of "Palestinian security officials" while ignoring evidence that shrapnel removed from the injured, who had been brought to Israeli hospitals, did not come from an Israeli shell (Rettig 2006).<sup>65</sup>

The press release had the façade of a technical analysis with reference to the use of GPS readings and other details meant to convey the impression of military expertise, but that are largely irrelevant. HRW researchers, presumably Garlasco, claimed to have found "a large piece of unoxidized jagged shrapnel, stamped '155mm,' which would be consistent with an artillery shell fired by the IDF's M-109 Self-Propelled Artillery." There is no mention

of the possibility that Palestinians may have moved such an item so that it could be "found" for this purpose. The statement also referred to a "Palestinian explosive ordnance disposal unit who investigated three craters on the beach," quoting claims by "General Salah Abu 'Azzo, head of the Palestinian unit" to have found fragments consistent with 155mm artillery shells.

Consistent with many other HRW reports on Israel, the statement demanded "an independent, impartial investigation" that "involve the use of external, international experts," and condemned Israeli investigations. The text also invoked the rhetoric of international law, implying that Israel failed to "distinguish between soldiers and civilians, targeting only the former." The statement used legal terms such as "indiscriminate" and "disproportionate attacks in which the civilian harm outweighs military necessity." In the context of the Gaza Beach events, as in many similar cases, HRW officials and "researchers" clearly possessed neither the factual nor military information necessary to make such judgments.<sup>66</sup>

Then, on June 16, Garlasco gave an interview to *The Guardian* (UK), claiming (McGreal 2006):

*You have the crater size, the shrapnel, the types of injuries, their location on the bodies. That all points to a shell dropping from the sky, not explosives under the sand...I've been to hospital and seen the injuries. The doctors say they are primarily to the head and torso. That is consistent with a shell exploding above the ground, not a mine under it.*

Maj.-Gen. Meir Klifi of the IDF, who headed the investigation into the incident, directly challenged Garlasco's evidence (Katz and Keinon 2006), including the

<sup>63</sup> On June 10 and 11, Palestinian NGOs, Miftah (headed by Hanan Ashrawi), the Palestinian Centre for Human Rights (PCHR), and Al-Mezan issued press statements, condemning Israel. These three NGOs all based their condemnations on video "evidence" ([http://www.pmw.org.il/asx/PMW\\_Shooting2006.asx](http://www.pmw.org.il/asx/PMW_Shooting2006.asx)) provided by Palestinian authorities, which was found to have been manipulated.

<sup>64</sup> Quotes from UPI report on press conference (accessed June 2006), previously viewed at <http://www.upi.com/NewsTrack/view.php?StoryID=20060613-110607-8441r>.

<sup>65</sup> "'We can account for every 76-mm shell fired from the navy boats. All were successful hits.' In fact, Kalifi said, 'the ones that fell closest to the location of the incident were fired four hours earlier.' ... Artillery shelling could also not have been responsible for the explosion, Kalifi told reporters. While giving medical care to one of the victims in an Israeli hospital, IDF medics extracted a piece of shrapnel that, according to Kalifi, simply could not have come from the artillery forces' 155-mm guns."

<sup>66</sup> This is in violation of the Guidelines on International Human Rights Fact-Finding Visits and Reports (The Lund-London Guidelines), which state that "The mission's delegation must comprise individuals who are and are seen to be unbiased. The NGO should be confident that the delegation members have the competence, experience and expertise relevant to the matters pertaining to the terms of reference." See <http://www.factfindingguidelines.org>.

claim at his press conference that he found shrapnel from an IDF 155mm shell, 200 meters from site of the explosion that killed the family. Klifi responded that the IDF had indeed fired a shell at a target 200 meters from the site – there had been ongoing Palestinian attacks launched from the area – which explained the shrapnel nearby, but not at the place of the alleged explosion.

On June 19, Garlasco finally held a three hour meeting with Maj.-Gen. Klifi. In comments reported by journalists, Garlasco reportedly admitted that he could not contradict the findings of the Israeli enquiry (Katz and Siegel-Itzkovich 2006), and changed a number of his previous allegations:

*“We came to an agreement with General Klifi that the most likely cause [of the blast] was unexploded Israeli ordnance,” Garlasco told the Jerusalem Post following the meeting.<sup>67</sup>*

This plausible – but not definitive – explanation contradicted all of Garlasco’s and HRW’s previous assertions about injuries and crater size as indicators that the explosive charge came from the air. The June 13 press release quotes two Palestinians who “heard the sound of an incoming projectile and saw a blur of motion in the sky before the explosion that killed the seven civilians.” In the attempt to provide artificial credibility, HRW claimed that “[r]esidents of northern Gaza are familiar with the sounds of regular artillery fire.”

Garlasco also reportedly reversed his view of the IDF’s investigation. According to the *Jerusalem Post* (Katz and Siegel-Itzkovich 2006):

*Garlasco told Klifi during the meeting that he was impressed with the IDF’s system of checks and balances concerning its artillery fire in the Gaza Strip and unlike Hamas which specifically targeted*

*civilians in its rocket attacks, the Israelis, he said, invested a great amount of resources and efforts not to harm innocent civilians.*

*Lucy Mair – head of the HRW’s Jerusalem office – said Klifi’s team had conducted a thorough and professional investigation of the incident and made “a good assessment” when ruling out the possibility that an errant IDF shell had killed the seven Palestinians on the Gaza beach.*

However, a further HRW press release was published on June 21, which contradicted these admissions and repeated the standard call for an independent investigation. HRW again criticized the IDF for not including evidence gathered by the Palestinians in its investigation, ignoring serious credibility problems and past examples of deliberate tampering (Katz and Siegel-Itzkovich 2006; see also NGO Monitor Report July 28, 2008).<sup>68</sup> The internal dynamics of HRW that produced these reversals are unclear. Ultimately Lucy Mair decided to assert the impossibility of the task itself, stating: “This Israeli military investigation is incapable of uncovering the truth.”<sup>69</sup>

The many discrepancies should have led Garlasco to apologize, withdraw his claims, and admit that he had been misled by Palestinian officials and that his technical capabilities are limited. But Garlasco ignored the clear holes in his analysis, persisted with this campaign, and relied on his title as HRW’s “military expert,” which was repeated extensively in the international press (BBC News June 14, 2006; see also Macintyre June 14, 2006; see also USA Today June 14, 2006). HRW marketed Garlasco as the neutral expert alternative to the IDF by publishing press releases (HRW News Release June 13, 2006; see also HRW News Release June 14, 2006; see also HRW News Release June 1, 2006)<sup>70</sup> which continually dismissed the Israeli account.

<sup>67</sup> It could not be determined whether this ordnance was planted on the beach by Palestinians or was unexploded ordnance from earlier IDF responses to Palestinian rocket attacks.

<sup>68</sup> For example, one of the victims of the June 9 explosion arrived for treatment at an Israeli hospital, having undergone extensive surgery to remove all traces of shrapnel from her body, a medically risky and unnecessary procedure. Another example is the death of Muhammad al-Dura, a 12-year-old Palestinian, on September 30, 2000, which became a symbol of Israeli aggression against the Palestinians. Despite numerous inconsistencies, HRW accepted the Palestinian account that the IDF killed the boy, which has since been proven in a French court to have been a fabrication.

<sup>69</sup> Al- Khyial “Abbas Intelligence official killed by Israeli troops” (June 23, 2006), <http://my.algeria.com/forums/geopolitics-international-affairs/12372-palestine-73.html>.

<sup>70</sup> HRW press releases were published on June 13, 14 and 19 while Garlasco gave numerous media interviews in between.

Similarly, the speed at which Garlasco and HRW reported “facts” based only on Palestinian claims and pseudo-technical analysis reflects a highly irresponsible and unreliable approach in the context of the confusion of a war zone in which there is a long history of false claims used for propaganda purposes. While Garlasco appears to be acting out of concern for and sympathy with the Palestinian victims, he expresses this by targeting Israeli military officials with false allegations of indiscriminate attacks, deliberate targeting of civilians, disproportionate force, and wholesale violations of international law.

## 2b. 2006 Lebanon War

*Disproportionate condemnation of Israel, demonization of self-defense, and self-contradictory reporting based on eyewitnesses*

On July 12, 2006, Hezbollah forces attacked across the Lebanese-Israel border, killing eight soldiers and kidnapping two.<sup>71</sup> While there had been a number of similar attack efforts in the previous year, this was the first that succeeded. The incident marked a major escalation following the 2000 Israeli withdrawal from Southern Lebanon. In response, Israel launched a large-scale military operation designed to compel the Lebanese government to take control of the border and disarm Hezbollah, as demanded in the 2004 UN Security Council Resolution 1559.<sup>72</sup> Hezbollah then launched thousands of missiles into northern Israel, killing and wounding a number of Israeli civilians. Over 1,000 Lebanese were reported killed in the subsequent fighting.

During and following the six-week 2006 Lebanon War, international human rights NGOs issued an extraordinary number of public statements and reports, most of which condemned Israel as violating international law and showing a disregard for human rights. Human Rights Watch led this campaign, issuing 40 items, including press releases, long “research” reports, and other public statements. A July 16 press statement headlined *Israel: Investigate Attack on Civilians in Lebanon* and a report entitled *Fatal Strikes: Israel’s Indiscriminate Attacks against Civilians in Lebanon* (August 2, 2006) illustrate HRW’s

tendentious approach. The hundreds of pages produced by HRW also obscured Hezbollah’s status as an Iranian-supported militia operating illegally from Lebanese territory.

These publications, which were ostensibly grounded in morality and international law, denied the basic distinction between aggression by Hezbollah and Israel’s legitimate right and obligation to defend its citizens. By artificially and narrowly defining the issues that they chose to address, and grossly distorting international legal discourse, HRW officials – particularly Ken Roth and MENA division director Sarah Leah Whitson – ignored the fundamental offense. Had they acknowledged Hezbollah’s aggression, they would also have had to recognize Israel’s right to defense, which would have mitigated their anti-Israel bias. In an August 1 “Q &A” during the Lebanon War, for example, (HRW News Release Aug. 1, 2006) HRW stated that it

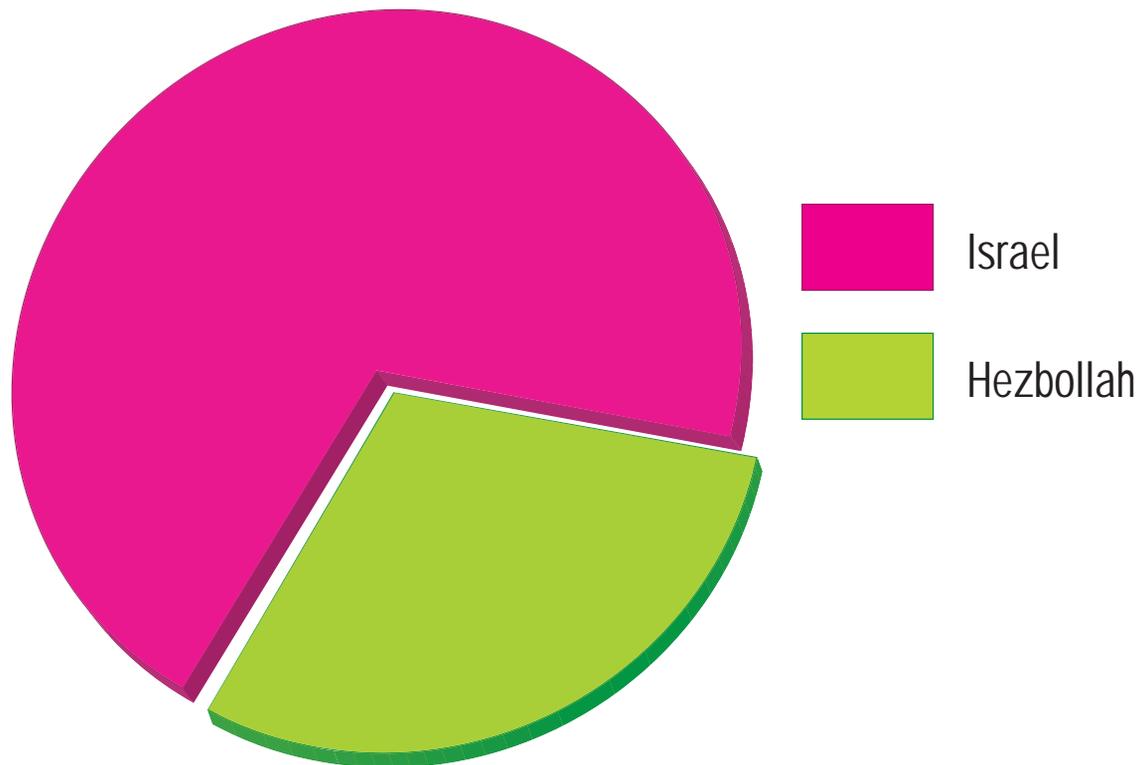
*addresses only the rules of international humanitarian law, known as jus in bello, which govern the way each party to the armed conflict must conduct itself in the course of the hostilities. It does not address whether Hezbollah was justified in attacking Israel, whether Israel was justified in attacking Lebanon for the conduct of Hezbollah, or other matters concerning the legitimacy of resorting to war. In accordance with its institutional mandate, Human Rights Watch maintains a position of strict neutrality on these issues of jus ad bellum, because we find it the best way to promote our primary goal of encouraging both sides in the course of the conflict to respect international humanitarian law. [emphasis added]*

Similarly, HRW’s portrayal of international law in the report *Civilians under Assault: Hezbollah’s Rocket Attacks on Israel in the 2006 War* was selective, incomplete, and self-serving. According to international law, the only legitimate uses of force are for purposes of self-defense or pursuant to Security Council authorization under Chapter VII of the UN Charter (Deller and Burroughs 2003).

<sup>71</sup> “Hezbollah Terrorist attack on Israeli’s Northern border: Eight IDF Soldiers killed and Two Abducted,” Intelligence and Terrorism Information Center at the Center for Special Studies (July 13, 2006), [http://www.terrorism-info.org.il/malam\\_multimedia/English/eng\\_n/pdf/hezbollah\\_upd1e.pdf](http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/hezbollah_upd1e.pdf).

<sup>72</sup> UNSC Press Release 8181 (Sept. 2, 2004).

Percentage of HRW Publications Devoted to Israel and Hezbollah July-August 2006



Under Article 2(4) of the Charter, states are prohibited from engaging in illegitimate use of force. In other words, there is both a moral and legal basis for distinguishing between aggressor and defender under the laws of war (Steinberg 2007).

As shown in the examples below, HRW's "research reports" on the Lebanon conflict, as in other cases, were characterized by the absence of any professional methodology. The allegations in the reports, statements, interviews, and op-eds were based on unsubstantiated, highly questionable or false "eyewitness" testimony designed to elicit "evidence" for the pre-selected objectives of indicting Israel for "war crimes."

#### *Key themes in HRW reports on the 2006 Lebanon War*

#### **Singling out Israel for excessive and disproportionate criticism**

- During the 2006 war, the great majority of HRW's statements, including its major report, directed

most of their criticism against Israel. This obsession is particularly evident when compared with HRW's activities related to the conflict in Sri Lanka. Between July 12 and August 14, 2006, hundreds died in fighting in Sri Lanka, yet HRW issued only two minor press releases, while at the same time using major resources to condemn Israel.<sup>73</sup>

#### **Ignoring Hezbollah's human shielding while condemning Israel for indiscriminate attacks**

- Hezbollah's widespread use of civilians as human shields in the towns and villages of Southern Lebanon and in the neighborhoods of Beirut went largely unreported. For example, in the August 2, 2006 report *Fatal Strikes: Israel's Indiscriminate Attacks against Civilians in Lebanon*, HRW claimed that it found "no cases" of Hezbollah's deliberate use of human shields, despite the evidence available from international media (Tavernise 2006).

<sup>73</sup> See *Times of India* 2006 and Reddy 2006.

- In a July 31 op-ed (HRW News Release July 30, 2006, Bouckaert July 31, 2006) published in *The Guardian* (UK), Peter Bouckaert, HRW's emergencies director, dismissed Israel's statement that Hezbollah used human shields, labeling the IDF's assertion "a convenient excuse."
- The denial of Hezbollah's use of human shields allowed HRW to justify condemning Israel for "indiscriminate" bombing.
- On May 27, 2006, in a television interview, Hassan Nasrallah boasted "[Hezbollah fighters] live in their houses, in their schools, in their churches, in their fields, in their farms and in their factories...You can't destroy them in the same way you would destroy an army."<sup>74</sup> This statement was absent from HRW statements.
- HRW also made little mention of Hezbollah's concrete reinforced military headquarters, located under civilian buildings in southern Beirut. The positioning of military/guerrilla installations in residential areas is a war crime, as defined by Protocol I (1977) to the Geneva Convention, article 51(7), relating to human shields. Hezbollah also stored and launched missiles from civilian villages in Southern Lebanon, but HRW dismissed or ignored the human rights implications of Hezbollah's use of human shields.
- Even after media reports (Wall Street Journal Dec. 11, 2006; Link 2006; Kalb 2007) and the documentation in the systematic study by the Intelligence and Terrorism Center at the Israeli Center for Special Studies (CSS)<sup>75</sup> showed HRW's allegations to be unfounded, Human Rights Watch continued to claim otherwise (HRW News Release July 29, 2007; see Appendix 3). CSS

published extensive documentation including images showing "Hezbollah's consistent pattern of intentionally placing its fighters and weapons among civilians," demonstrating that Hezbollah was "well aware of the civilian casualties that would ensue."<sup>76</sup> Nevertheless, Roth and HRW maintained their previous claims, dismissing CSS's detailed evidence of human shielding as a "comfortable assumption" (HRW News Release July 29, 2007).

### **Omission of other central aspects of the conflict inconsistent with HRW's bias**

- HRW made minimal references to the role of Iran and Syria in providing missiles and support to Hezbollah.
- HRW focused on the plight of Lebanese civilians affected by the fighting and paid little attention to the approximately 500,000 Israeli IDPs (internally displaced persons) or to Israeli victims of Hezbollah rocket attacks.
- On only a few occasions did HRW call for the release of the two abducted Israeli soldiers, Ehud Goldwasser and Eldad Regev.

### **Lack of systematic research methodology – false claims and reliance on "eyewitnesses"**

- The 2006 Qana incident is one of many examples in which HRW selected and publicized misleading or incorrect "evidence." It is also another example that highlights the internal contradictions and absence of systematic methodology in HRW research. A July 30 press release (HRW News Release July 29, 2006) condemned an Israel Air Force strike as "indiscriminate" and a "war crime," and quoted eyewitnesses ("survivors") in this region dominated by Hezbollah, who claimed that "at least 54 civilians have been

<sup>74</sup> Intelligence and Terrorism Information Center, "Hezbollah's use of Lebanese civilians as Human Shields," (Dec. 5, 2006) <http://www.ajcongress.org/site/PageServer?pagename=secret2>

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

killed.” This disregarded both an HRW “official on the scene” (Kalb 2007) and a Red Cross statement at the time (ICRC July 30, 2006) that put the death toll at 28, some of whom may have been Hezbollah combatants (Murphy 2006). HRW belatedly acknowledged the lower casualty figure in its statements, but as noted in a Harvard study, “Most reporters used the higher of the two [casualty] estimates, some describing the scene as a massacre. It made for more sensational copy” (Kalb and Saivetz 2007). And the campaign led by HRW pressured Israeli officials into declaring a 48 hour halt in air strikes that allowed Hezbollah to regroup.<sup>77</sup>

- HRW officials repeated the allegations of “war crimes” and continued to deny the presence of Hezbollah forces (rockets, fighters, etc.) in the Qana area. However, IDF videos<sup>78</sup> and CSS’s report documented a significant Hezbollah presence: three rockets were fired from within civilian houses, 36 within a 200 meter radius, and 106 within a 500 meter radius of the village. The report also showed an aerial photograph of a weapons storehouse located next to a mosque in Qana.<sup>79</sup>
- The Srafa Incident: According to *Fatal Strikes* (HRW Report Aug. 2, 2006), there was “no evidence that there had been Hezbollah military activity around the areas targeted by the IDF during or just prior to the attack: no spent ammunition, abandoned weapons or military equipment, trenches, or dead or wounded fighters.” But journalists, including from the *New York Times*, reported extensive evidence that the village was a base for “fighters belonging to Hezbollah and the allied Amal Party” (Bell Aug. 23, 2006).
- In *Fatal Strikes* (HRW Report Aug. 2, 2006), Hashem Kazan, interviewed regarding a July 15 attack on Bint Jbeil, claimed that “there was no fighting taking place in the village – there was no one but civilians.” In contrast, the CSS report included an aerial photograph of 20 bases and five weapons storehouses in the village, also documenting 87 rockets fired from within village houses, 109 from within a 200 meter radius, and 136 within a 500 meter radius.

### Inconsistent reporting:

- The *Fatal Strikes* report (which was the only extended publication issued by HRW on the Lebanon conflict in 2006), contained 21 incidents which, according to HRW, illustrate Israeli war crimes and “indiscriminate use of force” (HRW Report Aug. 2, 2006). However, in a September 2007 publication – more than one year later – HRW acknowledged that their reporting of these incidents contained many inaccuracies.
- In one incident nearly all the casualties were Hezbollah fighters, and in another the location of the strike was an active battlefield, rather than a civilian area without Hezbollah presence (HRW Report Sept. 5, 2007).
- A third incident was discussed in a HRW December 2006 report, which acknowledged that many details related to the allegations of an Israeli bombing attack on an ambulance were incorrect and inconsistent with the physical evidence. HRW blamed these errors, which were repeated without question at the time, on “sloppy and sometimes exaggerated reporting in the news media” (HRW Report Dec. 19 2006).<sup>80</sup>
- The Srafa incident: In a July 31 letter to the *New York Sun*, Ken Roth alleged (Roth 2006, cited

<sup>77</sup> IDF “Completion of inquiry into July 30th incident in Qana,” August 2, 2006.

<sup>78</sup> IDF video #7: “Hezbollah fires missiles from Qana and Zidkin (Aug 6),” IDF (Aug. 6, 2008).

<sup>79</sup> Intelligence and Terrorism Information Center, “Hezbollah’s use of Lebanese civilians as Human Shields,” (Dec. 5, 2006) <http://www.ajcongress.org/site/PageServer?pagename=secret2>.

<sup>80</sup> “Human Rights Watch’s report originally said that Israeli warplanes had carried out the attack, while further investigation established that the missiles most likely were fired by Israeli drones. Sloppy and sometimes exaggerated reporting in the news media contributed to some of the confusion.” <http://www.hrw.org/legacy/backgrounder/mena/qana1206/qana1206web.pdf>, p. 24.

by Bell July 31, 2006) that Israel had killed 42 civilians in this incident. However, in HRW's *Fatal Strikes* (HRW Report Aug. 2, 2006) the number was reduced to 30 in one place, and 23 in another. There is no independent confirmation regarding the claim of civilian casualties (Bell Aug. 23, 2006). As noted above, the village was used as a base for Hezbollah and Amal forces.

## 2c. "Reuters Cameraman" Incident – April 2008

*Quick condemnation based on Palestinian witnesses, vilification of IDF, and no follow-up*

On April 16, 2008, against the background of ongoing conflict in Gaza, four non-combatants, including a Reuters cameraman, were reportedly killed by a shell fired from an Israeli army tank. In a press release (HRW News Release Apr. 18 2008), Human Rights Watch accused Israeli soldiers of firing "recklessly or deliberately at the journalist's team." The HRW statement also repeated allegations from PCHR, a political NGO of questionable credibility, and Palestinian claims.

Joe Stork, HRW's Middle East deputy director, made the loaded allegation – without producing any "evidence" – that "Israeli soldiers did not make sure they were aiming at a military target before firing, and there is evidence suggesting they actually targeted the journalists." He also suggested "it's hard to believe the Israeli tank crew didn't see the pickup contained only journalists." In a separate public letter addressed to the IDF Military Advocate General (HRW News Release April 30, 2008), HRW demanded a more "thorough" and "impartial investigation" beyond the "field investigation" being conducted by the IDF. HRW also issued a press release (HRW Press Release May 2, 2008).

The IDF conducted a highly detailed investigation, and the 17-page report was presented to Reuters. On August 13, 2008, Reuters News Agency published excerpts (Reuters 2008), including the IDF's conclusion that the decision to fire at the journalist was "sound." The IDF's

letter to Reuters has not been released, although Reuters quoted briefly from it. The IDF also released a one-page summary.<sup>81</sup>

The IDF summary stated that:

(a) The tank and the journalists were in an area that had seen heavy Palestinian gunfire and mortar attacks earlier that day, that resulted in the killing of three Israeli soldiers.

(b) The journalists were wearing body armor, similar to that worn by Palestinian fighters.

(c) The journalist placed his video camera on a tripod and pointed it towards the tank, but the tank crew, from a significant distance, believed that the camera was a weapon and could not identify it as a non-threatening object. Photos of the camera look strikingly similar to a shoulder-fired rocket launcher.<sup>82</sup>

(d) According to the IDF Spokesperson's office, "the decision of the tank crew and the officers who authorized the shot was reasonable since the suspicious figures and suspected missile presented a clear and present danger to the lives of the IDF soldiers."

Reuters disagreed with the IDF Military Advocate General's conclusion, continuing to assert that Israel "was in clear breach of its duty under international law to avoid harm to civilians" (Reuters Aug. 13, 2008). No support for this allegation was provided.

Human Rights Watch declined to report the results of the IDF investigation, or explain that contrary to HRW claims (HRW Press Release May 1, 2008) the IDF investigation included the examination of sources beyond the soldiers' testimonies. In a common HRW pattern, we see here an early amplification of allegations and condemnations of Israeli actions without possession of detailed information about the incident. Later, when these details became clarified, HRW issued neither a correction nor an apology. Stork and others simply ignored the IDF report.

<sup>81</sup> Available at [http://www.ngo-monitor.org/data/images/File/dover\\_idf.pdf](http://www.ngo-monitor.org/data/images/File/dover_idf.pdf).

<sup>82</sup> See <http://israelmatzav.blogspot.com/2008/08/idf-troops-cleared-in-death-of-reuters.html>.

## 2d. The Gaza War, December 2008 - January 2009

*Leading the NGO campaign to delegitimize defensive actions, calls for “lawfare,” and publication of inflated casualty figures*

HRW’s “targeted advocacy” directed at Israel and based on a series of ostensibly “rigorous and objective investigations” was particularly pronounced in relation to the Gaza conflict. This advocacy began months before the renewal of the military operation on December 27, 2008. Eighteen out of the 27 HRW statements published in 2008 that addressed Israel focused on issues related to Gaza, including numerous accusations of “collective punishment,” “continued occupation,” and contribution to a “humanitarian crisis.”<sup>83</sup>

In a 27-page report entitled *Deprived and Endangered: Humanitarian Crisis in the Gaza Strip* (HRW News Release Jan. 13, 2009), HRW used the term “collective punishment” and made numerous demands of Israel, while failing to call for an end to the firing of rockets at Israeli civilians or to discuss the use of human shields by Hamas. Many other HRW statements focused solely on Israel, and failed to condemn the violations of international humanitarian law by Hamas.<sup>84</sup> Ken Roth repeated the accusations in a public letter to UN Secretary-General Ban Ki-moon (Roth Jan. 12, 2009),<sup>85</sup> and HRW’s website featured emotive images of Palestinian victims.

In an op-ed published in *Forbes* (Roth Jan. 22, 2009) – a similar version was published in the *Jerusalem Post* (Roth Jan 25, 2009) – HRW’s executive director accused Israel of “a determination to make Gazans suffer for the presence of Hamas – a prohibited purpose for using military force.” Roth also dismissed claims that Hamas operated from civilian areas as “ritual IDF pronouncements” that should be taken “with a grain of salt.” The facts included in these “ritual pronouncements” were clearly displayed

in video footage<sup>86</sup> and confirmed by journalists and by UN and ICRC officials. UN Under-Secretary-General for Humanitarian Affairs John Holmes declared, “The reckless and cynical use of civilian installations by Hamas, and the indiscriminate firing of rockets against civilian populations, are clear violations of international humanitarian law” (UN News Centre Jan. 27, 2009).

HRW publications continued the practice of citing unnamed “witnesses” or “researchers,” whose credibility cannot be established and whose reports cannot be independently verified. As with Qana in the Lebanon war, HRW reported rumors of civilian deaths as fact. Following an exchange of fire close to the al-Fakhura UN school on January 6, 2009, HRW relied on two eyewitnesses who said that there were no “Hamas militants in the area at the time.” HRW also promoted Palestinian claims that “between 30 and 40 people” had been killed, and that this “shocking loss of civilian life...appears to be the single-most deadly incident for civilians in Gaza since Israel’s current offensive began” (HRW News Release Jan. 7, 2009), calling for a “high-level emergency session” of the UN Security Council to investigate. As later confirmed by UN officials, no one was killed in the school. Of the 12 people reportedly killed nearby, nine were affiliated with Hamas, and three were civilians (Katz Feb. 19, 2009; see also Rabinovich Feb. 6, 2009).

HRW’s numerous publications condemning Israel were highly influential in the campaign that led to the creation of the Goldstone inquiry under the framework of the UN Human Rights Council.<sup>87</sup> Goldstone was himself a member of HRW’s board, and he resigned after the appointment to head the inquiry. The creation of this commission of inquiry was a major success for HRW’s advocacy campaign on Gaza. At the dinner held in Saudi Arabia in May 2009, *Arab News* (Salti 2009) reported that “HRW presented a documentary and spoke on the report they compiled on Israel violating human rights and international law during

<sup>83</sup> See p. 37 for more investigation into the allegation of “collective punishment.”

<sup>84</sup> HRW’s first detailed report on Hamas rocket attacks against Israel was published in August 2009.

<sup>85</sup> “[We] Urge that Israel take all feasible precautions to avoid indiscriminate or disproportionate attacks, cease attacks that assume that political entities are valid military targets, and not use white phosphorus ‘obscurants’ in densely populated areas.”

<sup>86</sup> [http://www.youtube.com/watch?v=uHhs9ihSmbU&feature=channel\\_page](http://www.youtube.com/watch?v=uHhs9ihSmbU&feature=channel_page).

<http://www.youtube.com/watch?v=8LGubwghyEw&feature=channel>.

<sup>87</sup> This inquiry was given the clearly biased mandate to investigate Israel violations “against the Palestinian people throughout the Occupied Palestinian Territory.” See HRW News Release May 17, 2009 (accessed August 16, 2009)

its war on Gaza earlier this year.” This report quoted Whitson, who boasted that HRW had been instrumental in this process, declaring “Human Rights Watch provided the international community with evidence of Israel using white phosphorus and launching systematic destructive attacks on civilian targets...”

HRW’s publications and advocacy campaigns continued for months after the fighting ended, in large part to influence the content of the inquiry’s report. A March 16, 2009 “Letter to EU Foreign Ministers to Address Violations between Israel and Hamas” (Leicht 2009) called for a “comprehensive and impartial international inquiry into allegations of serious violations of international law,” alleging that Israel and Hamas had a “poor record of conducting genuine and impartial investigations, and of holding members of their own forces accountable for war crimes.” Assuming the posture of a research organization, this letter declared that:

*...our researchers were able to enter Gaza for several weeks when Egypt opened the Rafah crossing. During that period, Human Rights Watch conducted extensive field investigations into the conduct of the conflict by both parties. We found that both sides showed a serious disregard for the safety of civilians and repeatedly acted in violation of the laws of war.*

The theme that Israel was incapable of investigating its own behavior, and that “independent” inquiries were needed, was repeated many times by HRW. When the IDF published its investigation of the Gaza conflict in April, HRW issued a blanket statement rejecting the conclusion without addressing details (Izenberg 2009):

*The IDF statement is an insult to the civilians in Gaza who needlessly died and an embarrassment to IDF officers who take military justice seriously. The IDF leadership is apparently not interested, willing or able to monitor itself. ...We consider the IDF investigations announced today a cover-up for serious violations of international law. Hamas also seriously violated the laws of war and HRW will continue to document violations on both sides.*

HRW issued five “research reports” following the Gaza conflict, which exhibit an absence of professional methodology, and reflect the effort to provide “evidence” to fit a prior political agenda. Three reports condemned Israel, and two were directed at Hamas.<sup>88</sup> And HRW officials have expressed their intention to issue a sixth report directed at Israel and also addressing a relatively minor aspect of the war. Following HRW’s standard pattern, first the conclusions in each report are defined, and then evidence is presented in order to fit these claims.

The first such report, entitled *Rain of Fire: Israel’s Unlawful Use of White Phosphorous in Gaza*, was published on March 25, 2009 and written by Marc Garlasco, Fred Abrahams, Bill van Esveld, Fares Akram, and Darryl Li. Charges related to white phosphorus were a central vehicle for NGO anti-Israel campaigns during the Gaza War (NGO Monitor Report Feb. 12, 2009; NGO Monitor Report Jan. 14, 2009), similar to the “massacre” claims in Jenin and Qana in the 2006 Lebanon War.

HRW’s investigation claimed that the “IDF’s repeated firing of air-burst white phosphorus shells from 155mm artillery into densely populated areas was indiscriminate and indicates the commission of war crimes.” Therefore, according to the authors, “these circumstances demand the independent investigation of the use of white phosphorus and, if warranted, the prosecution of all those responsible for war crimes.” These statements at once assert culpability and then call for an investigation to determine it.

While claiming to present “research” findings, this publication, like many others produced by HRW in the series focusing on Israel, lacks a relevant methodology and is based on unreliable Palestinian claims, entirely irrelevant technical “evidence,” and international legal claims.

The report rests on HRW’s claims to have identified use of this weapon in circumstances that are not militarily justified, particularly with respect to camouflaging troop movements in areas of combat. To make this case, HRW distorts or ignores evidence that is inconsistent with its pre-formed conclusions. In one case, the HRW report

<sup>88</sup> See the discussion below on the issue of artificial balance and the morality of human rights in HRW’s agenda.

states that there was no Hamas activity around the Al-Quds Hospital in Tel al-Hawa. This version ignores a media report quoting a Gazan ambulance driver (Koutsoukis 2009) who stated that Hamas operatives “made several attempts to hijack the Al-Qud’s Hospital’s fleet of ambulances.” In another instance, HRW alleges there was “no indication” of “Palestinian armed groups” operating in Beit Lahiya; photographic evidence shows Hamas fortifications in the town.<sup>89</sup> The report also relies on the blatantly anti-Israeli Palestinian NGO Al Mezan, even thanking them in the acknowledgments. Among other claims, Al Mezan lists a child as deceased, who was subsequently interviewed by Garlasco in Gaza (Garlasco and Li 2009).

HRW’s inconsistent definition of “human shield” is also reflected in this report. When investigating Sri Lanka, HRW condemns the LTTE (Tamil Tigers) for “deploy[ing] their forces close to civilians, thus using them as human shields” (HRW News Release March 4, 2009). Yet in Gaza, HRW ignores the extensive evidence,<sup>90</sup> claiming that it “found no evidence of Hamas using human shields in the vicinity at the time of the attacks” despite the fact that “In some areas Palestinian fighters appear to have been present.” The three HRW reports released on Gaza were accompanied by press conferences at the American Colony Hotel.

On April 20, 2009, HRW also published *Under Cover of War*, a 26-page report documenting the killing of “at least 32” Palestinians by Hamas during and after the conflict in Gaza. This report, which dealt with internal violence rather than the conflict and allegations of “war crimes,” was released long after media attention had shifted, and without an accompanying press conference.

The second HRW report, *Precisely Wrong: Gaza Civilians Killed by Israeli Drone-Launched Missiles*, which was also released with a press conference at the American Colony Hotel on June 30, 2009, consisted of allegations regarding

the deaths of 29 Palestinian civilians in six highly ambiguous incidents supposedly caused by high-precision missiles fired by unmanned drones. To stress the purpose of the publication, the term “war crimes” was used seven times, and the alleged drone attacks are termed “unlawful.” The case is entirely speculative, but the conclusions are stated with absolute assurance.

Much of the evidence and the bulk of the text consist of technical and legal claims that are unfounded or irrelevant, but present the façade of expertise. These include references to satellite imaging, precise GPS coordinates, weapons specifications, and Geneva conventions – none of which offsets the complete absence of verifiable evidence. According to Robert Hewson, editor of *Jane’s Air-Launched Weapons*,<sup>91</sup> “Human Rights Watch makes a lot of claims and assumptions about weapons and drones, all of which is still fairly speculative, because we have so little evidence” (Williams 2009).

Additional “evidence” and references are from unverifiable Palestinian testimony and reports from journalists<sup>92</sup> and other NGO officials. As is often the case in HRW reports targeting Israel, the report accepts at face value the Palestinian claims of seeing no active Hamas fighters in the area of the alleged attacks.<sup>93</sup>

Other “evidence” quotes Palestinian claims to have seen and heard the missiles. But Richard Kemp, retired British colonel and Commander of British forces in Afghanistan, (Williams 2009)

*questioned whether such distinctions could be made, not least as the Spike’s range is 8 km (5 miles) ...In a battlefield, in an urban environment, with all the other noises, it’s certainly more than likely you would not hear something five miles away.*

On the legal and moral issues, HRW asserts that drone operators in the midst of the intense conflict should have

<sup>89</sup> [http://www.terrorism-info.org.il/malam\\_multimedia/English/eng\\_n/pdf/hamas\\_e062.pdf](http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/hamas_e062.pdf).

<sup>90</sup> Israel Ministry of Foreign Affairs July 29, 2009. See also “Hamas Booby Trapped School and Zoo Jan. 11, 2009,” YouTube, <http://www.youtube.com/watch?v=uHhs9ihSmbU> and “Hamas firing from school,” YouTube, <http://www.youtube.com/watch?v=YLbZyWZI3hU>

<sup>91</sup> <http://jalw.janes.com/public/jalw/index.shtml>.

<sup>92</sup> Such as an email from the Norwegian Broadcasting Corporation quoting a Jane’s Defence Weekly staffer.

<sup>93</sup> The Israeli government’s report on the Gaza combat provides details that refute this claim. See Israel Ministry of Foreign Affairs July 29, 2009.

stopped their activities in order to consult with military lawyers “to help determine whether targets are legitimate.” This suggests that the authors possess no significant battlefield experience in which split-second decisions must be made.

Despite their claims to document Palestinian violations, HRW was remarkably slow to do so. It took six months following the Gaza War – long after media interest had ended – for HRW to publish *Rockets from Gaza*, on August 6, 2009, which belatedly addressed Hamas attacks aimed at Israeli civilians. This was followed one week later with another HRW publication that again focused on allegations of Israeli war crimes, thereby immediately shifting the focus away from Hamas.

The fourth HRW post-Gaza report critical of Israel (*White Flag Deaths: Killings of Palestinian Civilians during Operation Cast Lead*), published on August 13, 2009, consisted of allegations that the IDF had killed 11 civilians “waving white flags” in seven incidents. This indictment was written by Joe Stork and Bill van Esveld. Much of the 64 pages in this report consists of details regarding the attack sites, technological and military details (“ballistic evidence”), statements by forensic pathologists and medical records of the alleged victims, quotes from documents related to international law, interviews with Palestinians who claimed to have witnessed the events, and allegations made by local politicized NGOs.

As is often the case in HRW reports that target Israel, the legal, medical, technological, and weapons details are not relevant to establishing whether the dead were entirely innocent civilians or involved in combat, and whether they were, as claimed by HRW, waving white flags and attempting to surrender.

The IDF evidence was far more credible than HRW’s, and a video was posted on the internet dated January 8, 2009 that clearly shows a Palestinian preparing an improvised explosive device (IED) to attack IDF soldiers; he then runs into a nearby home to hide with a group of civilians waving

a white flag.<sup>94</sup> This destroyed the core of HRW’s case that “All available evidence indicates that ...no fighting was taking place there at the time, and no Palestinian forces were hiding among the civilians or using them as human shields.”

In addition, the first and in many ways, central case in *White Flag Deaths* is based on claims by Khaled and Majdi ‘Abd Rabbo. But as researchers have shown, they have produced many versions of these events since January (Sterntal 2009). The details in these versions are also highly inconsistent with journalists’ reports of this incident and of the role of these buildings in Hamas rocket attacks (Sterntal 2009).

Furthermore, six of the seven alleged incidents are based on the “evidence” and Palestinian testimony provided to journalists or NGOs with highly biased agendas. These include *Breaking the Silence*,<sup>95</sup> and the Gaza-based Palestinian NGOs Al Mezan and Palestinian Center for Human Rights (PCHR). Both of these organizations consistently promote the Palestinian agenda. Reliance on these sources further undermines the credibility of HRW’s analysis and conclusions.

These highly visible flaws accelerated criticism of the validity of HRW reports condemning Israel, and for the first time, HRW felt the need to publish a defense (HRW News Release, Aug. 14, 2009) in an attempt to discredit their critics. But in many ways this rebuttal serves to highlight the NGO’s systemic methodological failures. Ignoring the main video evidence and the contradictions that demolished their case, this attempted defense simply restated the problems of unreliable and irrelevant “evidence” (HRW News Release Aug. 14, 2009):

*Human Rights Watch methodology does not rely only on the accounts of victims and eyewitnesses. We examine medical records such as hospital and autopsy reports; forensic evidence left over from attacks, such as bullet casings, tank tracks or ammunition boxes; the attack sites themselves; and we conduct interviews*

<sup>94</sup> See [http://www.youtube.com/watch?v=\\_uOug-mN3Tw&eurl=http://www.haaretz.com/hasen/spages/1107286.html&feature=player\\_embedded#t=12](http://www.youtube.com/watch?v=_uOug-mN3Tw&eurl=http://www.haaretz.com/hasen/spages/1107286.html&feature=player_embedded#t=12).

<sup>95</sup> The *Breaking the Silence* report consists of anonymous claims from a small group of Israeli soldiers, many of whom repeated rumors or confused versions from other soldiers.

*with multiple witnesses, including medical staff and law enforcement, military and other officials and, where possible, the alleged perpetrators.*

HRW's vehement insistence on the validity of its "research methodology" did not solve these problems or end the criticism.

## 2e. The Durban Strategy

*Active participant in the strategy of using human rights claims to advance the "complete and total isolation of Israel...the imposition of ...comprehensive sanctions and embargoes, the full cessation of all links ...between all states and Israel."*

HRW's systematic ideological bias, lack of credibility, and disproportionate focus on Arab-Israeli issues take place in the wider context of the Durban Strategy. This was articulated clearly in the declaration adopted in the 2001 NGO Forum of the UN's Durban conference, where HRW played a key role. Since then, HRW has actively contributed to the exploitation of human rights claims to promote the agenda of anti-Israel boycotts and the broader demonization strategy adopted at the NGO Forum of the 2001 UN World Conference on Racism.

The Conference was ostensibly called to unite nations in the fight against "racism, racial discrimination, xenophobia, and related intolerance." However, at the Asian preparatory meeting which took place in Tehran, Israel and Jewish NGOs were effectively excluded, while the Organization of the Islamic Conference (OIC) consisting of Arab and Islamic countries introduced language into the draft Declaration accusing Israel of perpetrating "holocausts," "ethnic cleansing," and "a new kind of apartheid, a crime against humanity," and declared that Zionism "is based on race superiority."

The conference consisted of three parallel forums: a diplomatic framework, a youth summit and a massive NGO Forum. The NGO Forum generated the most publicity and impact, aided by major funding from the

Ford Foundation, the Canadian government, the UN, and others (Steinberg 2006). Some 7,000 delegates from 1,500 NGOs took part in this event.<sup>96</sup> Participants adopted a declaration that demonized Israel's responses to Palestinian terror attacks and attempted to delegitimize and isolate the Jewish state internationally through boycott and divestment campaigns. For example, Article 164 claimed that

*targeted victims of Israel's brand of apartheid and ethnic cleansing methods have been in particular children, women and refugees.*

Article 425 announced a policy of

*complete and total isolation of Israel as an apartheid state...the imposition of mandatory and comprehensive sanctions and embargoes, the full cessation of all links (diplomatic, economic, social, aid, military cooperation and training) between all states and Israel.*

Furthermore, Article 426 talks of condemnation of those states

*supporting, aiding and abetting the Israeli apartheid state and its perpetration of racist crimes against humanity including ethnic cleansing, acts of genocide.*

This document formed the basis for the "Durban Strategy," an ongoing political campaign, promoted by Palestinian and international NGOs determined to undermine the existence of the State of Israel.

Human Rights Watch played a significant role in this process, both at the conference itself and in the political campaigns which followed. As described above, Reed Brody led HRW's delegation to the NGO Forum, and despite his belated attempt to distance himself from the declaration (CNN Sept. 2, 2001), reports of HRW's conduct at Durban indicate that Brody was clearly involved.

<sup>96</sup> Office of the United Nations High Commissioner for Human Rights. Statement by Mary Robinson, High Commissioner for Human Rights and Secretary-General of the World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, Sept. 4, 2002, <http://www.unhcr.ch/hurricane/hurricane.nsf/0/81BEC2394E67B11141256ABD004D9648?opendocument>

Notwithstanding its September 9, 2001 press release entitled “Anti-Racism Summit Ends on Hopeful Note,” which “criticized the media focus on the dispute over the Middle East” (HRW News Release Sept. 9, 2001), Blitt (2004) notes HRW’s distorted portrayal: “By scapegoating the media for reporting on activities within the NGO forum, Brody sought to downplay the very real and very virulent one-sided fixation with Israel manifested by the delegates themselves.”

Indeed, HRW’s active endorsement of the NGO Forum declaration is clear in subsequent reports and campaigns. These demonstrate obvious support for the Palestinian program of demonization, delegitimization, and boycott and sanction campaigns. For example, following the October 2004 release of its flawed and one-sided report *Razing Rafah*, Human Rights Watch joined the broader boycott campaign (NGO Monitor Report Oct. 18, 2004). Sarah Leah Whitson wrote to Caterpillar (HRW Letter Oct. 28, 2004) urging it to suspend sales of its D9 bulldozer, “until it has assurances that the militarized bulldozer will not be used to commit violations of human rights and international humanitarian law,” and HRW published a press release on the same subject (HRW News Release Nov. 21, 2004). HRW also participated in a “Day of action” on April 13, 2005,<sup>97</sup> to oppose “direct or indirect Caterpillar sales of home-crushing bulldozers to the Israeli military,” an event whose endorsers<sup>98</sup> included radical pro-Palestinian groups, Israel Committee Against House Demolitions (ICAHD), the Ireland Palestine Solidarity Campaign, and the International Solidarity Movement.

HRW’s approach to the Durban Review Conference (DRC), which took place in Geneva in 2009, showed some improvement, but still reflects a denial of the significance and extent of antisemitism at Durban 2001. In contrast to over 100 NGOs, HRW refused to sign the Magenta “Statement of Core Principles for WCAR [UN World Conference against Racism] Follow up” in January 2008,<sup>99</sup> which expressed the need for a corrective movement to reverse the damage of Durban I and reassert the

universality of human rights. However, HRW did release a “Position Paper on the Durban Preparatory Committee” (HRW News Release April 21, 2008) admitting that

*the NGO forum at the Durban Conference undermined the wider process when the forum’s concluding statement singled out one country, Israel, as the target of exaggerated and unsupportable allegations and when certain forum participants made antisemitic statements and expressed antisemitic sentiments that targeted, among others, individuals participating in the conference.*

HRW’s Geneva director Juliette de Rivero also wrote to the Libyan chair of the Preparatory Committee for the DRC on November 13, 2008 (de Rivero 2008), criticizing the “group of NGOs [that] have taken steps to promote the organization of an NGO Forum.” De Rivero wrote, “while Human Rights Watch remains faithfully involved in the Durban Review Conference, it does not support the proposal made by this or any other group to have an NGO Forum.” She called on all participants to “avoid a repeat of...the offensive behavior in the NGO Forum at the Durban Conference.” There was no mention of the role of its own officials in the “offensive behavior” of 2001. HRW’s statement during the DRC attacked the governments of Canada, the US, and others for their refusal to participate, and ignored the speech delivered by Iran’s President Ahmadinejad (HRW News Release April 19, 2009).

<sup>97</sup> See <http://www.catdestroyshomes.org/article.php?id=132>

<sup>98</sup> “Declaration Regarding Caterpillar Violations of Human Rights: List of Endorsers,” <http://www.catdestroyshomes.org/endorse.php>.

<sup>99</sup> <http://www.icare.to/prepcom1-dreview-2008esp/statement%20on%20behalf%20of%2094%20NGOs.pdf>.

## Part Three: Analysis of HRW's Middle East Agenda 2004-2008

In the following section we apply quantitative measures to analyze HRW's relationship with Israel, in comparison to the resources, agendas, and emphases regarding other countries and non-state actors in the Middle East Division. The weighted methodology illustrates a disproportionate and obsessive focus on Israeli military actions, with concomitantly less attention given to the absence of fundamental freedoms and totalitarian rule that are endemic to other countries in the region.

### 3a. Double Standards: War Crimes, Collective Punishment, Human Shields, Abducted Soldiers

#### War crimes

Human rights and international law are based on universal norms. The application of those norms and the appropriation of this language to support narrow interests or ideological objectives violate this universality. In this section, we provide evidence of HRW's consistent double standards and disproportionate focus on allegations against Israel.

One key indicator is HRW's "War Crimes / Crimes against Humanity" section which is produced by the "International Justice" division. The website includes reports and advocacy documents which allege war crimes in various countries, with Darfur, the Congo, and Israel receiving the most attention in the first six months of 2009. This is not a sudden change in HRW's rhetoric, but rather a development that can be seen over a number of years. In 2005, Israel was the only country in the MENA division

for which the term "war crimes" was used. Perhaps in response to criticism, the term was more widely applied in 2006: Israel (15 times), Iraq (28), Iran (4), Jordan (1), Syria (4) and Hezbollah (19).<sup>100</sup> But in 2007 HRW returned to the practice of directing these accusations disproportionately at conflicts involving Israel. In that year, Israel was charged with war crimes 12 times, the Palestinians 4, Hezbollah 16, and Iraq and Lebanon combined only received seven such allegations. In 2008, HRW used "war crimes" in relation to the Israeli-Palestinian conflict seven times. In six of these instances the accusation was directed at Israel, and only once (HRW Report Feb. 6, 2008) was it used to describe "indiscriminate Palestinian rocket and suicide bomb attacks against Israeli civilians." In the few cases critical of Palestinian rocket attacks, HRW notably fails to label them as war crimes. No other Middle Eastern state was accused of "war crimes" in 2008. A search of HRW's website for the use of this term in 2008 returned 213 results, concentrated on Sudan, leaders of the former Yugoslavia, Congo, and Uganda.

In 2009, during and following the Gaza conflict, these accusations and the use of accompanying anti-Israel rhetoric increased significantly. In a single report on Israel, *White Flag Deaths* (HRW Report Aug. 13, 2009), which is based on very weak and highly misleading claims, HRW included 15 accusations of "war crimes." Similarly, in the text of *Precisely Wrong: Gaza Civilians Killed by Israeli Drone-Launched Missiles* (HRW Report June 30, 2009) the term appears in five places. In the only report on Hamas rocket attacks against Israel, *Rockets from Gaza*, the term "war crimes" is used in six places to refer to Hamas alone, while a number of other citations are either "balanced" or make accusations against Israel (HRW Report August 6, 2009).

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<sup>100</sup> It is important to note that even though HRW cited Israel 15 times for "war crimes" and Hezbollah 19 times, the publicity they are given is completely uneven. For example, four of the 19 citations of Hezbollah were in *Fatal Strikes: Israel's Indiscriminate Attacks against Civilians in Lebanon*, the only major report published during the 2006 Lebanon war. As the title indicates, the report focuses almost entirely on allegations against Israel. Condemnations against Hezbollah are thus buried, significantly minimizing their impact. In several other cases shown below, allegations against Israel are far more widely publicized than are condemnations of Hezbollah, Hamas, or the PA. See this report on the 2006 Lebanon War and the Gaza Beach incident for more detail.

## Collective punishment

In 2007 Human Rights Watch, together with several other political NGOs, began using the phrase “collective punishment” to refer to Israeli defense against Palestinian rocket attacks from Gaza. HRW’s ideology-driven application of this phrase is inconsistent with the precise legal meaning of this term. Collective punishment, in fact, refers to criminal penalties imposed against a group of people in the form of beatings, murder, or imprisonment, for the acts attributed to members of that group. HRW’s use of the term in this idiosyncratic manner is applied solely to Israel, the only situation in which HRW alleges that a blockade in response to military aggression constitutes “collective punishment.” In all other cases in which HRW uses this term, it does so in a manner more consonant with the legal definition.

Cases that are somewhat parallel to that of Israel and Gaza, but are not labeled “collective punishment,” include Azerbaijan’s blockade of Nagorno Karabakh and Armenia, as described in Human Rights Watch 1994 World Report:

*Electricity, gas, oil and grain – necessary for the basic human needs of civilians in Armenia – were in extremely short supply... The lack of gas and electricity deprived Armenians of heat in the freezing winter... a rise in deaths among the newborn and the elderly was accompanied by a higher suicide rate and growing incidence of mental illness. The blockade had ruined Armenia’s industry...*

This HRW report does not refer to this “blockade” as “collective punishment,” and indeed recommends that “all but humanitarian aid should be withheld from Armenia because of Armenia’s financing of the war.” It is not clear why HRW promotes a policy of limiting non-essential supplies for Armenia, but when Israel responds to daily rocket attacks on civilian population centers – over 8000 since 2000 – HRW condemns a similar policy as constituting “collective punishment.”

Similarly, in a 1999 press release on Chechnya, HRW described the humanitarian situation there as “rapidly deteriorating, with no functioning hospitals, electricity, running water, gas, or heating since the beginning of November, and dwindling food supplies” (HRW News Release Dec. 8, 1999). This was clearly a more desperate situation than was Gaza in 2007, where humanitarian aid entered daily (Bell and Weiner 2008; see also Benn June 16, 2007).<sup>101</sup> Yet HRW did not refer to Chechnya as suffering from “collective punishment.”

In 2007 the term “collective punishment” was used by HRW in 13 items not referring to Israel (see Table 1). These cases generally provide evidence of punitive intent against third parties in accordance with the actual legal definition:

For example, in his 2007 testimony to a U.S. House Committee on Foreign Affairs, Subcommittee on Africa and Global Health, Sam Zarifi<sup>102</sup> stated (HRW Report Oct. 2, 2007),

### “Collective Punishment” in 2007 HRW Publications

Incident Type	Countries	Count
Fines, obligatory labor and beatings	Rwanda	3
Burning/destroying property	Ethiopia, Niger, Indonesia	3
Beatings/violence	Saudi Arabia, India, Iraq	3
Killing civilians as punishment	Ethiopia	1
Detention	Burma, Turkmenistan	1
Fines	Uganda	1
Unspecified	North Korea	1

<sup>101</sup> See IDF Spokesperson reports of trucks entering Gaza with supplies, [http://www.mfa.gov.il/MFA/Government/Communiques/2009/Humanitarian\\_aid\\_to\\_Gaza\\_following\\_6\\_month\\_calm.htm](http://www.mfa.gov.il/MFA/Government/Communiques/2009/Humanitarian_aid_to_Gaza_following_6_month_calm.htm).

<sup>102</sup> HRW’s “Washington Advocate.”

*in the Ogaden, we have documented massive crimes by the Ethiopian army, including... villages burned to the ground as part of a campaign of **collective punishment**.* [emphasis added]

Another example is found in an August 2007 article in The Guardian about Ethiopia, and authored by HRW's London director, Tom Porteous. There he asserts that

*dozens of civilians have been killed in what appears to be a deliberate effort to mete out **collective punishment** against a civilian population suspected of sympathizing with the rebels.* [emphasis added]

These results demonstrate that HRW's application of the label "collective punishment" is inconsistent and arbitrary, singling out Israel and holding it to a different standard than other nations in its quest for security.

### Human shields

As shown repeatedly in the case studies on the Lebanon War and Gaza, HRW also uses double standards regarding human shielding. The obligation to maintain the distinction between combatants and civilians is a cornerstone of International Humanitarian Law (IHL). Article 28 of the Fourth Geneva Convention mandates that "[t]he presence of a protected person [e.g., civilians] may not be used to render certain points or areas immune from military operations."<sup>103</sup> UN Glossary of Peacekeeping Terms interprets the prohibition as follows:

*human shield [any person who, under the laws of war is considered a non-combatant [sic] and as such protected from deliberate attack (civilians, POWs, etc.) but who is used by one side as a hostage to deter the other side from striking a particular military target and risking killing the hostages; the side using "human shields" gambles on the other side's reluctance to violate the laws of war and on its fear of*

*the moral and political opprobrium usually attached to such violations; the use of human shields can take the form of a) placing civilians or prisoners in or near legitimate military targets (bases, bunkers, weapons factories, etc.) or b) placing artillery batteries and other offensive weapons in the midst of the civilian population, particularly such buildings as hospitals, schools, churches, etc., or residential neighborhoods, or c) for non-uniformed armed groups, firing at their adversary from among a crowd of civilians].*

The violation of this obligation is serious not only because it flaunts the principle of distinction, but it exposes civilians to harm, since under IHL military objectives may be attacked, even if civilians are present, so long as such attacks are in accordance with the principle of proportionality.<sup>104</sup> Those who engage in the practice of human shielding are guilty of war crimes and bear responsibility for any civilian deaths that result.

Despite the central and clear prohibition against the use of human shields, HRW's emphasis on this issue varies greatly across conflict areas. When reporting on Sri Lanka, Somalia, Chechnya, and elsewhere, HRW's interpretation of human shielding law is generally consistent with the legal principles. However in its statements on the Arab-Israeli conflict, HRW invariably applies an artificially narrow definition that results in a much wider possibility of alleged Israeli violations. As detailed in the examples below, HRW has even gone so far as to reverse its position on human shields when faced with criticism from the extreme Left for challenging Palestinians for engaging in the practice.<sup>105</sup>

The double standards in effect are highlighted by comparing specific examples. In an April 2009 report on Sri Lanka, HRW condemned the LTTE (Tamil Tigers) for "deploy[ing] their forces close to civilians, thus using them as 'human shields'" (HRW Report Mar. 4,

<sup>103</sup> Office of High Commissioner for Human Rights, "Geneva Convention relative to the protection of Civilian persons in time of war" (adopted Aug. 12, 1979), <http://www.unhcr.ch/html/menu3/b/92.htm>.

<sup>104</sup> Pursuant to article 2(b)(iv) of the Rome Statute of the International Criminal Court, an attack is "disproportionate" if it causes damage or loss of civilian life "which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated."

<sup>105</sup> In contrast, despite the many factual and technical errors in HRW's reporting on Israel, the organization has never issued an apology or reversed its position when such errors are revealed. Instead, as shown in the case studies in this report, HRW tends to bury corrections in footnotes of subsequent reports issued months or even years later.

2009). In a report issued on Somalia in Dec. 2008, HRW condemned “[t]he practice by insurgent forces of firing mortars or otherwise launching attacks from heavily populated neighborhoods” and noted that such activity “can constitute ‘human shielding,’ which is a war crime” (HRW Report Dec. 8, 2008). And in a 1999 report from Chechnya, HRW claimed that situating “a key command post within or adjacent to [a] market” by Chechen fighters “would be a serious violation, as the Chechen forces are obliged to respect international law prohibiting use of the civilian population to shield military objects” (HRW News Release Nov. 2, 1999).

In contrast, HRW’s May 2002 report on Operation Defensive Shield in Jenin (HRW Report May 2, 2002) claimed to have found “no evidence that Palestinian gunmen forced Palestinian civilians to serve as human shields during the attack.” This is despite HRW’s statement (HRW Report May 2, 2002) that

*Palestinian gunmen endangered Palestinian civilians...[ by] using [the camp] ...for...launching attacks, ...planting improvised explosive devices within the camp and intermingling with the civilian population during armed conflict, and, in some cases, to avoid apprehension by Israeli forces.*

HRW’s recommendations did not call for the end to these practices. Instead, the organization discussed alleged Israeli violations at length, including human shielding, and made recommendations to end the use of the “neighbor procedure” (Greenberg 2005).<sup>106</sup> The NGO continues to cite the Jenin investigation for its claims regarding Israeli use of human shields, while ignoring clear evidence of blatant Palestinian abuses (for examples see HRW News Release Jan. 7, 2009 and HRW News Release Jan. 27, 2009).

Similarly, HRW’s *Fatal Strikes* report during the 2006 Lebanon War claimed to have found “**no cases in which Hezbollah deliberately used civilians as shields** to protect

them from retaliatory IDF attack” [emphasis added]. HRW made this statement despite the extensive evidence that Hezbollah was deeply embedded in Southern Lebanese villages, and instead relied on local eyewitnesses who said otherwise (NGO Monitor Report Dec. 28, 2006). In an October 2006 op-ed after the war, however, Sarah Leah Whitson contradicted HRW’s earlier statements claiming that, “Human Rights Watch’s research found that on a number of occasions Hezbollah unjustifiably endangered Lebanese civilians by storing weapons in civilian homes, firing rockets from populated areas, and allowing its fighters to operate from civilian homes” (Whitson 2006). Yet just as in HRW’s Jenin report four years earlier, Whitson declined to label this activity “human shielding.”

In November 2006 HRW issued a rare condemnation of Palestinian use of human shields in Gaza. In a press release describing Muhammadwail Barud’s<sup>107</sup> call for civilians to surround his home following an IDF warning that it would be attacked (HRW News Release Nov. 22, 2006), HRW quoted a PRC commander urging “our people to rush into threatened houses and make human shields.” Sarah Leah Whitson said “[w]hether or not the home is a legitimate military target, knowingly asking civilians to stand in harm’s way is unlawful.” However, by December 15, 2006, in response to pressure from commentators and blogs on the extreme Left (Finkelstein 2006; Cook 2006), HRW selected and reported a new version of the incident in order to justify reversing its position. The new statement defined the potential Israeli strike as a “punitive measure,” not subject to the “law regulating the conduct of hostilities during armed conflict,” and on the basis of ostensibly new eyewitness reports, concluded that the home was not being used “for military purposes.” Ignoring contrary evidence presented in its prior release, HRW characterized the act as one of “nonviolent resistance” and apologized for doing “more to cloud the issues than clarify them” (HRW News Release Dec. 15, 2006).<sup>108</sup>

In the 2008-9 Gaza conflict HRW again highlighted alleged Israeli violations and repeatedly failed to condemn Hamas for large-scale human shielding, despite assurances

<sup>106</sup> Officially termed the “Early Warning Procedure,” this involves Palestinian civilians “volunteering” to assist the IDF in arrest operations.

<sup>107</sup> A commander in the Popular Resistance Committee.

<sup>108</sup> The limited understanding of the law regarding human shields exhibited by HRW staff member Lucy Mair can be seen in an exchange with NGO Monitor’s legal advisor, earlier in 2006. See Appendix 4.

by HRW officials that they planned to “investigate” the practice (Katz 2009).<sup>109</sup> HRW had little access to Gaza during the conflict, yet issued numerous statements accusing Israel of “war crimes,” based on media reports, unreliable Palestinian claims, and the assessments of questionable “military experts” positioned on ridges surrounding Gaza. HRW chose not to report detailed information on Hamas’ “reckless and cynical use” (UN News Centre Jan. 27, 2009) of civilian infrastructure as a primary fighting tactic (as stated by UN official John Holmes) – including firing from populated areas, placing women and children on the roofs of targeted buildings, storing weapons in schools and mosques, and hiding in bunkers beneath hospitals. According to military analyst Anthony Cordesman, Israel’s actions must “be placed in the broader context of how Hamas chose to deploy and use the equivalent of human shields. Israel is correct in claiming that Hamas must share responsibility for what happened” (Cordesman 2009). HRW failed to take this context into account.

In its March 2009 report, *Rain of Fire*, HRW alleged that the IDF used white phosphorous unlawfully in order to deliberately target civilians. White phosphorous is a lawful weapon employed to obscure troop movements. HRW repeatedly argued that Hamas fighters were not present in the incidents it reviewed even though Palestinian media and IDF reports refuted these claims. In one example involving an alleged white phosphorous attack on an elementary school in the Beit Lahiya neighborhood, HRW claimed “it found no indication that IDF units or Palestinian armed groups were operating in the area at the time.” Yet, the Palestinian Ma’an News Agency reported heavy fighting near the school and an IDF investigation concluded that its ground forces, including tanks, were operating in the Beit Lahiya area and had used smoke munitions to protect against rocket-launching units and terrorist infrastructure.

Similarly, in the August 2009 publication on the Gaza War, *White Flag Deaths*, HRW emphasizes that “[a]ll available

evidence indicates that...no fighting was taking place there at the time, and no Palestinian forces were hiding among the civilians or using them as human shields.” Israeli soldiers, however, are again accused of “human shielding.” HRW ignored substantial evidence of Hamas’ exploitation of schools, mosques, hospitals, and cultural centers. Moreover, a video showing a Palestinian fighter using civilians waving a white flag as human shields<sup>110</sup> is omitted. In contrast, in an interview with the *Jerusalem Post*, HRW’s researcher in Israel and the Palestinian Authority, Bill van Esveld, belatedly acknowledged the use by Hamas of human shields (Izenberg, et.al. 2009).

HRW’s only substantive report on Hamas war crimes during the Gaza conflict, *Rockets from Gaza* (Aug. 6, 2009), failed to condemn the terror organization for its extensive use of human shields. According to HRW’s overly narrow definition of the concept – in contrast to that of international law – Hamas “did not...force civilians to remain in areas in close proximity to rocket launching sites.” Instead the authors absurdly blame Israel for Hamas’ rocket fire from populated areas. In HRW’s version, Hamas “redeployed from more open and outlying regions – many of which were...controlled by Israeli ground forces...into densely populated urban areas.” In other words, Israel’s military operations targeting rocket fire is blamed for Hamas’ violations of the laws of war. And the numerous rocket attacks from these same urban areas – long before the December 2008-January 2009 offensive – are not mentioned.

### Abducted soldiers

Nineteen year old Gilad Shalit was kidnapped in a June 2006 cross-border raid from Gaza. Since then he has been held incommunicado, with no access to the Red Cross, and in clear violation of international law. In the three years since Shalit’s kidnapping (as of June 2009), HRW dedicated only one press statement (July 2007) specifically calling for his release and for his right to unfettered Red Cross access. This same statement called for the release of the two soldiers captured at the beginning of the Second Lebanon War, Ehud Goldwasser and Eldad Regev, whose

<sup>109</sup> An April 2009 IDF report revealed that Hamas Prime Minister Ismail Haniyeh operated a command and control center inside Shifa Hospital throughout Israel’s operation in Gaza. See Katz April 22, 2009. Other evidence of Hamas’ use of human shields is widely available. See for example “Hamas Booby Trapped School and Zoo” Jan. 11, 2009, You Tube, <http://www.youtube.com/watch?v=uHhs9ihSmbU>, and “Hamas firing from school,” You Tube, <http://www.youtube.com/watch?v=YLbZyWZI3hU>.

<sup>110</sup> [http://www.youtube.com/watch?v=YJgfZ9\\_6miE](http://www.youtube.com/watch?v=YJgfZ9_6miE). The video is dated Jan. 8, 2009.

bodies were returned to Israel on July 15, 2008 in a prisoner exchange. In their case as well, Red Cross representatives were not allowed access to the abducted soldiers in the two years following their kidnapping in July 2006.

Throughout 2007 HRW mentioned one or more of the kidnapped Israeli soldiers in a total of only six publications. Of these, only two publications refer to them by name. The other references are simply in passing (HRW News Release July 4, 2007; HRW News Release Jan. 13 2009).<sup>111</sup> When HRW was publicly criticized for making “no more than a token demand for Shalit’s release and then only in the context of wider issues” (NGO Monitor Press Release Mar. 15, 2009), Joe Stork responded (Lefkovits 2009):

*We have commented on this case on a number of occasions...The idea that we have commented on everything but this is ridiculous.*

This dismissive comment illustrates HRW’s moral failure in dealing with Israeli victims of human rights violations, and the absence of universality in HRW’s application of human rights standards.

On June 25, 2009, the third anniversary of Shalit’s kidnapping, HRW issued a belated press release which called his continued imprisonment “cruel and inhumane” (HRW News Release June 25, 2009). Yet even this statement was constrained by HRW’s ideological agenda, reflected in effort made to draw a parallel between Shalit’s kidnapping and treatment, and the detention of Palestinians in Israeli jails, and to include another condemnation of Israel’s blockade of Gaza as collective punishment.

In sharp contrast, between April 2007 and June 2009 HRW issued four statements or public letters calling for Israel to allow Shawan Jabarin, general director of NGO Al-Haq, to travel abroad. Jabarin has been denied travel visas by both Israel and Jordan because of his role, according to the Israeli Supreme Court, as a “senior activist” in the PFLP terrorist organization, a qualification HRW declines to mention in its publications.<sup>112</sup> The vast differences in the resources that HRW devoted to these two instances, and their implications in terms of this organization’s double standards and ideological agenda, speak for themselves.

### 3b. Terrorism / Asymmetric Warfare

HRW’s approach to terrorism erases the broader context of universal human rights, to create a one-sided focus almost exclusively on the rights of perpetrators. In this section we trace the evolution of HRW from its defense of political prisoners in the early years of Helsinki Watch, to a near-myopic categorization of terrorists as the new victims.

A search of HRW’s website for articles on “terrorism” returns 74 pages of results. The first page comprises 19 written items,<sup>113</sup> 18 of which condemn states for their counterterrorism measures. Although HRW lists “terrorism” as a topic at the bottom of its website’s pages, only “counterterrorism” appears as a topic filter on searches. On the topic pages, there are eight pages of reports on counterterrorism and one page on terrorism.

Following the Mumbai terror attacks in December 2008, in which at least 10 coordinated shootings and bombings killed more than 175 people, HRW’s first statement was titled *India: Respect Rights in Hunt for Mumbai Conspirators*

<sup>111</sup> Examples of these passing references illustrate HRW’s minimal concern for Shalit’s human rights, and the NGO’s overwhelming focus on critiquing Israel: “Since illegality by one side does not justify illegality by the other, Human Rights Watch also urged Israel to refrain from any unlawful practices to gain the release of the Israeli hostages. Four days after the capture of Corporal Shalit in Gaza, the Israeli army on June 29, 2006 detained eight Hamas cabinet members and at least 20 Hamas members of the Palestinian Legislative Council in the West Bank, according to the New York Times.” (HRW News Release July 4, 2007) Also, “For example, on June 28, 2006, after a Palestinian armed group from Gaza captured the Israeli soldier Gilad Shalit and unlawfully held him as a hostage, the Israeli Air Force fired eight missiles at Gaza’s sole power plant, rendering the six transformers inoperable. Israel subsequently delayed or blocked the delivery of material needed to repair the plant, leaving it capable of producing 80 megawatts per day out of an original capacity of 100 megawatts,” (HRW News Release Jan. 13, 2009).

<sup>112</sup> The Israeli Supreme Court has heard appeals on at least three occasions regarding the travel ban on Jabarin, [www.alhaq.org/pdfs/Shawan-abarin-v.pdf](http://www.alhaq.org/pdfs/Shawan-abarin-v.pdf).

Charles Shamas, founder of Al Haq is on the HRW Middle East Advisory Board, which could explain HRW’s campaign in support of Jabarin.

<sup>113</sup> The search was conducted on April 21, 2009. In addition to the 19 written items, one audio file also appeared.

(HRW News Release Dec. 3, 2008; see also Herzberg 2008). HRW's "condemnation" of the September 11, 2001 terror attacks on the World Trade Center was all of three sentences long, followed by a caution to governments that "...in the struggle against terrorism, ends [don't] always justify means" (HRW News Release Sept. 12, 2001).

This strong institutional bias that emphasizes criticism of counter-terror measures ahead of terrorist groups themselves is implicit in these activities. HRW proclaims a mandate to "bring greater justice and security to people around the world." Given this aim and the growing phenomena of global acts of terrorism, often state-sponsored, one would expect to find a significant portion of HRW's resources used for anti-terror advocacy. Yet the evidence clearly points to a bias in favor of perpetrators.

This bias is particularly acute in the Middle East Division, where HRW frequently fails to condemn Palestinian terror attacks on Israeli civilians. For example, on March 6, 2008, HRW remained silent following the Mercaz Harav Seminary attack in Jerusalem, where a Palestinian opened fire in a school library, killing eight youths and wounding 11 others (Israeli Ministry of Foreign Affairs Mar. 6, 2008). Sarah Leah Whitson's only mention of the crime was in passing, in a document condemning Israel's proposed response of demolishing the terrorist's home. Whitson states, "The assault on Mercaz Harav Seminary... [was] appalling, but Israel shouldn't respond by trampling on basic rights...the house demolition measures would violate international law because they punish people who are not even accused, let alone convicted of a crime" (HRW News Release Aug. 9, 2008).

HRW also regularly declines to condemn Palestinian rocket attacks as "war crimes" despite their clearly indiscriminate nature, which are intended specifically to terrorize the thousands of Israeli civilians living near Gaza. On the one occasion in 2008 when HRW actually did label rocket attacks as "war crimes" this was done only when rocket attacks were paired with suicide bomb attacks (HRW News Release Feb. 6, 2008). HRW also consistently condemns Israel for any steps it takes to prevent attacks on its civilians (the security barrier), to stop supplies reaching terrorist organizations (Israel's blockade of

Gaza), or discourage terrorism (demolishing the homes of terrorists).

In contrast to thousands of pages of reports on Israeli "oppression" of the Palestinians, HRW published just one report on Palestinian suicide bombings in 2002 (HRW Report Oct. 15, 2002). To its credit, this report did condemn suicide attacks and their supporters. However, despite reporting the close links between Fatah and the Al Aqsa Martyrs' Brigades,<sup>114</sup> the PA's payments to terrorists and their families, the suicide attacks perpetrated by salaried members of the PA, the laudatory comments made by PA officials regarding such attacks, and the failure of the PA to bring any terrorists to account, HRW then claimed that "there is no publicly available evidence that Arafat or other senior PA officials ordered, planned, or carried out such attacks." This report was criticized by one observer as "too little, too late" (Richter 2004). The author noted the significant rise in terror attacks beginning in 1995, and condemned HRW for its seven-year lag in researching this growing phenomenon, during which time more than 300 Israelis were killed.

HRW has also demonstrated an inconsistent approach to investigating state support for the "low-technology adversary" in asymmetric conflict. In its *Erased in a Moment* report of 2002, HRW reported on the funding of terror activities and/or payments to terrorists' families from Iran, Syria, Iraq, Saudi Arabia, and the United Arab Emirates. Yet in its reporting of the Second Lebanon War in 2006, HRW blatantly ignored Iran and Syria's significant support for Hezbollah. Ken Roth brushed off criticism of his NGO's reports, stating that "Iranian, Syrian, and Lebanese governments are not currently fighting in Lebanon" (Roth 2006). HRW similarly declined to address the role of Syria, Iran, and China in the Gaza conflict in 2009.

In this way, HRW's serious failure to systematically investigate, monitor, and advocate against the use of terror by Palestinian militants fits with its broader organizational bias. HRW claims expertise in the human rights implications of asymmetric warfare, yet focuses its energies on critique of national self-defense, this in the face of a global rise in terrorism.

<sup>114</sup> HRW reports that "The al-Aqsa Brigades claimed responsibility for at least twelve of the thirty-eight suicide bombing attacks against Israeli civilians in the January-August 2002 period."

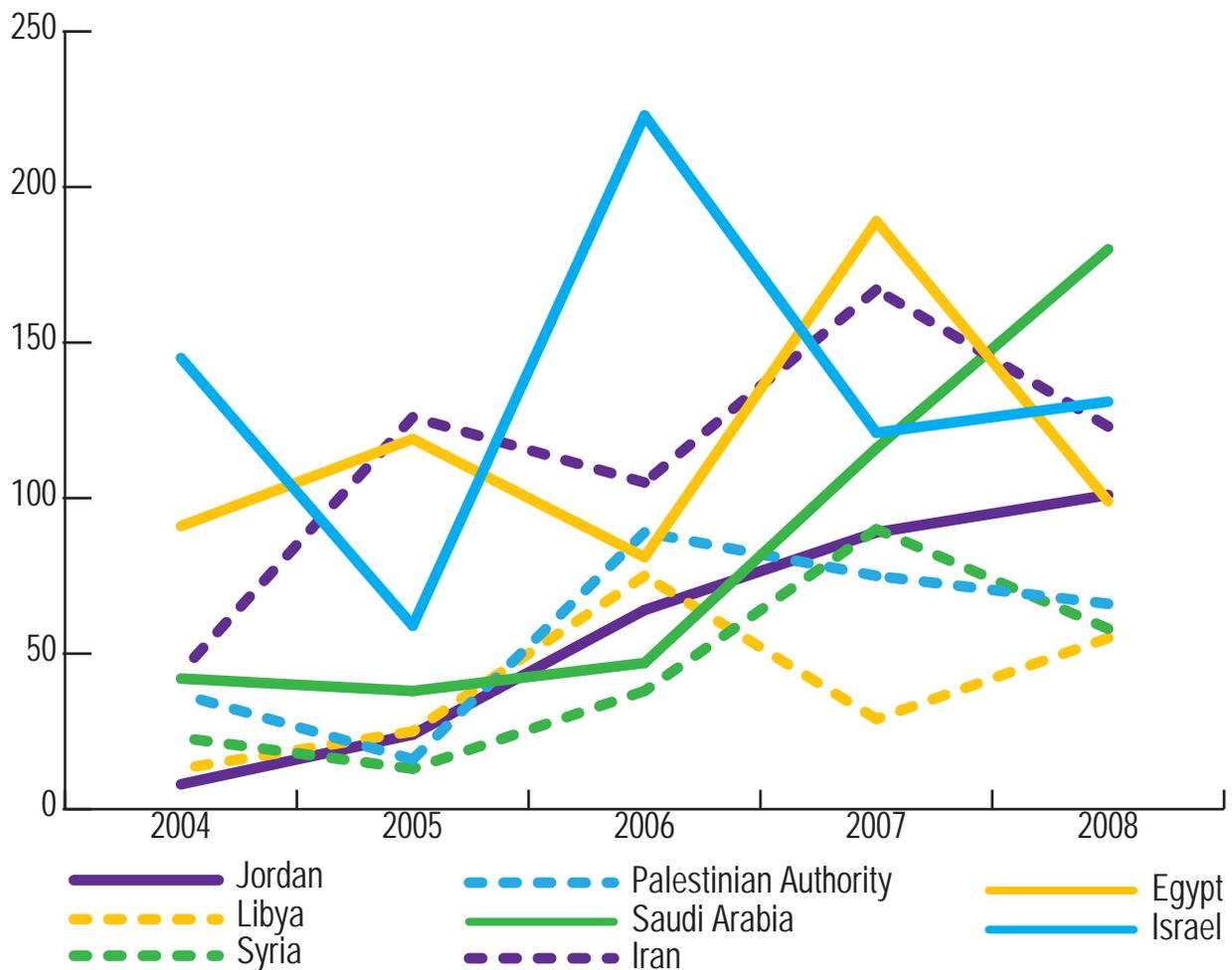
### 3c. Disproportionate Focus on Israel

Since 2004 NGO Monitor has analyzed HRW's Middle East output using a weighted scale methodology to rank and count publications on each country per year.<sup>115</sup> This gives a basic but informative picture of the research priorities and distribution of resources across the division. To expand the analysis, NGO Monitor studies have also examined the use of language in relation to various Middle Eastern states. This has repeatedly shown that

Israel is consistently singled out for condemnation, using particularly harsh language that delegitimizes Israel's actions of self-defense, while minimizing Palestinian and Arab human rights violations.

The chart below illustrates the total weighted scores for a selection of Middle East actors from 2004 to 2008 inclusive.<sup>116</sup>

HRW's priorities in the Middle East 2004-2008



<sup>115</sup> For details on the methodology see Appendix 1.

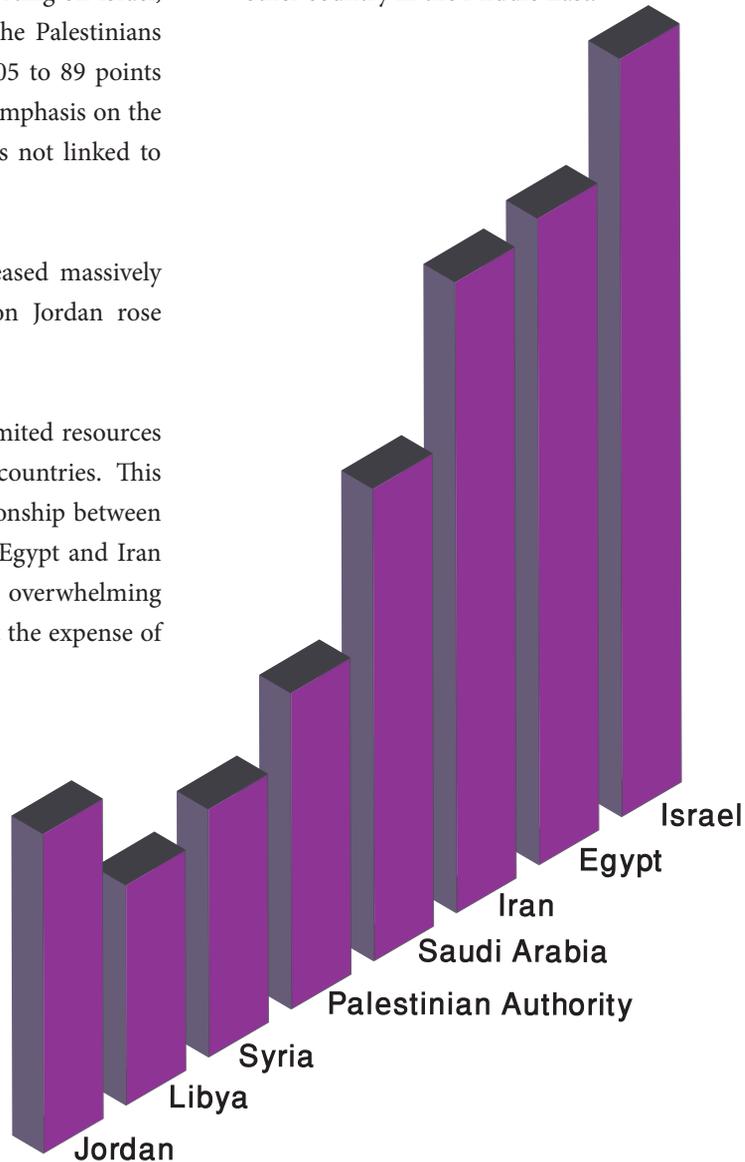
<sup>116</sup> For a breakdown of the scores for each country and year, see Appendix 2.

The graph illustrates that:

- Total output in the Middle East Division has doubled since 2004. More items were published in 2008, on a wider range of countries.
- Far more items were published on Israel than on any other country in 2004. Following NGO Monitor’s exposure of this phenomenon, 2005 saw a significant drop in attention to both Israel and the PA. There was a corresponding increase in focus on Egypt and Iran (in 2005, publications on Iran rose by 286%).
- The Second Lebanon War can account for part of the significant 2006 peak in reporting on Israel, yet the sharp rise in focus on the Palestinians that year (from 16 points in 2005 to 89 points in 2006) indicates an increased emphasis on the Israeli-Palestinian conflict that is not linked to the Lebanon War.
- Attention to Saudi Arabia increased massively in the period, and reporting on Jordan rose consistently.
- The Middle East Division has limited resources which must be divided between countries. This is expressed in the inverse relationship between scores for Israel, and scores for Egypt and Iran between 2004 and 2007, and the overwhelming focus on Saudi Arabia in 2008 at the expense of other countries (Salti 2009).<sup>117</sup>

- In 2008, Israel comes second only to Saudi Arabia as the worst abuser of human rights in the region, based on HRW allegations. Egypt, Iran, Syria, and Jordan all received less attention than Israel.
- It is noteworthy that throughout the last five years, HRW’s focus on Israel has scored consistently higher than Libya, Jordan, the PA, Saudi Arabia, and Syria.

This chart of cumulative weighted scores over the four-year period (2004-2008) shows that Israel consistently constitutes a higher research priority for HRW than any other country in the Middle East.



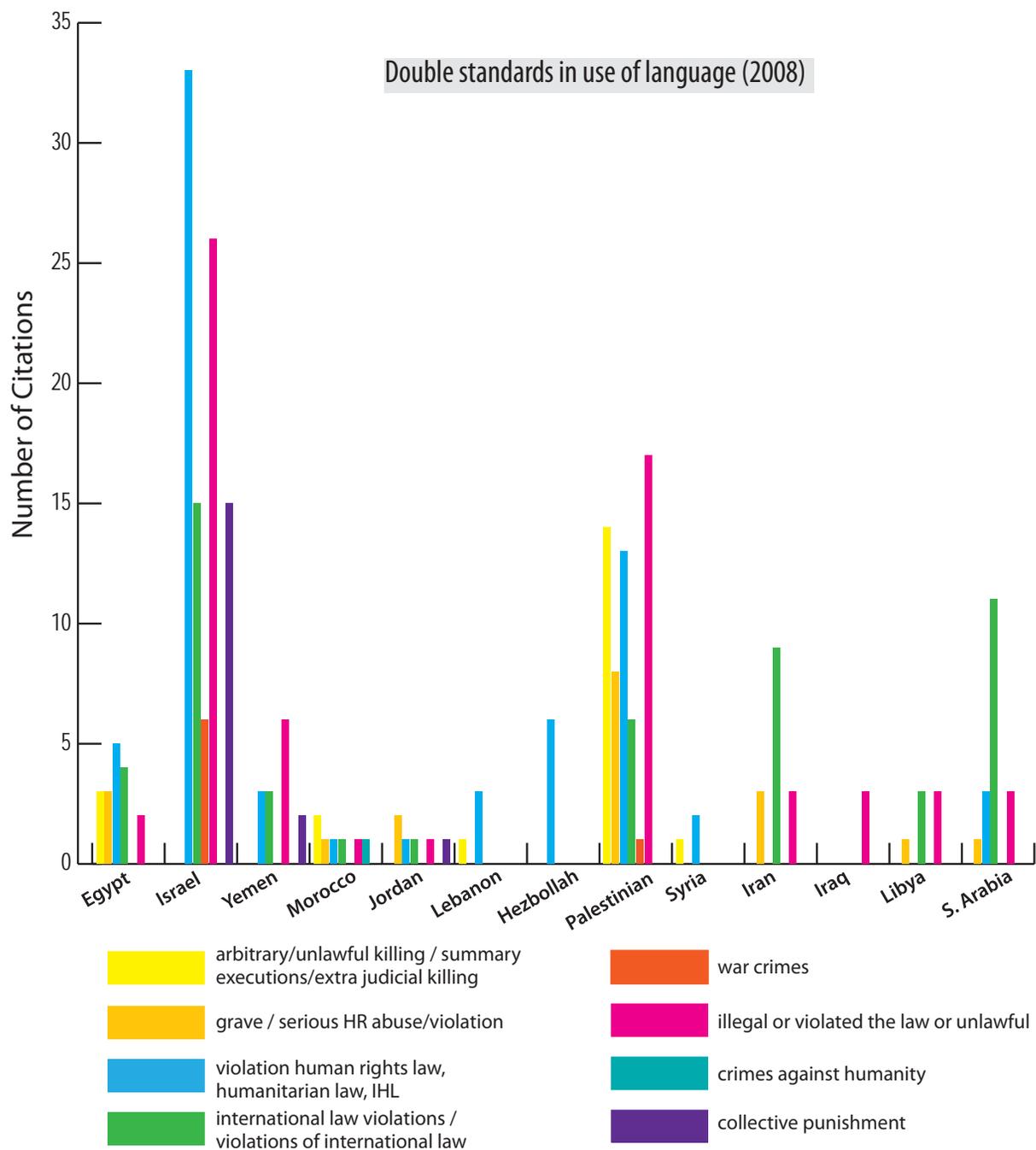
<sup>117</sup> In 2009, HRW held a fundraising event in Riyadh, Saudi Arabia. Sarah Leah Whitson’s presentation focused on HRW’s extensive reporting of “Israel[i]” violations of human rights in “its war on Gaza,” and HRW reportedly argued that it “is facing a shortage of funds because of the global financial crisis and the work on Israel and Gaza, which depleted HRW’s budget for the region.” See Salti 2009.

### 3d. Demonization of Israel Using the Rhetoric of International Law

A qualitative analysis of HRW’s use of international legal and human rights terminology to condemn Middle Eastern states adds to evidence of consistent bias against Israel. Annual studies since 2005 repeatedly show that HRW condemns Israel for human rights violations more frequently and more vehemently than it does other countries.<sup>118</sup> Terms such as “violation of international law,” “war crimes,” “collective punishment,” and “arbitrary/unlawful killing” are applied to Israel significantly more

often than they are applied to other countries. This reflects a disproportionate eagerness to condemn Israel and inadequate universality in the application of human rights standards.

The graph below illustrates the results for 2008. Terms were counted when they specifically condemned the country’s government – hence a separate category was designated for Hezbollah, to avoid confusion with the Lebanese government.



<sup>118</sup> For the complete list of results for each year, see Appendix 2.

In this table, we see that,

- Israel was the only Middle Eastern state to be accused of “war crimes” by HRW in 2008 (six times).
- Israel was condemned for “violations of human rights law,” “humanitarian law,” or “international humanitarian law” (IHL) 33 times, compared with 13 citations for the Palestinians, six for Hezbollah, and five for Egypt.
- HRW accused Israel of “illegal” or “unlawful” activity, or “violating the law,” 26 times in 2008, compared to 17 citations for the Palestinians, six for Yemen, and less than four citations for other Middle Eastern countries.
- Accusations of “international law violations” were also primarily directed at Israel: 15 citations for Israel, nine for Iran, and six for the Palestinians.
- The peak in Palestinian numbers in the chart shows a limited attempt at “balance” in HRW treatment of the Israeli-Palestinian conflict, including partial acknowledgment of Palestinian human rights violations.
- See “Double Standards” section (page 36) above for details on HRW’s inconsistent and one-sided use of international legal terminology, including “collective punishment.”

### 3e. Distortion of International Humanitarian Law

Human Rights Watch states its goal to be one of promoting adherence to existing international law and human rights standards, but also boasts of its “tenaciou[s]” work “to lay the legal and moral groundwork for deep-rooted change.” This effort is overt in HRW’s campaigns to ban antipersonnel (land) mines and cluster munitions and

its strong support for the International Criminal Court (ICC). However, other reports and campaigns blur the line between interpretation of existing laws and advocacy for new ones, and present subjective prosecutorial arguments rather than objective reporting. Examples include HRW’s report (April 2008) of the “Reuters cameraman” incident (see page 29) and its statements (August 2006) following the Qana bombing in the Second Lebanon War (see page 27). HRW’s analysis of Israel’s legal obligations toward Gaza is a salient example of the practice of re-interpreting or advocating for international law to match a political viewpoint.

In 2008,<sup>119</sup> HRW published 18 condemnations of Israel’s response to sustained and deliberate attacks launched from Gaza and aimed at civilians. These statements distort international legal terminology, repeat incomplete or false analyses of international law, and minimize or omit Hamas’ attacks on Israeli border crossings where humanitarian aid is delivered, as well as the diversion of this aid by Hamas. Far from carefully written, accurate and well-sourced legal analyses, these publications reflect an overriding political agenda. The following detailed examination of the claims reveals their lack of foundation in international law (NGO Monitor Report June 16, 2008).<sup>120</sup>

*Claim: Israel’s restrictions on the flow of goods and services into Gaza “constitute[s] collective punishment against the civilian population, a serious violation of international humanitarian law.”*

**Analysis:** HRW continues to apply the label of “collective punishment” selectively and incorrectly to Israel (also see above page 37). Restriction on the flow of goods in a war environment does not constitute “collective punishment” under international law. “Collective punishment” refers to the imposition of criminal penalties (Bell Jan. 28, 2008) and not to the legal act of retorsion (e.g., sanctions, blockades). Furthermore, pursuant to Article 23 of the Geneva Convention, which sets standards for the

<sup>119</sup> Note that this study covers January 1 – December 22, 2008.

<sup>120</sup> The following section is an extract from a June 2008 NGO Monitor report analyzing HRW claims on Gaza.

provision of limited humanitarian aid,<sup>121</sup> Israel has no obligation (Bell Feb. 28, 2008) to provide any goods, even minimal humanitarian supplies, if it is “satisfied” that such goods will be diverted<sup>122</sup> or supply of such goods will aid Hamas in its war effort. Israel is also bound by several international treaties restricting the financing and support of terrorism. Provision of goods that ultimately aid Hamas in its terror campaign would place Israel in breach of these international legal obligations. As credible accounts (Israeli Ministry of Foreign Affairs Apr. 11, 2008) have reported, Hamas has indeed diverted supplies from Gaza’s civilian population. This is consistently omitted from HRW reports.

Even though Israel is under no legal obligation, and despite Hamas’ diversion of aid, as well as attacks on the Israeli border crossings (Israeli Ministry of Foreign Affairs June 4, 2008), that include the April 9 attack on the Nahal Oz fuel depot and the May 22 truck bomb attack at the Erez crossing, Israel continued to provide hundreds of tons<sup>123</sup> of humanitarian supplies to Gaza on a weekly basis. This is above and beyond any obligation under international law.

*Claim: HRW argues that the deliberate targeting of civilians by Hamas “[does] not permit unlawful actions – in this case collective punishment – by the other.”*

**Analysis:** This claim attempts to portray Israel’s lawful right to exercise self-defense against attacks on its civilians as a violation of international law. As shown above, Israel is not engaging in “collective punishment,” nor is Israel’s actions in any way “unlawful.” Indeed, under international law, the only legitimate uses (Burroughs and Deller) of force are for purposes of self-defense or pursuant to Security Council authorization under Chapter VII of the UN Charter. Article 51 of the UN Charter, states: “[n]othing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.” Israel, therefore, has the unequivocal right to engage in self-defense to prevent attacks against its civilian population.

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<sup>121</sup> Article 23 provides that:

*Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.*

*The obligation of a High Contracting Party to allow the free passage of the consignments indicated in the preceding paragraph is subject to the condition that this Party is satisfied that there are no serious reasons for fearing:*

*(a) that the consignments may be diverted from their destination,*

*(b) that the control may not be effective, or*

*(c) that a definite advantage may accrue to the military efforts or economy of the enemy through the substitution of the above-mentioned consignments for goods which would otherwise be provided or produced by the enemy or through the release of such material, services or facilities as would otherwise be required for the production of such goods.*

*The Power which allows the passage of the consignments indicated in the first paragraph of this Article may make permission conditional on the distribution to the persons benefited thereby being made under the local supervision of the Protecting Powers.*

*Such consignments shall be forwarded as rapidly as possible, and the Power which permits their free passage shall have the right to prescribe the technical arrangements under which such passage is allowed.*

It is sometimes argued that Article 23 does not apply to the case of Gaza. If that is the case, then Israel is under no legal duty to provide even the minimal humanitarian supplies listed in Article 23.

<sup>122</sup> “Convention (IV) relative to the Protection of Civilian Persons in Time of War,” Geneva. Part II: General protection of populations against certain consequences of war, article 23, (Aug. 12, 1949) <http://www.icrc.org/ihl.nsf/WebART/380-600027?OpenDocument>.

<sup>123</sup> Israel Ministry of Foreign Affairs, June 18, 2008, <http://www.mfa.gov.il/MFA/Government/Communiques/2008/Humanitarian+assistance+transferred+to+Gaza+4-Mar-2008.htm>.

*Claim: Israel maintains “continued effective occupation of the Gaza Strip.”*

**Analysis:** This is simply an ideological maneuver. According to HRW, Gaza is still occupied because Israel “still maintains effective control over the territory via its control of Gaza’s land borders, airspace, [and] territorial waters.”<sup>124</sup> This argument is false both as a matter of fact and as a matter of law, and largely parrots a “legal” opinion circulated by the PLO prior to Israel’s disengagement in August 2005.<sup>125</sup> Under both The Hague<sup>126</sup> and Geneva Conventions,<sup>127</sup> as well as judicial interpretation of these provisions,<sup>128</sup> the standard of “effective control” refers solely to the exercise by a hostile army of governmental authority (Casey and Rivkin 2008) – not control of borders. Thus in no way can Israel be said to exercise governmental authority in Gaza. Indeed, as Egypt controls the southern border of Gaza, and based upon its occupation of Gaza from 1948-1967, under HRW’s reasoning Egypt would rightfully also be considered to be occupying Gaza. While HRW frequently quotes the ICRC on matters of international humanitarian law, they have declined to address the implications of the ICRC’s categorization of Gaza as “autonomous [not occupied] territory.”<sup>129</sup>

*Claim: Gaza continues to be occupied because Israel “maintains effective control over ... tax collection, and population registry.”*

**Analysis:** HRW provides no source to support this allegation.<sup>130</sup> Beginning in 1994, the Palestinian Authority became responsible for the establishment and collection

of all taxes within Gaza (Israeli Ministry of Foreign Affairs Aug. 29, 1994), and this is now controlled by Hamas following its violent takeover in June 2007. Israel has no power to set or collect such taxes. Pursuant to international agreement, Israel collects custom duties for cross-border transactions on behalf of the PA, but only a highly distorted interpretation would conclude that Israel is “controlling” tax collection in Gaza. Moreover, Israel has no authority over what population registry the PA and Hamas choose to use (Israeli Ministry of Foreign Affairs May 4, 1994). It was the decision of the PA and Hamas to continue use of the population registry system that was established by Israel following 1967.

*Claim: Gaza continues to be “occupied” because “Israeli military forces can and regularly do re-enter Gaza at will.”*

**Analysis:** As noted, territory is considered “occupied” under international law solely if the hostile army exercises the functions of “governmental authority.” The test is not whether an army has the potential to enter a territory to conduct military operations. Under this reasoning, Mexico and Canada would be considered “occupied” by the U.S., since U.S. forces could enter these countries “at will.”

Such inaccurate and reckless allegations not only diminish HRW’s credibility, but also devalue the lexicon of human rights while allowing many abusers to escape criticism. Such claims are reinforced by Palestinian NGO campaigns that use similar language, and in turn legitimize local NGO abuse of human rights norms.

<sup>124</sup> Marc Garlasco and Darryl Li termed this “indirect occupation” in a March 2009 article, though this phrase does not reflect any accepted concept in international law (Garlasco and Li 2009).

<sup>125</sup> PLO Negotiations Affairs Department “Factsheet,” “The Israeli “Disengagement” Plan: Gaza Still Occupied,” [http://www.nad-plo.org/inner.php?view=facts\\_gaza\\_gazaplan](http://www.nad-plo.org/inner.php?view=facts_gaza_gazaplan).

<sup>126</sup> United Nations War Crimes Commission. Law Reports of Trials of War Criminals. Volume VIII, CASE No. 47, The Hostages Trial. Trial of Wilhelm List and others (1949), <http://www.ess.uwe.ac.uk/WCC/List3.htm#Yugoslavia>.

<sup>127</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, Part I: General Provisions (Aug. 12, 1949), <http://www.icrc.org/ihl.nsf/WebART/380-600009?OpenDocument>.

<sup>128</sup> See, e.g., The Hostages Trial, Trial of Wilhem List, United Nations War Crimes Commission, Law Reports of Trials of War Criminals, Volume VIII, 1949, pp. 55-6, <http://www.ess.uwe.ac.uk/WCC/List3.htm#Yugoslavia> (holding that “an occupation indicates the exercise of governmental authority to the exclusion of the established government ... To the extent that the occupant’s control is maintained and that of the civil government eliminated, the area will be said to be occupied”).

<sup>129</sup> “Israel, the occupied territories and the autonomous territories – ICRC maps,” available at [http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/map\\_israel?opendocument](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/map_israel?opendocument).

<sup>130</sup> NGO Monitor contacted HRW a number of times requesting information on the source of these claims, but received no response.

## Part Four: Recommendations



On the basis of this analysis, and the clear findings of bias, double standards, and inappropriate methodology in HRW's activities related to Israel, we suggest a number of critical changes to be implemented by the board of directors.

a) Formation of a governing board independent of the executive director, with direct involvement in top employment and related personnel decisions.

b) Review of HRW's mission and priorities, to decide which activities and areas of concentration are compatible with HRW's professional capabilities and resources. HRW must also determine whether its mission ought to be devoted to the grave human rights abuses that are endemic to closed, undemocratic societies, or whether it should continue to devote scarce donor resources toward investigating democracies.

c) Professional guidelines are needed at every operational level and division to ensure that decisions are made strictly on a professional, rather than ideological, basis. Accuracy before advocacy.

d) An independent ombudsman should be employed to monitor the implementation of these guidelines, including the removal of ideological and other bias. This position should be filled without the input of the executive director, and funded with five percent of HRW's overall budget. The ombudsman should have the authority to prevent publication of any document or the implementation of any program.

e) Transparency in HRW's process of agenda setting is essential to restoring the universality and moral credibility of human rights.

## Appendix 1: Weighted scale methodology to rank and count publications per year, on each country in the Middle East Division

HRW publications on countries in the Middle East Division were counted and categorized, based on the relative resources required to produce each type of activity and the relative significance of their impact. For example, a long report which requires weeks of research and writing, and is launched at a press conference, scores more highly than a press release or letter.

From 2004-2007 the following schema was used:

Points	Document
10	Special Focus
9	Multi Country Report
8	Report
7	Background Briefing
6	Campaign Document
5	Commentary
4	Press Release
3	Graphic / Video
2	Testimony / Oral Statement
1	Letter

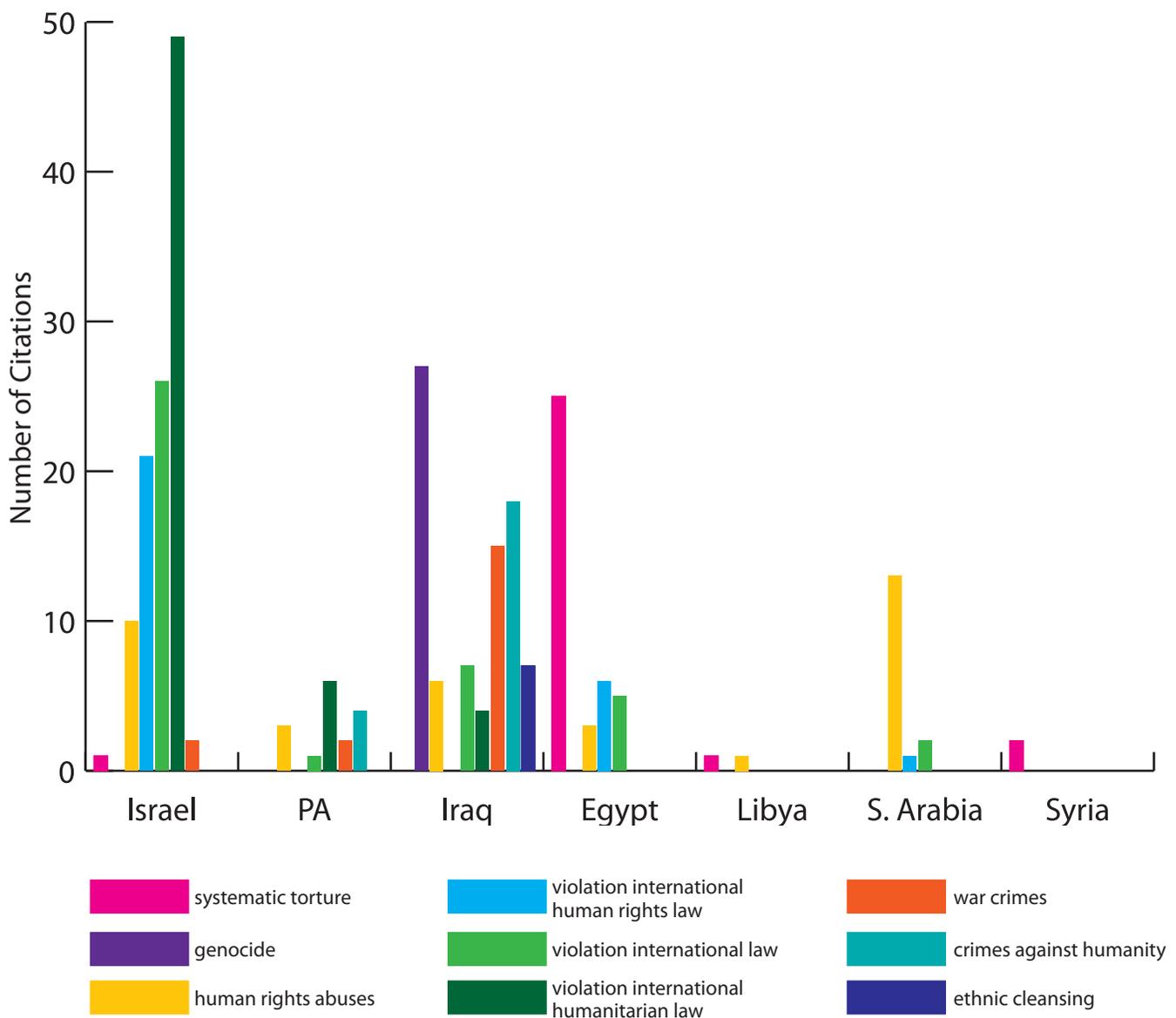
In 2008, the schema was adjusted slightly to reflect changes in HRW's publication patterns and website categorization.

Points	Document
10	Single Country Report
9	Multi Country Report
7	Background Briefing
6	Commentary / Testimony to Policy Makers
4	Letter/ News Release
2	Multimedia Item / Oral Statement

For the detailed results for each year, see individual NGO Monitor reports found at [http://www.ngo-monitor.org/article/human\\_rights\\_watch\\_hr\\_w\\_](http://www.ngo-monitor.org/article/human_rights_watch_hr_w_)

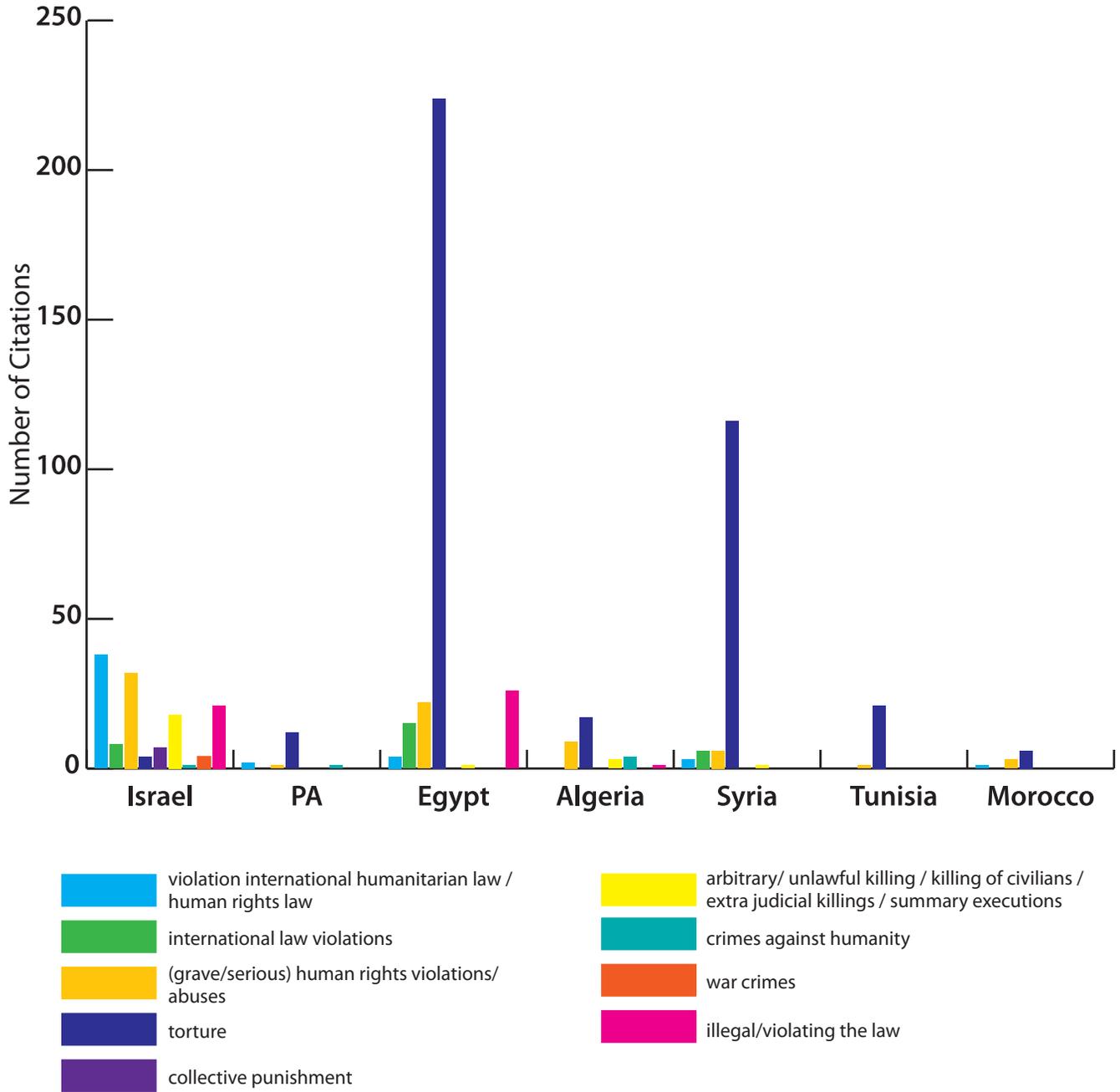
## Appendix 2: Analysis of HRW's language with respect to various Middle Eastern countries, 2004-2007

2004



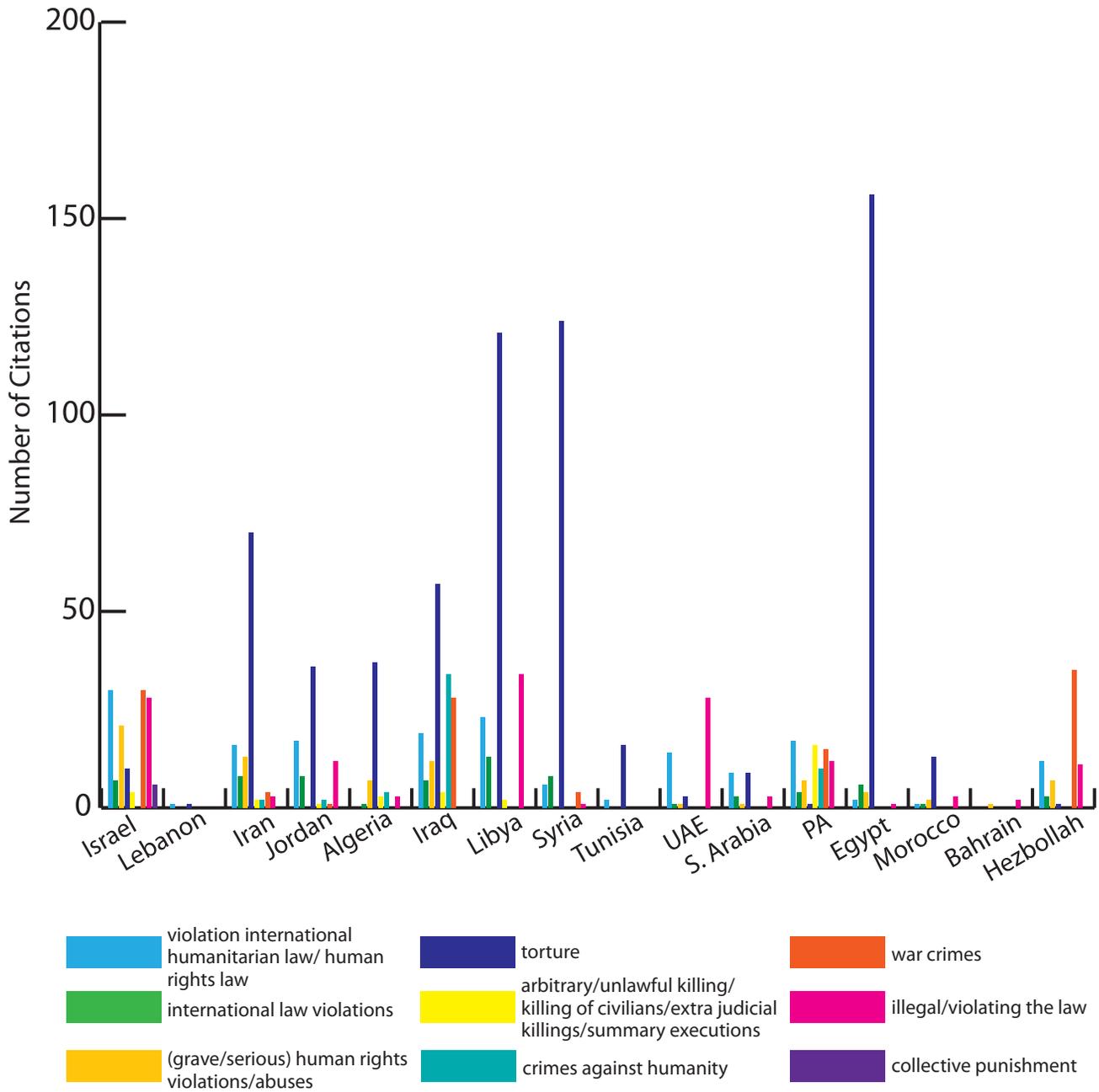
For breakdown of results see <http://www.ngo-monitor.org/data/images/File/ComparativeAnalysisOfHRWMEActivities.pdf>

2005



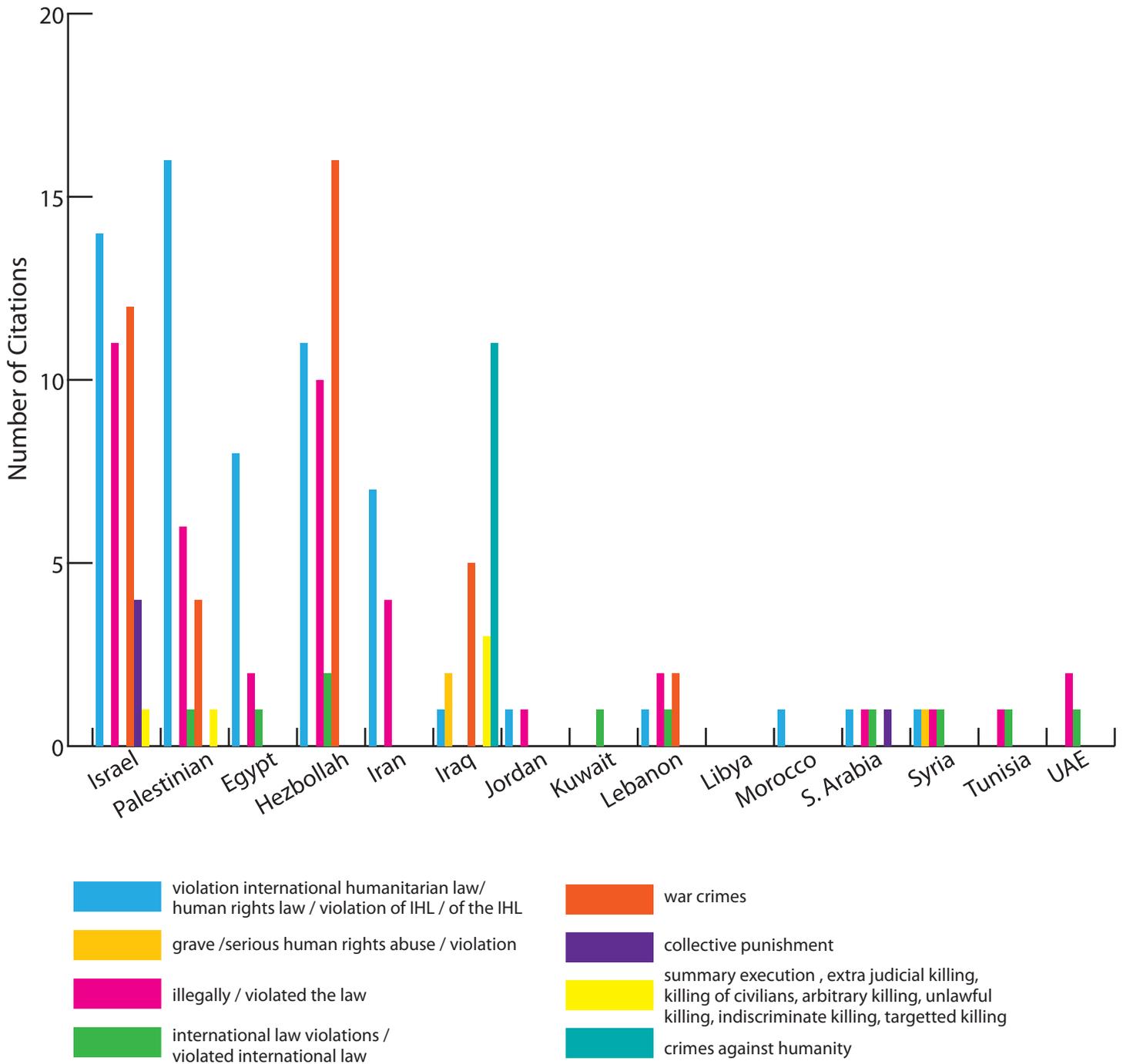
For breakdown of results see [http://ngo-monitor.org/article/human\\_rights\\_watch\\_in\\_political\\_bias\\_against\\_israel\\_continues\\_despite\\_wider\\_middle\\_east\\_focus](http://ngo-monitor.org/article/human_rights_watch_in_political_bias_against_israel_continues_despite_wider_middle_east_focus)

2006



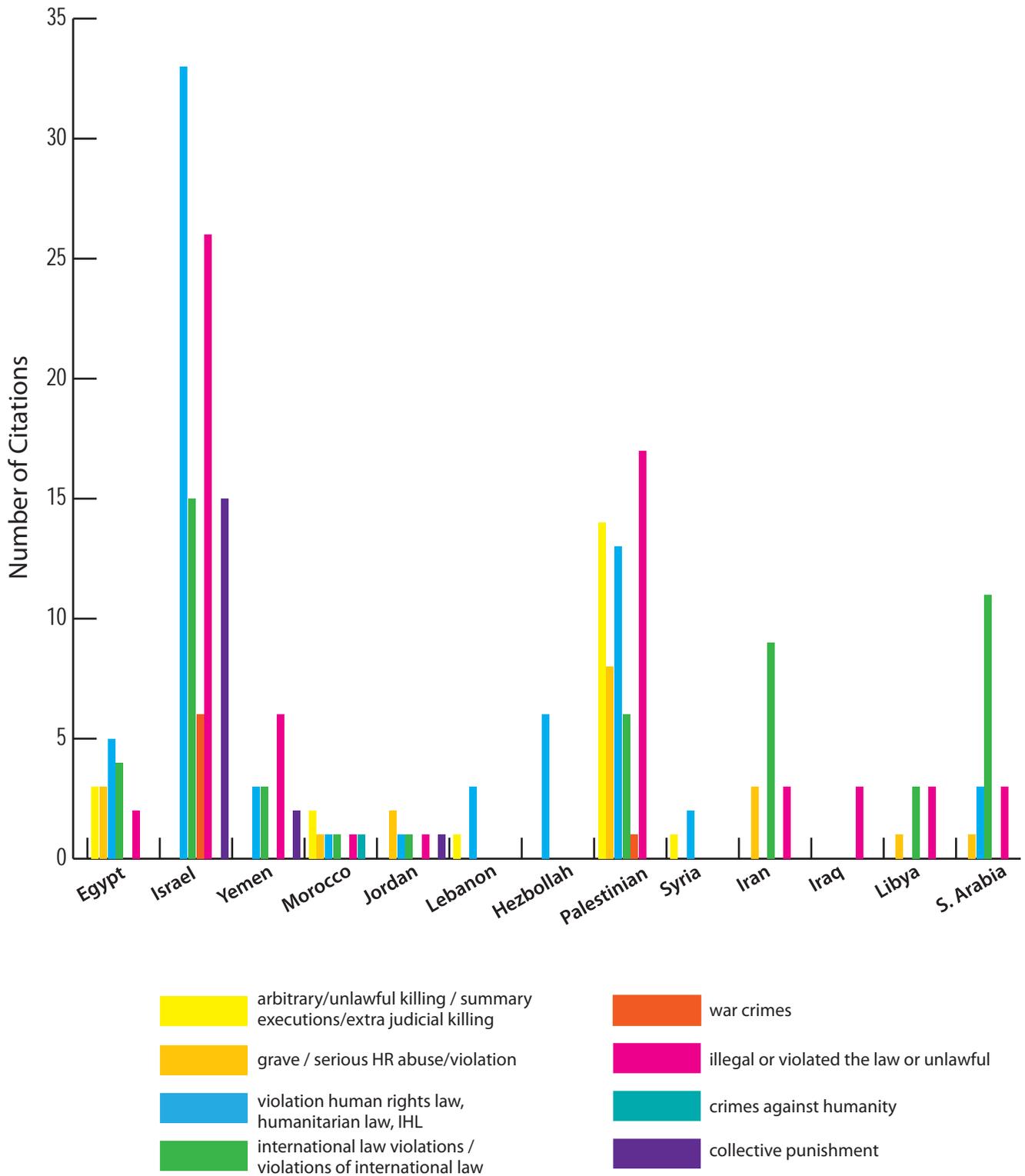
For breakdown of results see [http://www.ngo-monitor.org/article/report\\_on\\_hrws\\_activities\\_in\\_political\\_bias\\_undermines\\_human\\_rights](http://www.ngo-monitor.org/article/report_on_hrws_activities_in_political_bias_undermines_human_rights)

2007



For breakdown of results see [http://www.ngo-monitor.org/article/ngo\\_monitor\\_s\\_report\\_on\\_hrw\\_bias\\_and\\_double\\_standards\\_continue](http://www.ngo-monitor.org/article/ngo_monitor_s_report_on_hrw_bias_and_double_standards_continue)

2008



For breakdown of results see [http://www.ngo-monitor.org/article/hrw\\_annual\\_report\\_](http://www.ngo-monitor.org/article/hrw_annual_report_)

## Appendix 3: Comparison of claims in HRW reports with evidence provided by the Intelligence and Terrorism Information Center report

The following charts summarize the main discrepancies in the reports issued by HRW, based on claims documented in the study carried out by the Intelligence and Terrorism Information Center. These examples are representative, but are not exhaustive.

### Intelligence and Terrorism Information Center Report Discredits HRW's Fatal Strikes Report (August 2006)

HRW's <i>Fatal Strikes</i>	Intelligence and Terrorism Information Center Report
HRW claims that is “ <b>found no cases</b> in which Hezbollah deliberately used civilians as shields to protect them from retaliatory IDF attack.”	Shows <sup>131</sup> through images, videos, seized documents, and other evidence <sup>132</sup> that Hezbollah had a deliberate policy of “cynically exploiting the civilian population” by planting its “military infrastructure” within civilian areas.

### Specific Instances of Hezbollah Activity in Areas HRW Claims There Was No Hezbollah Presence

<i>Fatal Strikes</i>	Intelligence and Terrorism Information Center Report
<p><b>Bint Jbeil:</b> Killing of four civilians on July 15.</p> <p>HRW eyewitness: “There was <b>no fighting</b> taking place in the village – there was <b>no one but civilians</b>. The civil defense was there to help us [recover the bodies].”</p>	<p>20 bases and five weapons storehouses inside the village are shown in an aerial photograph.<sup>133</sup></p> <p>87 rockets fired from within village houses, 109 from within a 200 meter radius of the village, and 136 within a 500 meter radius of the village.<sup>134</sup></p> <p>60 regular Hezbollah operatives in the village, including about 15 in charge of storehouses.<sup>135</sup></p> <p>Arms, ammunition, and equipment were stored in the village before the war. Some equipment was placed in storehouses; some inside civilian residential buildings.<sup>136</sup></p>

<sup>131</sup> Intelligence and Terrorism Information Center, “Hezbollah’s use of Lebanese civilians as Human Shields,” (December 5, 2006) [http://www.terrorism-info.org.il/malam\\_multimedia/English/eng\\_n/html/human\\_shields.htm](http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/html/human_shields.htm).

<sup>132</sup> Ibid., Appendix 1 <http://www.ajcongress.org/site/DocServer/appendix1i-iv.pdf?docID=707>.

<sup>133</sup> Intelligence and Terrorism Information Center Report, Part 2, p. 76.

<sup>134</sup> Ibid., Appendix 4, p.256 [rocket launches as tracked by IDF Radar].

<sup>135</sup> Ibid., Part 2, p.77.

<sup>136</sup> Ibid.

## Specific Instances of Hezbollah Activity in Areas HRW Claims There Was No Hezbollah Presence

<i>Fatal Strikes</i>	<i>Intelligence and Terrorism Information Center Report</i>
<p><b>Qana:</b> Killing of “at least” 28 civilians on July 30.<sup>137</sup></p>	<p>3 rockets fired from within village houses, 36 within a 200 meter radius, and 106 within a 500 meter radius.<sup>138</sup></p> <p>Aerial photograph of weapons storehouse located next to a mosque in the village.<sup>139</sup></p> <p>Hezbollah compound in former UN outpost just southwest of Qana.<sup>140</sup> “In Hezbollah’s view, outposts only serve to complement its infrastructure in the villages, perceived as the primary operative system.”<sup>141</sup></p>
<p><b>Aitaroun:</b> Killing of 11 civilians, July 16; and 10 civilians, July 17.</p> <p>HRW eyewitnesses: “The positions of the [Hezbollah] resistance are around the village, not inside the village.”</p> <p>“There was <b>no presence</b> of the [Hezbollah] resistance inside the village.”</p> <p>“To my knowledge, Hezbollah was not operating in the area, but <b>I can’t be 100% sure</b> because we were sleeping.”</p>	<p>18 rockets fired from within village houses, 23 within a 200 meter radius, and 54 within a 500 meter radius.<sup>142</sup></p> <p>Senior Hezbollah Figure, Nabil Qawouk speaking in Aitaroun at the memorial service for those killed in the village: “The arms are in the villages and towns on south Lebanon, but they are invisible.”<sup>143</sup></p>
<p><b>Dibbin (near Marja’youn):</b> Killing of three civilians, July 19.</p> <p>One witness told HRW that “Hezbollah was active outside the village but <b>not inside it</b>.”</p>	<p>Explosives from warehouses inside Dibbin transferred to Hezbollah sabotage teams; these explosives were to be used at key places on roads and junctions.<sup>144</sup></p> <p>The Hezbollah defense plan for the eastern sector of Southern Lebanon involves both the reporting of fighters to the “infantry center” in Dibbin and the transfer of explosives from “storehouses” in Dibbin, to Hezbollah sappers.<sup>145</sup></p> <p>Seven rockets fired from within village houses in Marja’youn, 11 within a 200 meter radius of Marja’youn, and 11 within a 500 meter radius of Marja’youn.<sup>146</sup></p>

<sup>137</sup> For HRW’s original statement on Qana as and its revisions, see HRW’s “Israel-Lebanon Conflict” webpage at [http://www.hrw.org/campaigns/israel\\_lebanon/](http://www.hrw.org/campaigns/israel_lebanon/).

<sup>138</sup> Intelligence and Terrorism Information Center Report, Appendix 4, p. 256.

<sup>139</sup> Ibid., Part 1, p.44, Part 2, p. 122.

<sup>140</sup> Ibid., Part 2 p. 124.

<sup>141</sup> Ibid., Part 1, at p. 46.

<sup>142</sup> Ibid., Appendix 4, p. 256.

<sup>143</sup> Ibid., Part 1, p. 56.

<sup>144</sup> Ibid., Part 1, p. 39.

<sup>145</sup> Ibid., Appendix 1, p. 171-76.

<sup>146</sup> Ibid., Appendix 4, p. 256.

## Specific Instances of Hezbollah Activity in Areas HRW Claims There Was No Hezbollah Presence

<i>Fatal Strikes</i>	Intelligence and Terrorism Information Center Report
<b>Tallouseh:</b> Killing of three civilians, July 20. <sup>147</sup>	Four rockets fired within a 200 meter radius of the village, and 24 within a 500 meter radius of the village. <sup>148</sup>
<b>Zibqine:</b> Killing of 12 civilians, July 13.	Main source of artillery and mortar fire. <sup>149</sup>  Two rockets fired from within village houses, seven from within 200 meter radius of the village, 23 within a 500 meter radius. <sup>150</sup>
<b>Houla:</b> Killing of two civilians, July 15.  HRW eyewitness: “Neither he nor his children were involved in Hezbollah, nor was there <b>any</b> [Hezbollah] resistance in the town at the time.”	Two rockets fired from within village houses, three within a 200 meter radius, and four within a 500 meter radius. <sup>151</sup>
<b>Kafra:</b> “Heavy Israeli bombardments in Kafra had trapped 50 members of the extended Shaita family in a single home since the beginning of the war.”  Killing of three civilians and wounding of 14 trying to flee Kafra in a van, July 23. Those fleeing waved a white flag “to indicate their civilian status.”	17 rockets fired from within village houses, 36 from within a 200 meter radius of the village, and 61 within a 500 meter radius of the village. <sup>152</sup>  Hezbollah transported arms and ammunition from Syria via trucks and vans. <sup>153</sup>  Muhammad Abd al-Hamid Srour (a captured Hezbollah operative) testified about Hezbollah’s practice of “flying white flags to prevent IDF attacks.” <sup>154</sup>
<b>Baflay:</b> Killing of nine civilians, July 13.	13 rockets fired from within village houses, 19 within a 200 meter radius of the village, and 20 within a 500 meter radius. <sup>155</sup>
Wounding of six ambulance drivers and three patients, July 23 in the village of Qana.  According to HRW, “Making medical or religious personnel, medical units or medical transports the object of attack is a war crime.”	Aerial photograph of weapons storehouse located next to a mosque in the village. <sup>156</sup>  “There were numerous incidents reported of the use of ambulances, Red Cross vehicles, and the Lebanese government’s civilian defense vehicles to transfer operatives, arms and ammunition, and equipment. In other incidents, Hezbollah’s civilian vehicles closely followed Red Cross and other humanitarian convoys to minimize risk.” <sup>157</sup>

<sup>147</sup> HRW Report, August 2006.

<sup>148</sup> Intelligence and Terrorism Information Center Report, Appendix 4, p. 256.

<sup>149</sup> *Ibid.*, Part 2, p. 133.

<sup>150</sup> *Ibid.*, Appendix 4, p. 256.

<sup>151</sup> *Ibid.*, Appendix 4, p. 256.

<sup>152</sup> *Ibid.*, Appendix 4, p. 256.

<sup>153</sup> *Ibid.*, Part 1, p. 29.

<sup>154</sup> *Ibid.*, Part 2, p. 88.

<sup>155</sup> *Ibid.*, Appendix 4, p. 256.

<sup>156</sup> *Ibid.*, Part 1, p. 44.

<sup>157</sup> *Ibid.*, p. 45.

## Appendix 4: Correspondence between NGO Monitor's Legal Advisor, Anne Herzberg, and Lucy Mair.

### Email 1:

**From:** Anne Herzberg  
**Sent:** Sun 10/22/2006  
**To:** Lucy Mair  
**Subject:** HRW Report: Hezbollah Use of Cluster Bombs

Dear Ms. Mair,

I am doing some research on the use of cluster munitions by Hezbollah and wanted to ask you a few questions about HRW's October 19 Report.

1. Are the weapons referred to in the report different from the rockets used by Hezbollah that sprayed ball bearings? In other words, is HRW referring to a new type of weapon that has not previously been reported on by the media – a type of munition that releases explosive submunitions or “bomblets” akin to the cluster bombs used by Israel in Lebanon? Or are these the same weapons that sprayed ball bearings and were widely reported on by the media?
2. The report says that “Hezbollah's deployment of the Chinese-made Type-81 122mm rocket is also the **first confirmed use** of this particular model of cluster munition anywhere in the world.” What is the basis for this statement?
3. The report mentions that “Israeli authorities had until now prevented publication of details of Hezbollah cluster strikes in Israel, citing security concerns.” What is the basis for this statement?
4. Did HRW conduct investigations in any of the other cities hit by this type of cluster bomb or just the city of Mghar? Why was this particular site chosen?

Thanks in advance for any information you can provide.

Sincerely,

Anne Herzberg

### Email 2:

**From:** Lucy Mair  
**Sent:** Mon 10/23/2006 10:14 AM  
**To:** Anne Herzberg  
**Subject:** HRW Report: Hezbollah Use of Cluster Bombs

hi,

can you tell me a bit more about your research – are you a journalist, academic, etc? i'd like to know the purpose of your research so i can get the information you need to questions below.

thanks

**Email 3:****From:** Anne Herzberg**Sent:** Sun 10/23/2006**To:** Lucy Mair**Subject:** HRW Report: Hezbollah Use of Cluster Bombs

Thanks for getting back to me so promptly. I am the Legal Advisor for NGO Monitor and we are researching the issue of Hezbollah's use of cluster bombs. The information I have received so far suggests that the use of these weapons were mentioned in the media during the war and that the Israeli government was not censoring this issue. I was surprised, therefore, to read the conclusions HRW reached in its report and was interested on what information HRW was basing its report. I would appreciate any help you could provide in answering my questions below.

Regards,

Anne

**Email 4:****From:** Lucy Mair**Sent:** Sun 10/24/2006**To:** Anne Herzberg**Subject:** Answers

Anna, answers below in CAPS:

1. Are the weapons referred to in the report different from the rockets used by Hezbollah that sprayed ball bearings? THESE ARE DIFFERENT ROCKETS. THE ONES CONTAINING STEEL SPHERES OR BALL BEARINGS ARE KNOWN AS HIGH FRAGMENTATION ROCKETS, DIFFERENT THAN CLUSTER ROCKETS. ONLY CLUSTER ROCKETS CONTAIN INDIVIDUAL SUBMUNITIONS OR BOMBLETS IN THIS CASE 39 INDIVIDUAL BOMBLETS IN EACH ROCKET. THESE SUBMUNITIONS IN TURN ALSO CONTAINED STEEL SPHERES.

In other words, is HRW referring to a new type of weapon that has not previously been reported on by the media – a type of munition that releases explosive submunitions or “bomblets” akin to the cluster bombs used by Israel in Lebanon?

THAT IS CORRECT AND YES, WE ARE THE FIRST ONES TO REPORT IT.

Or are these the same weapons that sprayed ball bearings and were widely reported on by the media?

NO – ALTHOUGH AS I SAY, THEY ALSO CONTAIN STEEL SPHERES.

2. The report says that “Hezbollah’s deployment of the Chinese-made Type-81 122mm rocket is also the first confirmed use of this particular model of cluster munition anywhere in the world.” What is the basis for this statement?

OUR RESEARCHERS WHO WORK ON CLUSTER MUNITIONS, INTERNATIONAL DEMINERS SUCH AS UN MINE ACTION AND ALL OPEN SOURCE INFORMATION CONFIRM THAT THERE HAS BEEN NO NONE USE OF THESE WEAPONS BEFORE.

3. The report mentions that “Israeli authorities had until now prevented publication of details of Hezbollah cluster strikes in Israel, citing security concerns.” What is the basis for this statement?

DURING THE WAR AND SHORTLY AFTER ITS CONCLUSION ISRAELI AUTHORITIES SAID THAT

THIS INFORMATION WAS NOT FOR THE PUBLIC DOMAIN UNTIL THEY FINISHED THEIR OWN INVESTIGATION AND ANALYSIS. WE RESPECTED THAT. YOU WOULD HAVE TO TALK TO THE IDF SPOKESPERSON OR ISRAELI POLICE SPOKESPERSON OR ISRAELI POLICE BOMB SQUAD IF YOU WANT MORE OF A STATEMENT ON THIS.

4. Did HRW conduct investigations in any of the other cities hit by this type of cluster bomb or just the city of Mghar? Why was this particular site chosen?

WE CONDUCTED INVESTIGATIONS IN OTHER PLACES WHERE CLUSTERS REPORTEDLY HIT BUT MGHAR WAS THE FIRST PLACE WHERE WE FOUND INDEPENDENT EVIDENCE - TESTIMONY AND SHRAPNEL - SUFFICIENT TO MOVE AHEAD TO PUBLICATION. THIS IS ALSO THE ONLY SITE WHERE POLICE REPORT THAT A FATALITY OCCURRED DUE TO A CLUSTER ROCKET AND WHERE THE MAJORITY OF THE INJURIES OCCURRED (6 OUT OF 12).

Thanks in advance for any information you can provide.

Sincerely,

Anne Herzberg

**Email 5:**

**From:** Anne Herzberg

**Sent:** Mon 10/25/2006

**To:** Lucy Mair

**Subject:** Answers

Dear Ms. Mair,

Thank you for your response to my email. I would like a little more information than what you provided on the following point:

3. The report mentions that "Israeli authorities had until now prevented publication of details of Hezbollah cluster strikes in Israel, citing security concerns." What is the basis for this statement?

I would like more specific information as to what HRW's basis is for saying the use of cluster bombs by Hezbollah was censored by the Israeli authorities during the war due to security concerns. We have spoken to several government officials as well as to the IDF spokesperson and according to them, this information was not censored during the war. Which Israeli authorities are you referring to? With whom did HRW speak? Did they provide you with any kind of statement in writing that this information was classified?

Sincerely,

Anne Herzberg

**Email 6:**

**From:** Lucy Mair  
**Sent:** 11/1/06  
**To:** Anne Herzberg  
**Subject:** Answers

Dear Ms. Mair,

Thank you for your response to my email. I would like a little more information than what you provided on the following point:

3. The report mentions that “Israeli authorities had until now prevented publication of details of Hezbollah cluster strikes in Israel, citing security concerns.” What is the basis for this statement?

DURING THE WAR AND SHORTLY AFTER ITS CONCLUSION ISRAELI AUTHORITIES SAID THAT THIS INFORMATION WAS NOT FOR THE PUBLIC DOMAIN UNTIL THEY FINISHED THEIR OWN INVESTIGATION AND ANALYSIS. WE RESPECTED THAT. YOU WOULD HAVE TO TALK TO THE IDF SPOKESPERSON OR ISRAELI POLICE SPOKESPERSON OR ISRAELI POLICE BOMB SQUAD IF YOU WANT MORE OF A STATEMENT ON THIS.

I would like more specific information as to what HRW’s basis is for saying the use of cluster bombs by Hezbollah was censored by the Israeli authorities during the war due to security concerns. We have spoken to several government officials as well as to the IDF spokesperson and according to them, this information was not censored during the war. Which Israeli authorities are you referring to? With whom did HRW speak? Did they provide you with any kind of statement in writing that this information was classified?

Sincerely,

Anne Herzberg

**Email 7:**

**From:** Lucy Mair  
**Sent:** 11/1/06  
**To:** Anne Herzberg  
**Subject:** RE: Answers

Hi Anne,

In a meeting that was set up for us through the Ministry of Foreign Affairs while the war was still ongoing (in early August) the military intelligence representative who gave us information on the cluster rockets asked us not to use this information in any public way and to check back with the army if we’d like to use the information publicly in the future. After conducting our own investigation we went back to the army, and to the police who provided us information on cluster rockets, and asked if they would object if we released our findings and their information publicly and they agreed. That is the exact chain of events.

Lucy

**Email 8:**

**From:** Anne Herzberg  
**Sent:** 11/5/06  
**To:** Lucy Mair  
**Subject:** RE: Answers

Dear Lucy,  
Thanks for getting back to me on this.

Anne

**Email 9:**

**From:** Lucy Mair  
**Sent:** 11/10/06  
**To:** Anne Herzberg  
**Cc:** Eric Goldstein  
**Subject:** RE: Answers

Anne,

Just curious what it was about my description of what transpired that “lacked credibility.”

Lucy

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Human Rights Watch issued a three page report on October 19 which stated that Hezbollah had fired cluster munitions at Israel during the recent Israel-Lebanon conflict of July/August this year. This came over 2 months after HRW published a 51-page report on “Israeli war crimes” in Lebanon. The report stated that “Hezbollah launched cluster attacks that were at best indiscriminate...At worst, Hezbollah deliberately attacked civilian areas with these weapons.” The long publication delay was attributed to claims that the Israeli government had requested secrecy, but HRW’s evidence for this claim lacked credibility.

[Excerpt from NGO Monitor November 2006 Digest, [http://www.ngo-monitor.org/digest\\_info.php?id=1252#7](http://www.ngo-monitor.org/digest_info.php?id=1252#7) - Ed.]

**Email 10:**

**From:** Lucy Mair  
**Sent:** 11/10/06  
**To:** Anne Herzberg  
**Subject:** p.s.

Also, as NGO Monitor’s legal advisor I thought you should know that you have the law wrong in the following piece.

Sarah Leah Whitson, HRW’s Middle East Division Director, published an op-ed in Al-Sharq al-Awsat on October 5 <<http://hrw.org/english/docs/2006/10/05/lebano14336.htm>>, in which HRW acknowledged that its numerous reports during the war were not correct.

Whitson stated that Hezbollah was guilty of using human shields during the recent Israel-Lebanon war: “Human Rights Watch’s research found that on a number of occasions Hezbollah unjustifiably endangered Lebanese civilians by storing weapons in civilian homes, firing rockets from populated areas, and allowing its fighters to operate from civilian homes.”

In fact, under international humanitarian law, as I'm sure you are aware, the definition of human shielding does not include the practices mentioned above. Protocol I (1977) <<http://www.icrc.org/ihl.nsf/c525816bde96b7fd41256739003e636a/4bebd9920ae0aeac12563cd0051dc9e?OpenDocument>> to the Geneva Convention, article 51 (7), "the parties 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." This is quite different from endangerment practices that we describe above. A classic case of human shielding is the IDF's forcible use of Palestinian civilians to stand in front of IDF soldiers during house to house checks, a policy that both HRW and the Israeli high court strongly criticized as violation of IHL.

**Email 11:**

**From:** Anne Herzberg

**Sent:** 11/15/06

**To:** Lucy Mair

**Subject:** Resending Email: Answers to your questions

I am resending this b/c it appears the text was compressed in the sending process in my previous email and was difficult to read.

Lucy,

Thanks for your emails on November 10 – Promoting critical analysis on how NGOs cover the Israeli-Palestinian conflict is one of the key aims of NGO Monitor.

In response to your email regarding the term "human shield" – I believe your interpretation of the definition of "human shield" is overly narrow. Article 51 of the Geneva Convention is one source for the definition, but other legal bodies define the term "human shield" more broadly. For instance, the UN Glossary of Peacekeeping Terms offers the following definition:

human shield [any person who, under the laws of war is considered a non-combattant [sic] and as such protected from deliberate attack (civilians, POWs, etc.) but who is used by one side as a hostage to deter the other side from striking a particular military target and risking killing the hostages; the side using "human shields" gambles on the other side's reluctance to violate the laws of war and on its fear of the moral and political opprobrium usually attached to such violations; the use of human shields can take the form of a) placing civilians or prisoners in or near legitimate military targets (bases, bunkers, weapons factories, etc.) or b) placing artillery batteries and other offensive weapons in the midst of the civilian population, particularly such buildings as hospitals, schools, churches, etc., or residential neighborhoods, or c) for non-uniformed armed groups, firing at their adversary from among a crowd of civilians]

Clearly, our use of the term "human shield" in the report you quote falls under sections (b) and (c) of the UN definition.

And HRW itself considers placing armaments, etc. in civilian areas to be "shielding" if it is meant to deter military attacks (from HRW's Q&A on the Lebanon War):

What is meant by using human shields?

The crime of "shielding" has been defined as intentionally using the presence of civilians to render certain points, areas, or military forces immune from military attack. Taking over a family's house and not permitting the family to leave for safety so as to deter the enemy from attacking is a simple example of human shields. Using human

shields is a war crime. While it may be unlawful, as noted above, to place forces, weapons and ammunition within or near densely populated areas, it is only shielding when there is a specific intent to use the civilians to deter an attack.

With regards to your question about the “lack of credibility,” NGO Monitor’s research determined that HRW’s explanation for waiting to publish the Hezbollah cluster bomb report until almost two months after the end of the war (and three months after the incident) was not credible. HRW immediately published a 49-page report on alleged Israeli “war crimes” in Lebanon during the war. Furthermore, although HRW claims to have been the first organization to verify the use of these weapons, The New York Times, on July 19, published an article stating that Hezbollah used cluster bombs. The text of the article is below (note the highlighted sections). Knowledge that Hezbollah used cluster bombs, therefore, was already in the public domain in July. Our investigation showed that there was no restriction placed on publication of this information by either the IDF Censor or the Foreign Ministry.

I also have a few more questions. I was wondering if you have a legal background? Are you an attorney? Is there an attorney on staff at HRW who provides interpretation of international humanitarian law for HRW’s publications? In a broader respect, NGO Monitor would appreciate information on how HRW’s agenda in this region is determined. How are decisions made on what to publish, and when? To what degree do you, as HRW’s regional representative, determine or recommend that certain issues be examined, such as the recent report on Palestinian women, or the belated report on Hezbollah’s use of cluster bombs? Or are these decisions made largely in New York at HRW’s main office?

There are many other questions and issues, and we hope that you will continue to help us understand and analyze HRW’s activities.

Regards,

Anne

New York Times article from July 19:

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TURMOIL IN THE MIDEAST: WEAPONS; Arming of Hezbollah Reveals U.S. and Israeli Blind Spots

By MARK MAZZETTI AND THOM SHANKER

Published: July 19, 2006

The power and sophistication of the missile and rocket arsenal that Hezbollah has used in recent days has caught the United States and Israel off guard, and officials in both countries are just now learning the extent to which the militant group has succeeded in getting weapons from Iran and Syria.

While the Bush administration has stated that cracking down on weapons proliferation is one of its top priorities, the arming of Hezbollah shows the blind spots of American and other Western intelligence services in assessing the threat, officials from across those governments said.

American and Israeli officials said the successful attack last Friday on an Israeli naval vessel was the strongest evidence to date of direct support by Iran to Hezbollah. The attack was carried out with a sophisticated antiship cruise missile, the C-802, an Iranian-made variant of the Chinese Silkworm, an American intelligence official said.

At the same time, American and Israeli officials cautioned that they had found no evidence that Iranian operatives working in Lebanon launched the antiship missile themselves.

But neither Jerusalem nor Washington had any idea that Hezbollah had such a missile in its arsenal, the officials said, adding that the Israeli ship had not even activated its missile defense system because intelligence assessments had not identified a threat from such a radar-guided cruise missile.

They said they had also been surprised by the advances that Hezbollah had made in improving what had been crude rockets – for example, attaching cluster bombs as warheads, or filling an explosive shell with ball bearings that have devastating effect.

The Bush administration has long sought to focus attention on Iranian missile proliferation, and regularly discusses with journalists intelligence evidence of those activities. But American officials in Washington made clear this week that they were reluctant to detail Iran's arming of Hezbollah in the current conflict.

The reason, according to officials across the government, was a desire by the Bush administration to contain the conflict to Israeli and Hezbollah forces, and not to enlarge the diplomatic tasks by making Iranian missile supplies, or even those of Syria, a central question for now.

Still, some officials in Washington admitted to being blindsided by the abilities of Hezbollah's arsenal.

"You have to acknowledge the obvious – we've seen a new capability in striking the naval vessel and in the number of casualties that have been sustained from the Hezbollah missile attacks," a Bush administration official said.

"In the past, we'd see three, four, maybe eight launches at any given time if Hezbollah was feeling feisty," the official added. "Now we see them arriving in large clusters, and with a range and even certain accuracy we have not seen in the past."

The officials interviewed agreed to discuss classified intelligence assessments about Hezbollah's capabilities only on condition of anonymity.

While Iranian missile supplies to Hezbollah, either by sea or overland via Syria, were well known, officials said the current conflict also indicated that some of the rockets in Hezbollah's arsenal – including a 220-millimeter rocket used in a deadly attack on a railway site in Haifa on Sunday – were built in Syria.

"The Israelis did forensics, and found several were Syrian-made," said David Schenker, who this spring became a senior fellow at the Washington Institute for Near East Policy after four years working on Middle East issues at the Pentagon. "Everybody recognizes that Syria has played an important role in facilitating transshipment – but not supplying their own missiles to Hezbollah."

Officials have since confirmed that the warhead on the Syrian rocket was filled with ball bearings – a method of destruction used frequently in suicide bombings but not in warhead technology.

"We've never seen anything like this," said one Western intelligence official, speaking about the warhead.

But it was Friday's successful launching of a C-802 cruise missile that most alarmed officials in Washington and Jerusalem.

Iran began buying dozens of those sophisticated antiship missiles from the Chinese during the 1990's, until the United States pressured Beijing to cease the sales.

Until Friday, however, Western intelligence services did not know that Iran had managed to ship C-802 missiles to Hezbollah.

Officials said it was likely that Iran trained Hezbollah fighters on how to successfully fire and guide the missiles, and that members of Iran's Al Quds force – the faction of the Revolutionary Guards that trains foreign forces – would not necessarily have to be on the scene to launch the C-802.

At the same time, some experts said Iran was not likely to deploy such a sophisticated weapon without also sending Revolutionary Guard crews with the expertise to fire the missile.

An administration official said intelligence reports have concluded that a small number of Iranians are currently operating in Lebanon, but the official declined to disclose their number or mission.

**Email 12:**

**From:** Eric Goldstein

**Sent:** 11/21/06

**To:** Anne Herzberg

**Cc:** Lucy Mair

**Subject:** Response to NGO Monitor

Anne,

What “lacks credibility” is NGO Monitor’s implication that HRW withheld reporting on Hezbollah cluster munitions for over two months, presumably in order to protect Hezbollah or to prevent Israel from looking the victim.

You are right that the NY Times mentioned Hezbollah clusters in passing in a July 19 article. Thank you for that; we missed that very brief mention, and I stand corrected.

But the facts remain the same as we told them to you: we learned early about Hezbollah clusters and were asked by Israeli security authorities not to disclose this. Hard as it may be for you to believe, HRW scrupulously complied with this request until we visited again in October and were able to collect additional information and obtain the green light from Israeli authorities to go public with that information.

It is widely known that Israeli authorities did censor some details about where Hezbollah rockets landed during the war; so the idea that there were some restrictions on reporting cluster munition attacks is not far-fetched.

Your innuendo about a HRW cover-up might appear more plausible – although it would still be incorrect – if you could show that others were actively reporting on Hezbollah clusters between July and October.

OK, the NY Times mentioned it early on without giving details, but why didn't Israeli media treat this as a story worth pursuing? Why were there no first-hand accounts of the physical evidence of cluster attacks until our report on October 18? Why did the media treat our October 18 report as a news story, if what we were reporting had already been in the public domain?

I should add that even if you do find other examples of media coverage of clusters before our October 18 report, it does not change the sequence of events that we related to you, although it might undermine our claim to having brought to light new information.

Eric Goldstein

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