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**NGO Monitor Submission to the United Nations Human Rights Council  
Commission of Inquiry on the  
2018 Protests in the “Occupied Palestinian Territory”**

**Introduction**

NGO Monitor, a project of the Institute for NGO Research,<sup>1</sup> an organization in Special Consultative Status with UN ECOSOC since 2013, presents this submission to the Commission of Inquiry on the 2018 protests in the “Occupied Palestinian Territory” (Commission or COI). Since our founding in 2002, our organization has systematically analyzed various UN commissions of inquiry (COIs), identifying both best practices for fact finding as well as fundamental flaws that often undermine the credibility of their conclusions and recommendations.<sup>2</sup> We have also published numerous books and articles on the laws of armed conflict, international human rights law, arms proliferation, terror financing, and the Arab-Israeli conflict.

In contrast to the disinformation advanced by UN officials and NGOs, characterizing the events as “peaceful protests,” the “Gaza marches” represent an eight-month long (and continuing) organized military operation to attack and breach the Israeli border. This military campaign is not only intended to attack Israeli military installations and abduct IDF soldiers, but it is intended to terrorize, to cause wanton destruction, and to inflict bodily harm to Israeli civilians. Civilians living in the “Gaza envelope” (communities that abut the border) have been particularly hard hit.

Given the nature of the events on the Gaza border, it is unfortunate that the UN Human Rights Council (UNHRC) appears to have yet again established a one-sided Commission of

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<sup>1</sup> Members of the Institute’s Advisory Board include Elliott Abrams, Senior Fellow for Middle Eastern Studies at the Council on Foreign Relations; former Canadian Ambassador to Israel, Amb. Vivian Bercovici; Amb. John Bolton, US National Security Advisor and former US Permanent Representative to the UN; Hon. Michael Danby, MP, senior member of the Australian Labor Party; Harvard Professor Prof. Alan Dershowitz; Canadian Senator, Hon. Linda Frum; best-selling author and commentator and British journalist and international affairs commentator, Tom Gross; Colonel Richard Kemp, former commander of British forces in Iraq and Afghanistan; Douglas Murray, Director of the Centre for Social Cohesion, best-selling author and commentator; former Member of Italian Parliament, Hon. Fiamma Nirenstein, UCLA Professor and President of the Daniel Pearl Foundation, Prof. Judea Pearl; US Jurist and former Legal Advisor to the State Department Judge Abraham Sofaer; Dr. Einat Wilf, former member of Knesset with the Israel Labor Party and advisor to Shimon Peres; Harvard Professor Prof. Ruth Wisse; R. James Woolsey, former US Director of Central Intelligence; and Israeli Supreme Court Justice, Justice Elyakim Rubinstein.

<sup>2</sup> These publications include “NGO Fact Finding for IHL Enforcement: In Search of a New Model,” (Israel Law Review 2018); *Filling in the Blanks: Documenting Missing Dimensions in UN and NGO Investigations of the Gaza Conflict* (2015); “When International Law Blocks the Flow: The Strange Case of the Kidron Valley Sewage Plant,” (Regents Journal of International Law 2014); “Kiobel and Corporate Complicity,” (American Journal of International Law 2013); *Best Practices for Human Rights and Humanitarian NGO Fact-Finding* (Nijhoff 2012); “IHL 2.0: Is there a Role for Social Media in Monitoring and Enforcement,” (Israel Law Review 2012); *Best Practices for Human Rights and Humanitarian NGO Fact-Finding* (Nijhoff 2012); *The Goldstone Report ‘Reconsidered’: A Critical Analysis* (2010); and many other articles and reports.

Inquiry targeting Israel, aimed at cementing false narratives about the Gaza operation. Under UNHRC auspices, past commissions have had a poor record in providing objective and constructive reports regarding Israel. In our many publications (selections listed in footnote 2), we have highlighted several concerns plaguing UNHRC commissions of inquiry and fact-finding missions (FFMs) relating to the Arab-Israeli conflict. These issues include biased mandates; lack of transparency; lack of IHL and military expertise; extensive reliance, without verification or corroboration, on claims made by highly politicized and terror linked-NGOs; faulty legal analysis; omission of relevant facts; and ignoring of Palestinian violations.

In light of this history, we urge the current COI to strictly implement best practices, and avoid and prevent yet another biased report without credibility. Doing so will enhance policy development and civilian protection and help improve the tarnished reputation of the UN Human Rights Council. We hope that our submission will make a valuable contribution to this effort.

## **I. COI Mandate**

As with previous commissions and FFMs, the inherent bias of the COI's mandate hampers from the outset its ability to produce an objective and credible report. Specifically, resolution S-28/1, establishing the COI, is solely addressed to Israel and is silent as to the numerous violations by Palestinian actors. The resolution is blatantly conclusory both legally and factually: Israeli actions are called "military assaults" and labeled "disproportionate and indiscriminate"; Gaza protests are characterized as "peaceful" and "civilian"; the status of Gaza is deemed "occupied" prior to any legal analysis; and the resolution libels Israeli investigations claiming without basis that there is a "systematic failure by Israel to carry out genuine investigations in an impartial, independent, prompt and effective way." In other words, under the mandate of the COI and according to the leadership of OHCHR overseeing the COI, Israel is already judged guilty and Hamas and other Palestinian armed groups are granted impunity.

Former High Commissioner Zaid made similar prejudicial statements in his remarks at the 18 May 2018 UNHRC Special Session and in his 23 July 2018 remarks to the Committee on the Inalienable Rights of the Palestinian People.

As noted by legal scholars and human rights professionals, the starting point for any credible fact-finding inquiry must be to avoid re-enforcing predetermined conclusions. Failure to do so guarantees the resulting report will simply be used "for propaganda purposes and to support generally pre-conceived political views on the situation investigated."<sup>1</sup> The International Bar Association's Lund-London Guidelines on fact-finding emphasize that "the

terms of reference must not reflect any predetermined conclusions about the situation under investigation.”<sup>2</sup>

Joseph Weiler, one of the international community’s leading and most respected scholars, has commented on similarly biased UNHRC mandates targeting Israel:

It serves neither the interests of justice nor the credibility of the bodies charged in administering such to reach these categorical conclusions before the body set up, in the same breath, to investigate purported violations has investigated and reported. Careful factual and legal analyses are needed before any definitive conclusions may be reached. One might think that the appointing body, already sticking the arrow and drawing the target around it, may put undue pressure on the independent investigating body to reach certain conclusions. Even if these were the views of Members of the Council, they should have been withheld when the Council, a political body, exercised its investigative and judicial authority. The dissonance jars and is compromising. The same is true for the failure of the Council explicitly to make Hamas, the effective government of Gaza, alongside Israel an object for investigating purported violations of IHL and HR.<sup>3</sup>

**We urge the COI to disavow the mandate’s biased focus on Israel and to expand its inquiry to investigate all actors in the conflict. We also call on the COI to overtly reject the prejudicial and conclusory claims made in the mandate and by OHCHR officials, and approach both the facts and the law from a neutral and objective starting point.**

## **II. Lack of Transparency**

Previous COIs and FFMs have been marred by a lack of transparency, including the failure to identify staffers, consultants, and experts; failure to explain investigatory methodology such as the selection process for witnesses and incidents to review; and the failure to disclose meetings, documents, and other relevant information to independently assess the credibility of their work. Transparency is not only required to assess the quality of a COI report, but it is also essential for determining whether the already strained resources of the UN are employed effectively and in accordance with budgetary requirements.

COI Secretariat staffing is a critical issue. The Lund-London Guidelines emphasize that in order for a fact-finding mission to comply with its obligations, the people involved must be

individuals “who are and are seen to be unbiased.” While the three commissioners of the COI have been identified, the members of the Secretariat staff remain secret. Similarly, the names of any consultants, advisors, or experts also remain hidden. The failure to disclose these names makes it impossible to evaluate whether the individuals in the Secretariat are objective, free from conflicts of interest, and have the requisite expertise. Given that these unnamed individuals will likely do the bulk of the information collection, compiling of data, witness interviews, analysis, and drafting of the report, this failure to disclose is a clear violation of fact-finding standards and ethical principles.

**We urge the Commission to operate under full transparency and disclose all members of the Secretariat including any consultants and experts. We also call on the Commission to fully disclose its process for selection of incidents to review, witness interviews, and all necessary information to allow for independent review and analysis of its work.**

### **III. Lack of Military and Legal Expertise**

A serious concern relating to the workings of the COI is the lack of expertise in military operations and the laws of armed conflict (LOAC)/international humanitarian law (IHL). Extensive knowledge of human rights law is simply not enough. None of the Commission members has military or IHL expertise. Yet, it is impossible to conduct this inquiry and draft a report on the Gaza border conflict, involving almost exclusively issues of military operations and IHL, without this knowledge. The extent to which the COI has retained staffers or consultants with the requisite expertise is unknown. Due to the lack of transparency in the workings of the COI, it is impossible to evaluate the qualifications of those, if any, consulted.

Knowledge of military operations is critical for credible fact-finding and for analyzing whether IHL violations have occurred. Investigation of even a single incident requires extensive knowledge regarding weapons capabilities and availability, weather and environmental factors, chain of command, rules of engagement, targeting and collateral damage assessments, location of forces, capabilities and operations of the opposing force, the context of the incident within the operation as a whole, and many other variables.<sup>4</sup>

Similarly, lack of expertise regarding LOAC/IHL is just as problematic as a lack of military experience. Knowledge of human rights law and international criminal law is insufficient to carry out the work of the COI’s mandate. According to Professor David Kaye, IHL has become “highly technical, susceptible to different legal interpretations and embodied in a complicated inter-woven network of conventions as well as entrenched in general

international law.” Key IHL provisions are often difficult to interpret and are undermined by a lack of consensus. Many concepts have been hotly debated and involve much controversy, including the very relevant and applicable principles of proportionality and direct participation of civilians in hostilities.

Customary international law is even less-well understood: There is considerable disagreement on state practice and how it is to be assessed; in many cases, a customary rule will be claimed even though a significant number of states do not abide by it. Often the necessary conditions of state practice and opinion juris are conflated. Furthermore, those invoking customary law often rely upon tendentious and selective sources. The lack of military and legal expertise was grievously apparent in both the Goldstone Commission and the Schabas-Davis reports, which were replete with legal errors on critical matters such as proportionality, warnings, and targeting. The lack of understanding regarding military training, chain of command, operations, and technical capabilities was equally apparent in these highly flawed reports.

**We call on the Commission to employ credible and widely respected military and legal experts in the preparation of its report. The identity of these individuals must also be made public.**

#### **IV. Legal Analysis**

The legal analysis provided by previous COIs purporting to investigate Israeli “violations” was not well-founded and reflected the lack of understanding by the COI of both military operations and IHL. Part of this failure also stems from the deliberate omission of context, particularly by erasing or obfuscating Palestinian actions.

With regards to the current COI, we find it highly troubling that the mandate appears to demand the sole application of domestic law enforcement standards such as reference to an “imminent threat to life.” Such standards are inapplicable in situations of international armed conflict including the recent violence along the border between Israel and Gaza. If Gaza is “occupied” as claimed by the mandate then the applicable legal paradigm is IHL relating to international armed conflict and not domestic law enforcement.

At the very least, the Gaza border operation involves aspects where both the armed conflict and law enforcement paradigms apply. But as noted by Israeli Supreme Court Justice Hendel in his concurrence in the case reviewing the border operation,

The two-part division of the paradigms can be misleading, not for a lack of logic in the distinction, but rather because reality trumps neatly organized categorization as if each paradigm resides in a separate drawer. The problem in identifying the relevant paradigm is not the result of chance. Hamas and the terrorist organizations

intentionally seek to blur the borders between civilian protest and armed conflict, and to exploit LOAC by creating a reality of a dual character.<sup>5</sup>

Moreover, Justice Hayut explains that, unlike the politically and erroneously applied label of “occupation” to Gaza by the UN and the COI mandate,

Because Israel does not have physical control of the area in which the events are taking place, the security forces do not have at their disposal such “policing and enforcement” means as arrest and interrogation that characterize addressing violent disturbances occurring in an area under belligerent occupation, unless the participants breach the fence.<sup>6</sup>

Under IHL, whether an attack complies with the principles of distinction and proportionality requires an assessment of many factors. For instance, one must have knowledge as to what was known to military commanders prior to an attack, including enemy locations, presence of military objects, presence of civilians, anticipated harm to civilians, the military advantage expected, and evidence of intent to cause civilian harm. These factors are evaluated prospectively rather than based on the outcomes of a strike.

In addition, while evaluating the actions of Israel, the COI must simultaneously determine the status of Palestinian actors such as whether they were combatants or civilians directly participating in hostilities. Previous COIs have chosen to ignore or obfuscate such information, invalidating their findings.

Moreover, the COI may not proclaim Israel guilty of “war crimes” or other legal violations simply on the basis that civilian harm occurred. Past COIs and FFM’s, most notably the Goldstone Mission, erroneously engaged in this practice, in stark contrast to the requirements of IHL.

As explained by legal scholar Geoffrey Corn, focusing on the effects of an attack as a “touchstone of LOAC compliance” is an “endemic” methodological flaw.<sup>7</sup> Professor Laurie Blank characterizes this tendency even more starkly: “an effects-based analysis — that is, using the numbers of casualties and extent of destruction to make legal claims — is simply incorrect.”<sup>8</sup> Similarly, the Prosecutor of the International Criminal Court has explained, that “the death of civilians during an armed conflict, no matter how grave and regrettable, does not in itself constitute a war crime. International humanitarian law and the Rome Statute permit belligerents to carry out proportionate attacks against military objectives, even when it is known that some civilian deaths or injuries will occur.”<sup>9</sup>



Context is central in assessing any use of force in a conflict situation. Past COIs have de-contextualized the fighting by solely focusing on the actions of Israel as if they occurred in a vacuum. For example, in both the Goldstone and Schabas-Davis reports, details of Hamas military operations – including actions contemporaneous with Israeli operations, locations of Palestinian combatants, where weaponry was deployed, and many other factors – were erased.

Utilizing the faulty “effects-based” analysis and erasing necessary context is not only legally and factually fraudulent, but damages the framework of IHL. Engaging in the artificial separation between the actions of the parties in the conflict emphasizes a narrative of aggressors and victims, in other words serves to advance propaganda and politicized themes.

**The Commission must not employ the erroneous “effects-based” analysis in its report and it must not erase the actions of Palestinian actors in service of advancing political narratives and propaganda.**

#### **V. Reliance on Highly Politicized and Terror-linked NGOs**

Almost all reporting produced by OHCHR and Human Rights Council appointed COIs and FFMs have involved extensive reliance on claims advanced by a narrow sector of highly politicized and terror-linked NGOs. Almost none of these claims is verified or independently corroborated before being adopted.

As NGO Monitor has regularly documented, most NGOs lack the capability to conduct credible fact-finding in Gaza. In addition, many, if not all, of their claims relating to Palestinian activity and casualties originate with Hamas. The recycling of Hamas claims is rarely disclosed in NGO publications.

The methodology of these NGOs, to the extent a methodology exists, consists of relaying anecdotal “testimonies” of Palestinians, while erasing the context of Palestinian combatant activity or other violent activities.

In addition, almost all of these same NGOs apply the aforementioned erroneous “effects-based” analysis in proffering legal conclusions. Moreover, the default assessment regarding every Israeli military action is to attribute to Israel a malicious intent to harm civilians. There is no action that Israel could take that meets the standards of these organizations, nor do they offer any realistic policy alternatives.

In addition to the factual and legal distortions, this group of NGOs fails to offer realistic policy alternatives to the mass violence at the border. To the extent that proposals have been offered, adopting them would result in far more casualties.

Notably, on 30 April 2018, the Israeli Supreme Court held a hearing on two petitions from NGOs claiming that Israel's responses to violence along the Gaza border are illegal and demanding that the Court prohibit the use of live ammunition by the IDF.

In a response filed with the Court, the Israeli government demonstrated that the six NGOs – Yesh Din, ACRI, Gisha, HaMoked, Adalah, and Al-Mezan – were misrepresenting the situation along the border, misrepresenting the applicable international legal framework, and recommending steps that would actually result in *more* Palestinian casualties.

Below are excerpts from the Israeli government's response (translation by NGO Monitor, emphases in original):

5. The factual basis of these petitions is, with all due respect, **defective and lacking**, both in terms of the content of the open-fire regulations and in terms of the nature and essence of the events under discussion, and is **inconsistent with the actual situation**. On this basis, the petitioners draw faulty legal conclusions, first and foremost with regards to classifying the events as supposedly “distinctly civil events”; however, as an examination of the actual situation shows, the events under discussion are part of the armed confrontation between a terror organization – Hamas – and Israel.

6. At the crux of the matter, **open fire instructions given by the security forces in regards to the [border] barrier zone are consistent with Israeli law, international law, and rulings of the Honorable Court**.

13. **The distance between the two parts of the barrier [along the Gaza border] changes according to the topographical circumstances and ranges between 20 and 80 meters only**. As such, a Palestinian that [crosses the first part] will arrive within **a few seconds** to the iron fence that is in Israeli territory.

14. Since its establishment, the barrier is designed **to protect Israeli citizens and security forces from various threats, with an emphasis on infiltration of terrorists from Gaza into Israel**. The barrier is located **just hundreds of meters** away from a number of Israeli towns and **just dozens of meters** away from IDF forces. Therefore, a breach poses, definitely from the riotous mob, **a danger to both the citizens of Israel and to the soldiers**.

18a. In this context, it should be emphasized that **due to vulnerabilities in the barrier and the security significance of a breakthrough by a hostile Palestinian mob**, the threat of the breakthrough creates, at times, **a tangible, proximate danger**



**to the lives and bodily integrity** of both civilians and soldiers. And **if this threat [infiltration] were to be realized**, eliminating the danger (which at this stage would become immediate) **would necessitate the use of live ammunition on a larger scale.**

83. In this context, the respondents believe that **the petitioners make light of the tangible, proximate, severe danger posed by rioting masses...** The position of the respondents is that, **the danger posed by a rioting mass of thousands of people is tens of times greater than that posed by a single person or a small group of people.** Moreover, this danger **becomes instantaneously immediate** when the masses reach their target, and **preventing [the danger] at this later stage will require, from a tactical perspective, large scale live fire which the respondents are trying to prevent.**

During the Supreme Court hearing, the Israeli government sought to present the rules of engagement along with information explaining the context of the application of the rules, as well as information regarding alternative methods to disperse the rioters, stop armed attacks, and prevent border incursions. The NGOs explicitly and incredulously objected to the providing of this context even though they claimed that while the rules of engagement were acceptable as written, the application was flawed.

Such a move by the NGOs was a violation of due process and legal accountability and is directly opposed by such groups when Palestinian actors are involved in legal proceedings. It is astonishing that self-proclaimed human rights groups that claim to present objective information to the international community would actively block such measures.

See: "Recent Developments in Israeli Law," by Avinoam Sharon for further analysis.<sup>10</sup>

**We urge the Commission to independently verify all claims submitted by politicized NGOs. The Commission must expand its scope of NGO sources. All information originating with Hamas or other terror sources must be disclosed. Any submissions provided by terror-linked NGOs, including NGOs tied to the Popular Front for the Liberation of Palestine terror group, must be disqualified.**

## **VI. Violations by Hamas and other Palestinian actors**

Previous COIs and FFMs have routinely erased the activity of Hamas and other Palestinian armed groups. They have provided no information as to the operations and command structures of these organizations. They have offered little to no serious analysis of Palestinian violations.

*The Nature of the Gaza Border Riots*

Before any analysis of the events on the Gaza-Israel border can take place, it is essential to provide background regarding the nature and purpose of these violent activities. In contrast to the propaganda advanced by Palestinian armed groups and its NGO sympathizers that portrayed the border events as spontaneous and grassroots “peaceful protests,” these events consist of a highly planned and organized military operation aimed at achieving specific military and political objectives.

As noted by the Israel Supreme Court,

The organizers of the demonstrations named them “The Great Return March”, in which regard they called for a mass return of “Palestinian refugees” to the “homes of their ancestors” within the State of Israel. According to the Respondents, the demonstrations were planned over a significant period, and were organized and directed by a body called the “Return Committee, headed by Hamas, and comprising representatives of the Islamic Jihad, and the Popular Front for the Liberation of Palestine. The demonstrations included organized, intentional and significant confrontations with Israeli security forces, as well as attempts to damage security infrastructure.<sup>11</sup>

Analyst Joe Truzmah explains the command and control structure of the “Kushuk Unit” responsible for “delivering tires to the border to light on fire, removal of barbed wire at the security fence, throwing rocks, Molotov cocktails, and grenades.” Mustafa Mousa Zaquout, leader of the Fatah-affiliated armed group Abd Al-Qader Hussein Brigades, is the leader of the Kushuk Unit. Under Zaqugot are three commanders: Musab Al-Abudi’a, Ibrahim Al-Najjar, and Nashed Mohareb. They oversee the activities of the “foot soldiers” that carry out the violent directives of their commanders.<sup>12</sup>

Other units include the Hamas-led “night harassment unit,” which organizes night operations to infiltrate the border, and the “Sons of Al Zouari Unit,” which is responsible for the preparation and launching of incendiary balloons towards Israeli civilian areas.<sup>13</sup>

Far from being “peaceful,” an incident on 12 October 2018 exemplifies the strategic objectives of the marches. According to news reports, 25 Palestinian combatants used the cover provided by burning tires and smoke machines to detonate an IED on the border fence. They then infiltrated Israeli territory, and three members of the armed group headed towards an IDF post a few dozen meters from the fence with the intention to abduct one of the soldiers manning the post. They were killed after attempting to enter the post and seeking to seize the soldiers’ weapons.<sup>14</sup>

Statements made by officials of Palestinian armed groups including Hamas and Palestinian Islamic Jihad reveal the organized nature of the border operations and the genocidal intent to kill Jews and eliminate the State of Israel:

- 30 March 2018: Hamas leader Yahya Al-Senawar stated that “The march of return will continue until the temporary borders are uprooted.”
- 17 May 2018: Mahmoud al-Zahar, a Hamas leader, stated that “**when we talk about ‘peaceful resistance,’ we are deceiving the public.** This is a peaceful resistance bolstered by a military force and by security agencies, and enjoying tremendous popular support” (emphasis added).<sup>15</sup>
- 24 May 2018: Khaled al-Batsh, a senior official of Palestinian Islamic Jihad praised protestors stating that “we will move our popular march toward the Israeli villages surrounding Gaza by cutting wire and other units operating in the settlements surrounding Gaza.”<sup>16</sup>
- 9 August 2018: Khaled Tafesh, the MP in the Legislative Council of Hamas, stated “resistance in Gaza represents the utmost hope and sanctity, which is the hope for our people, our cause and our nation, and that the world who hears and watches and does not move against this aggression is an accomplice to the occupation in its crimes and we have been harboring this evil plant in our holy land for 70 years.”<sup>17</sup>
- 26 July 2018: Fathi Hamad, a Hamas official, on “called on Muslims to kill ‘Zionist Jews’ wherever they find them. He made the remark in a brief speech at a funeral at the Great Omari Mosque in Gaza City.”<sup>18</sup>
- 4 September 2018: Yahya al-Senawar, the head of the Islamic Resistance Movement in the Gaza Strip, stated that “our people are creative in inventing the means of pressure on the occupation, such as balloons and kites. History will write that those trapped in the Gaza Strip without anything forced the enemy to think again.”<sup>19</sup>
- 8 September 2018: Hamas released a statement saying that “We are committed to the legacy of the martyrs and their determination to preserve our land and defend it to the last drop of our blood and to hold on to our weapons until the last soldier is defeated and raped from our pure land in all parts of Palestine.”<sup>20</sup>
- 28 September 2018: Fawzi Barhoum, the spokesman for Hamas, stated that “these people and besiege them, that they will not retreat and will not break, and will continue with all force to break this siege and end the suffering. Anyone who imposes sanctions on Gaza and fights it in its strength and tries to hit the elements and factors of its steadfastness will fail.”<sup>21</sup>
- 8 October 2018: Senior Palestinian Islamic Jihad figure Ahmed al-Mudallal stated that the return marches “would continue and the Night Harassment Units would continue their activities until the ground burned under the feet of the ‘Zionists.’”<sup>22</sup>
- 18 October 2018: the military wings of Hamas and Palestinian Islamic Jihad issued a video showing its operatives preparing rockets for launching, ending with a caption in Arabic reading, “Be careful of making a mistake in judging [us],” and in Hebrew, “It is recommended [you] read us correctly. A mistake will not be good [for you].”<sup>23</sup>

- Khalil al-Haya, a member of Hamas' political bureau, said the "weapons of the Palestinians would be aimed at Israel until they reached Jerusalem and al-Aqsa."<sup>24</sup>

As mentioned, the strategy of the Palestinian armed groups was to use mass demonstrations and riots as a cover for combatants to breach the Israeli border. The following are several examples (this list is representative and not intended to be exhaustive):

- 27 April 2018: Al-Aqsa TV featured footage of the "Fence Cutters' Unit."<sup>25</sup> One of the members stated that "today, we cut the Zionist enemy's main barbed-wire fence on the Gaza border...today we shall enter our occupied lands, and ignite a revolution against the Zionist enemy, in order to proclaim, loud and clear, that this enemy is destined for perdition, and that what was taken by force **will be regained by force alone**. We are about to liberate our blessed Palestinian land, which was plundered from us by the enemy by force, and from which **the enemy will be driven out by force alone**" (emphasis added).<sup>26</sup>
- 5 May 2018: Video by Al-Jazeera showing Palestinians cutting through the fence. In the video, several Palestinians are seen approaching the fence and shouting, with one proclaiming, "God is with us, we are crossing the fence."<sup>27</sup>
- 7 May 2018: An article by Meir Amit Intelligence and Terrorism Information Center "Molotov Kites" – a new means of causing damage to Israel as part of the violent demonstrations of the 'Great Return March,'" details Palestinian use of kites to send Molotov cocktails from Gaza across the border into Israel.<sup>28</sup>



Palestinians making a Molotov kite east of Gaza, with the intention of sending it to Israeli territory (PALINFO Twitter account, May 4, 2018)

- 11 May 2018: CBS news footage of the violent protests shows individuals with slingshots and throwing rocks.<sup>29</sup>
- 14 May 2018: Photos of "Molotov cocktails being put together East of Rafah at March of Return camp. #Israel #Gaza."<sup>30</sup>



- 26 May 2018: Footage of an “IED detonation at #Gaza fence after it was placed by Islamic Jihad members awaiting IDF troops to come near it. #Israel”<sup>31</sup>
- 17 July 2018: A 20 year-old Israeli soldier was killed by sniper fire along the Gaza border.<sup>32</sup>
- 4 August 2018: Footage of Palestinians throwing stones at an Israeli tank.<sup>33</sup>
- 17 September 2018: Footage of Palestinians in Gaza with wire cutters trying to destroy the border fence.<sup>34</sup>
- 21 September 2018: Footage of Palestinians breaching the border fence during riots.<sup>35</sup>
- 29 September 2018: Photos of violent protestors preparing Molotov cocktails.<sup>36</sup>



- Late September: video showing after “Palestinians at the #Gaza border shoot down a small #IDF drone. Firearms can be seen and you can hear the noise of one of the tear gas canisters about to burst that is attached to the drone. #Israel”<sup>37</sup>
- September: Mohammed Al-Diri was killed during a “family quarrel” in Gaza. He was a member of Hamas Police and was involved in riots along the border and in launching incendiary balloons.<sup>38</sup>





- 8 October 2018: Footage of violent protestors burning an IDF post.<sup>39</sup>
- 8 October 2018: Photo of violent protestors armed with Molotov cocktails.<sup>40</sup>



- 8 October 2018: footage of an IED detonating among a group of protestors.<sup>41</sup>
- 12 October 2018: Photos of violent protestors with bows and arrows.<sup>42</sup>





10:05 AM - 12 Oct 2018

- 21 October 2018: footage of violent protestors destroying fence with wire cutters and detonating IED.<sup>43</sup>
- 31 October 2018: “Palestinian border unit publishes images of homemade explosives used tonight at the #Gaza border. #Israel.”<sup>44</sup>



- Meir Amit Intelligence and Terrorism Information Center posted a video of an IED being deployed against IDF soldiers.<sup>45</sup> The video shows soldiers approaching the fence and the IED detonating, injuring four soldiers.
- 10 November 2018: A Gazan entered 500 meters into Israel and set a greenhouse on fire in the Netiv Ha'asara border community.<sup>46</sup> The incident took place in extremely close proximity to civilian homes.
- Bader Najadi, a member of the Hamas Police, also worked as a “journalist” wearing a press vest and covering Palestinian border units launching incendiary balloons. His material was distributed on Palestinian social media to “encourage more attacks.”<sup>47</sup>

### *Incorporation of IHL and Human Rights Violations as Part of Palestinian Military Strategy*

Unlike the IDF, which is committed to IHL observance, albeit at times imperfect in practice, Palestinian armed groups consciously incorporate deliberate violations of IHL and human rights law as part of their military strategy. This includes indiscriminate attacks on the Israeli civilian population and the endangering and exploitation of Palestinian civilians to carry out

their operations. In other words, violations of IHL and human rights law are a feature of and not the exception to Palestinian military operations. The deliberate, widespread, and systematic use by Palestinian armed groups of IHL violations against civilians as a military strategy constitutes a crime against humanity.

These violations include the indiscriminate launching of fire kites, balloon bombs, and other incendiary devices into Israel; deliberate burning of agricultural fields; deliberate mass burning of tires; shooting of hundreds of rockets and mortars on the Israeli civilian population; co-locating rockets and other military infrastructure within Palestinian civilian buildings; machine gun fire on Israeli border communities; use of human shields including children; recruitment and use of child soldiers; and incitement to genocide.

Despite these mass violations, IDF policy of IHL compliance and training, and Palestinian “double war crimes” have been almost entirely ignored by previous COIs and FFMs. Appendix I to this submission provides a list of the many legal provisions violated by Palestinian actors.

The facts and circumstances regarding these many violations are detailed below:

#### *Recruitment and Use of Children*

One of the most egregious violations committed by Palestinian armed groups was the exploitation of children. This abuse occurred in several ways:

- Allowing children to be present at the border violence placing them in grave danger;
- Employing children to participate in hostilities such as using them as decoys along the border fence, using them to bait IDF soldiers into the range of Palestinian snipers, launching incendiary devices, or employing them to destroy the fence;
- Exposing Palestinian children to a culture of violence and incitement;
- Targeting Israeli children by attaching incendiary devices to balloons, luring them to pick up and detonate the devices.

The following are a just a few illustrative examples listed in chronological order:

- 25 March 2018: Hamas sent a 7-year-old girl to the Gaza security fence during protests. The IDF ensured that she returned to her parents safely.<sup>48</sup>
- 30 March 2018: A Times of Israel article featured an image of young children near Khan Younis, Gaza burning a poster with a crossed out photo of the US President.<sup>49</sup>



- 23 April 2018: YNet News published an article “IDF: Hamas sending children at us.”<sup>50</sup> The IDF is quoted stating that “Hamas encourages young children, some of them aged no more than 10, to take part in riots on the Gaza border fence—using them as glorified human shields with the knowledge that the IDF will refrain from shooting at them.”<sup>51</sup> The article features numerous photos of children throwing rocks, using slingshots, and collecting tires (to be burnt along the fence). The article also includes video footage of children participating in the demonstrations.<sup>52</sup>
- 24 April 2018: An article in *Israel Hayom* “Hamas uses children as human shields,” features a photo of children participating in the violent demonstrations.<sup>53</sup>
- 5 May 2018: A Times of Israel article “In new videos, IDF accuses Gazans of faking injury, taking small kids to riots,” features footage of young children near the border rolling tires as well as apparently injured youth carried on a stretcher that then walk away unharmed.<sup>54</sup>
- 14 May 2018: A Times of Israel article “Iran is funding Hamas’ violent campaign at Gaza border, Shin Bet says,” includes a photo of a young child running with a tire through a an area with burning tires and smoke.<sup>55</sup>



- 9 July 2018: Analyst Joe Truzmah exposed photos of children making a launching incendiary balloons from Gaza into Israel.<sup>56</sup>
- 25 July 2018: The IDF stated that “deadly violence” that took place on the Gaza border on July 25 began with a “bait” riot staged by children, which lured IDF soldiers into Hamas and other terror groups’ sniper range.<sup>57</sup>

- 10 August 2018: video showing Palestinian children releasing incendiary balloons. The devices are shown to be “condoms filled with helium and a string attached to a small stick they light on fire.” The young children are seen wearing masks and lighting the sticks in the video.<sup>58</sup>
- 24 September 2018: Palestinian media footage showing “Children at the #Gaza border near Beit Lahia cutting the wire at the security fence.”<sup>59</sup>
- 25 September 2018: Images showing children “attempting to light a tire on fire that’s wedged in the razor wire at the border.”<sup>60</sup>



- 25 September 2018: video, shows children cutting the Gaza border fence in the midst of riots near Beit Lahia.<sup>61</sup>



- 8 October 2018: Video of a Palestinian IED detonating amidst a crowd of “demonstrators.” Children can be seen among the crowd.<sup>62</sup>



- 19 October 2018: [Video](#) from Palestinian media showing a group of Palestinians, including children, breaching the Gaza border fence.<sup>63</sup>



In the midst of the border operations, Hamas also held “summer camps” for Palestinian children to indoctrinate and provide military training:

Most of the activity is **devoted to basic military training**. The youths are trained by **instructors wearing uniforms bearing the insignia and badges of Hamas’s Izz al-Din al-Qassam Brigades**. In addition to summer camps held in Hamas facilities, summer camps are held in schools throughout the Gaza Strip. Most of them are organized by Hamas **on a wider scale (tens of thousands of participants)**. The summer camps in schools are also devoted primarily to military training and ideological indoctrination by Hamas.<sup>[1]</sup> Training during these summer camps is a supplement to the military training, both theoretical and practical, undergone by high school students **during the school year**.<sup>64</sup>

The slogan for the 2018 summer camps was “I am returning to my homeland,” referring to the ultimate objective of the border attacks of “return” – a euphemism for the destruction of the State of Israel. The camps also included specific military training for the “marches” such as “launching balloons, throwing stones, collecting tires and glorifying the shaheeds killed during the ‘marches.’” Simulating and training for the abduction of Israeli soldiers was a significant component.<sup>65</sup>

## *Burning Tires: Violating the Right to Health, Wanton Destruction, Deliberate Destruction of the Environment*

A key component of Palestinian military operations at the border was the mass burning of tens of thousands of tires. According to the Environmental Law Alliance Worldwide, burning tires results in:

*“‘criteria’ pollutants, such as particulates, carbon monoxide (CO), sulfur oxides (SO<sub>2</sub>), oxides of nitrogen (NO<sub>x</sub>), and volatile organic compounds (VOCs). They also include ‘non-criteria’ hazardous air pollutants (HAPs), such as polynuclear aromatic hydrocarbons (PAHs), dioxins, furans, hydrogen chloride, benzene, polychlorinated biphenyls (PCBs); and metals such as arsenic, cadmium, nickel, zinc, mercury, chromium, and vanadium. Both criteria and HAP emissions from an open tire fire can represent significant acute (short-term) and chronic (long-term) health hazards to firefighters and nearby residents. Depending on the length and degree of exposure, these health effects could include irritation of the skin, eyes, and mucous membranes, respiratory effects, central nervous system depression, and cancer. Firefighters and others working near a large tire fire should be equipped with respirators and dermal protection. Unprotected exposure to the visible smoke plume should be avoided.”*

The US Environmental Protection Agency (EPA) similarly states that tire fires often become “major hazardous incidents affecting entire communities” and that the fires “threaten pollution of the air, soil, and water.” The EPA likewise states that tire fires emit toxic air pollutants including polycyclic aromatic hydrocarbons (PAHs), benzene, styrene, phenols, and butadiene.<sup>66</sup> Many of these emissions are highly carcinogenic. Incidents of tire burning include:

- 4 April 2018: Israeli officials warn of the environmental harm caused by burning tires, and called on the World Health Organization to prevent “ecological catastrophe and to protest Hamas’ irresponsible behavior.”<sup>67</sup>
- 5 April 2018: Quds News Network posted a video showing Palestinians in Gaza collecting tires and transporting them joyously in a tractor.<sup>68</sup>
- 6 April 2018: Friday, April 6<sup>th</sup>’s protests were referred to by Palestinians as “Friday of Tires,”<sup>69</sup> where 10,000 tires were burnt in order to obstruct IDF vision.<sup>70</sup>
- 6 April 2018: An AFP photograph shows a Palestinian collecting tires to be burnt during the protests along the Gaza border.<sup>71</sup>





- 6 April 2018: Another AFP shows Palestinians burning tires and the resulting thick black toxic smoke.<sup>72</sup>



- 6 April 2018: A video featured in the *Washington Post* shows violent protestors collecting and burning tires.<sup>73</sup>
- 8 April 2018: JTA featured a photo of Palestinians burning tires and the resulting toxic smoke.<sup>74</sup>



- 15 May 2018: The *New York Times* wrote that “After protestors burned tires to obscure the soldiers’ view and rolled them toward the fence, the Israelis brought in giant industrial fans to disperse the thick black smoke and powerful water cannons to douse the fires.”<sup>75</sup>
- 8 June 2018: The *Daily Telegraph* featured a video showing burning tires along the Gaza border.<sup>76</sup>
- 5 August 2018: Palestinian media video featuring a “giant kite with a flaming tire attached to it.”<sup>77</sup>

- The Meir Amit Intelligence and Terrorism Information Center published an article (10 September 2018) “The ‘Return March’ and propaganda events in the Gaza Strip” featuring photos of burning tires on rafts.<sup>78</sup>

The mass confiscation of tires in Gaza for burning has also resulted in a shortage of tires for Gaza motorists causing additional economic and humanitarian hardship.

- 1 November 2018: A Times of Israel article “In Gaza, tire shortage hits motorists but not protesters,” features photos of protestors carrying tires with fire and smoke in the background.<sup>79</sup>

### *Indiscriminate Attacks Against Civilians through Launching of Aerial Incendiary Devices:*

Throughout the violence along the Gaza border, Palestinian armed groups launched incendiary balloons across the border to target Israeli civilian communities and agriculture. These objects, which consist of fire kites, helium-filled balloons, or condoms, are tied together with flaming rags or other incendiary devices or explosives. Apart from targeting the Israeli civilian population, these devices have caused significant damage to agricultural fields, animals, and the environment more broadly. According to YNet News, as of July 2018, incendiary kites and balloons started “678 fires in Israel, burning 910 hectares (2,260 acres) of woodland, 1,500 acres of agricultural crops, as well as open fields. In addition, 6,000 dunams (1,500 acres) of agricultural produce and thousands of dunams (acres) of open fields were burned to the ground.<sup>80</sup> The Keren Kayemeth LeIsrael (KKL) alone has lost 15,100 dunams (37,000 acres) of land, not including the Gaza border communities’ lands that were scorched.” As mentioned, balloons are often used to attract children.

Incendiary devices have burnt fields in Kibbutz Sa’ad,<sup>81</sup> Kibbutz Mefalsim,<sup>82</sup> Or Haner,<sup>83</sup> and Kibbutz Be’ri among in numerous other communities in close proximity to Gaza.<sup>84</sup>



Burning Fields of Or Haner



Beyond the vast agricultural and environmental damage caused by these explosive devices, they have also landed in kindergartens and other public space establishments – endangering the lives of civilians. Examples include:

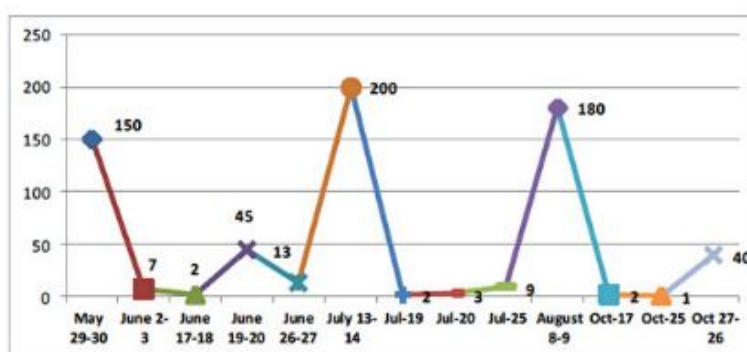
- 4 July 2018: A video featured on Ynet News shows incendiary devices launched from Gaza setting a field on fire in Israel.<sup>85</sup>
- 3 July 2018: Video shows “Sons of Zawari,” Palestinian armed faction, launching multiple incendiary balloons during the night from Gaza into Israel.<sup>86</sup>
- 6 July 2018: Video showing Sons of Zawari launching birthday party balloons with an explosive crafted airplane tied to them.<sup>87</sup>
- 17 July 2018: An explosive device attached to a “helium balloon landed on the grounds of an elementary school in the Eshkol Regional Council.”<sup>88</sup>
- 17 July 2018: According to Times of Israel, “A balloon from Gaza carrying flaming materials landed in the yard of a preschool in an Israeli community near the border Tuesday as children played outside. A teacher managed to get the children inside and there were no injuries.”<sup>89</sup>
- October: A fire broke out in Kissufim forest due to incendiary balloons. According to the Palestinian Ma’an News, “353 fires broke out in the Kissufim forest” in the past 6 months.<sup>90</sup>
- 11 October 2018: Images showing “Palestinian unit launching barrage of incendiary balloons.”<sup>91</sup>
- 11 October 2018: Images of balloons being launched.<sup>92</sup>
- 12 October 2018: Images on “I love you” incendiary balloons launched towards Israel on Friday east of Al-Bureij.<sup>93</sup>
- 31 October 2018: Images of balloons with the caption “Witness the launch of an explosive and an incendiary balloon towards our occupied territories this evening east of Rafah.”<sup>94</sup>

## *Indiscriminate Rocket, Mortar, and Machine Gunfire Targeting Israeli Civilians*

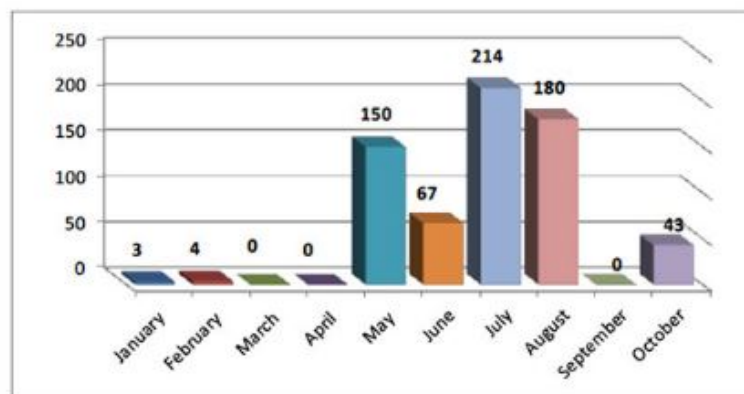
Since 2001, the primary military tactic of Palestinian armed groups has been to launch indiscriminate rockets and mortars, and aim gunfire at Israeli civilians. The 2018 border events have proved no exception. Not only does such activity endanger the Israeli civilian population, but these weapons are deliberately launched from within Palestinian civilian infrastructure including homes, mosques, schools, athletic stadiums, and farms. By doing so, these groups seek to draw retaliatory Israeli fire on these areas in hopes that civilian casualties will result and provide a significant PR victory. Many Palestinian civilians are also injured or killed by such weapons falling short of their intended Israeli targets or exploding prematurely.

According to the IDF, over 174 mortar shells and rockets were fired on Israel on 14 July 2018 alone. According to YNet News, three Israelis were injured in the incident when “rockets hit a home and a synagogue in the border town of Sderot.”<sup>95</sup> Meir Amit Intelligence and Terrorism Information Center’s compilation of the “Monthly Distribution of Rocket and Mortar Shell Fire since January 2018” and “Rocket and mortar shell fire during and between the recent rounds of escalation,” shows the intensity of these indiscriminate attacks targeting civilians since the beginning of Palestinian military operations at the border<sup>96</sup>:

**Rocket and mortar shell fire during and between the recent rounds of escalation**



**Monthly Distribution of Rocket and Mortar Shell Fire since January 2018**



Source: Meir Amit Intelligence and Terrorism Information Center, “Summary of Events Along the Gaza Strip Border,” <https://www.terrorism-info.org.il/en/summary-events-along-gaza-strip-border-4/>



Examples of this include:

- 5 April 2018: IDF released footage of protester approaching the fence holding what appears to be an assault rifle.<sup>97</sup>
- 16 May 2018: Several homes in Sderot, Israel were hit by machine gun fire from Gaza.<sup>98</sup>
- 29 May 2018: According to the IDF, “25 mortar shells were launched towards several sites in Israeli territory.” One of the rockets landed in a kindergarten schoolyard just hours before children were set to arrive.<sup>99</sup>



**LTC (R) Peter Lerner** ✓

@LTCPeterLerner



This photo of the kindergarten hit this morning shows the dispersal of the mortar rocket shrapnel. If the attack would've been launched 30 minutes later the courtyard would've been full of kids. (קרדיט: ידידיה הרוש)

♥ 45 8:18 AM - May 29, 2018

💬 111 people are talking about this



- Photos showing “Saraya Al-Quds, the military wing of Palestinian Islamic Jihad published photos of some of their rocket arsenal used against #Israel recently. #Gaza”<sup>100</sup>



11:19 AM - 31 May 2018

- 5 June 2018: footage of “Martyr Abd el-Qader El Husseini Brigades in #Gaza showing off their arsenal” and launching rockets.<sup>101</sup>
- 23 June 2018: Photos of Palestinian Islamic Jihad’s arsenal of rockets and attacks against Israel.



Joe Truzman  
@jtruzmah

Follow

On Sunday, Palestinian Islamic Jihad will be releasing a new video. Mostly showing off their arsenal, rocket attacks on #Israel and surveillance of #IDF positions - stay tuned. #Gaza



6:57 PM - 23 Jun 2018

- 9 August 2018: Footage from i24 News shows rocket fire from Gaza onto Israeli civilian areas and the resulting “heavy damage” and injuries.<sup>102</sup>
- 9 August 2018: *The Washington Post* reported that militants fired more than 180 rockets and mortar rounds into Israel.<sup>103</sup>
- 10 August 2018: An EU foreign affairs spokesperson stated that “The rocket fire from Gaza towards communities in southern Israel as well as other violent actions and provocations against Israel by Hamas and other Palestinian militants are totally unacceptable.”<sup>104</sup>



- 28 October 2018: “Palestinian Islamic Jihad releases video of Friday and Saturday's mortar and rocket fire on #Israel|i communities along the #Gaza border.”<sup>105</sup>



## Attacks on Humanitarian Aid

According to the Customary International Humanitarian Law Rule 32, “Objects used for humanitarian relief operations must be respected and protected.”<sup>106</sup> Despite this, Palestinian armed groups have throughout the violence along the Israel-Gaza border attacked the humanitarian aid crossing between Israel and Gaza:

- 4 May 2018: *Haaretz* reported that “The IDF said a few dozen protesters set fires at several locations on the Gazan side of the Kerem Shalom border crossing with the aim of damaging pipelines that transfer gas and fuel from Israel into the Strip.”<sup>107</sup> A video taken by the IDF’s spokesperson unit shows the humanitarian aid crossing burning.<sup>108</sup>
- 12 May 2018: Violent protestors again set the Kerem Shalom crossing on fire, resulting in its closure and an estimated 33 million shekels in damage (cost of the damaged pipe and conveyer belt).<sup>109</sup>
- 15 May 2018: *Haaretz* reported that Israel would “be reopening the Kerem Shalom Crossing into Gaza on Tuesday, after Palestinian rioters set fire to parts of the facility on three separate occasions during border protests this month — including on Monday.”<sup>110</sup>

## Casualty Figures

Statements made by UN officials and NGOs in response to the violence along the Israel-Gaza border regularly erase the fact that a significant number of casualties were combatants in Palestinian terror groups (such as Hamas, Palestinian Islamic Jihad, and the PFLP) or civilians directly participating in hostilities. Under IHL, combatants and civilians directly participating in hostilities can be targeted for any reason as long as the attack complies with the rules of proportionality. Considering that hundreds of thousands of individuals have participated in the violent protests since March, and a significant number of those killed identified by Palestinian terror groups as being their combatants, the IDF clearly acted within international standards:

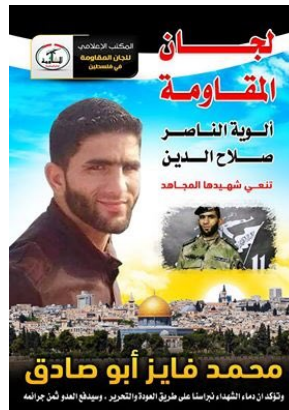
- 30 March – 15 May 2018: A study by Meir Amit Intelligence and Terrorism Information Centre identified 122 fatalities as being Palestinian combatants.<sup>111</sup>

The identities of the fatalities of the "Great Return March" (March 30, 2018 – May 15, 2018)

Organization	Membership	Affiliation	Total
Hamas	34 military wing and security force operatives	29 affiliated with Hamas	63
Fatah	2 military operatives	19 affiliated with Fatah	21
PIJ	4 military operatives		4
DFLP	1 military operative	1 affiliated with the DFLP	2
PFLP		3 affiliated with the PFLP	3
Unknown			19
<b>Total</b>			<b>112 fatalities</b>

Note: About 83% of the fatalities of the "Great Return March" (92 people) were terrorist operatives or individuals affiliated with terrorist organizations. At least 67% of them were Hamas operatives. The number of Hamas operatives may increase because it is possible that the category "Without organizational affiliation" (10 fatalities) also includes unidentified Hamas operatives.

- 6 April 2018: Yasser Murtaja, a Norwegian Refugee Council NGO contractor, was killed in the violence along the border and was reportedly an officer in Hamas.<sup>112</sup>
- 21 May 2018: Salah Bardawil, a senior Hamas figure, stated that "50 out of the 62 shaheeds who were killed in the events of May 14, 2018 (about 81%) belonged to Hamas.<sup>113</sup> He added that in the events that took place between March 30, 2018 and May 14, 2018, 50% of the fatalities were Hamas operatives. Yahya Sinwar, head of the Hamas Political Bureau in the Gaza Strip, also said that on May 14, Hamas had over 60 shaheeds, and that 'yet other 20 wounded are expected to die at any moment.'"
- May: Ma'an Development Center NGO employee Ahmad Abdallah Aladini was killed in the violence on the Gaza border.<sup>114</sup> Aladini was a "comrade" of the Popular Front for the Liberation of Palestine (PFLP).<sup>115</sup> According to the PFLP, Aladini was active against the "Zionist aggression on the Gaza Strip."
- 20 July 2018: According to AP, "The Palestinian Health Ministry says three people were killed by Israeli fire in Gaza. Israel's military said Palestinians in Gaza had fired shots at soldiers near the border. It says it responded with airstrikes and tank fire at militant targets in Gaza. Gaza media reported that two of the dead were Hamas militants and that gunmen fired mortars toward the border."<sup>116</sup>
- 7 August 2018: Reuters reported that "Israel kills two Hamas gunmen in Gaza, sides dispute circumstances." Israel described the attack as a "return fire for a shooting attack against its forces."<sup>117</sup>
- 24 September 2018: Salah Al-Din Brigades poster of "Mujahid Mohammed Abu Sadiq, a militant belonging to the Salah Al-Din Brigades was killed at the #Gaza border by #IDF gunfire. #Israel"<sup>118</sup>



- 3 October 2018: “Salah Al-Din Brigades memorializes one of their militant members in recently released video. He was killed at the #Gaza border participating in clashes against #IDF troops. Just another example of militants participating in border clashes at the security fence. #Israel”<sup>119</sup>



## *Humanitarian Access and Assistance Provided by Israel*

In contrast to the commandeering of aid and deliberate attacks on the humanitarian aid crossing by Palestinian armed groups and Palestinian political in-fighting, Israel has maintained and provided assistance to Palestinians in Gaza.<sup>120</sup>

The IDF’s Coordinator of Government Activities in the Territories unit (COGAT) reported that the following efforts have taken place since the beginning of the “Return Marches.” Note that COGAT reports similar numbers regarding goods entering Gaza, ambulance crossings, and humanitarian crossings multiple times per month and has done so throughout the border violence. The following list is therefore not exhaustive.

- 8 May 2018: During the week, 63,878 tons of supplies entered Gaza, including 118 tons of medical supplies and 41,229 tons of building supplies.<sup>121</sup>

- 9 May 2018: COGAT reported that “11,838 tons of goods, in 384 trucks, entered #Gaza through #Israel yesterday” via the Kerem Shalom crossing.<sup>122</sup>
- 9 May 2018: 270 Palestinians crossed between Israel and Gaza for humanitarian purposes.<sup>123</sup>
- 10 May 2018: COGAT reported that 84 Palestinians entered Israel from Gaza for humanitarian purposes.<sup>124</sup>
- 13 May 2018: COGAT reported that “On Monday, 14.5.2018 and on Tuesday 15.5.2018, Erez Crossing will be closed. Special crossings will be allowed for humanitarian purposes only.”<sup>125</sup> In response, senior Hamas member Fathi Hamad stated that “If the crossings are not opened and Gaza’s needs are not met every one of the crossings will be destroyed...”<sup>126</sup>
- 16 May 2018: The *Jerusalem Post* reported on how “Hamas turns away truckloads of Israeli humanitarian aid destined for Gaza.”<sup>127</sup> The article furthered that “The IDF said it coordinated the transfer of eight truckloads of vital medical equipment through the Kerem Shalom crossing due to severe humanitarian conditions in the Hamas-controlled enclave, with hospitals struggling to treat Palestinians wounded in clashes on the Israel-Gaza border on Monday and Tuesday. Hamas accepted four trucks of aid supplied by the Palestinian Authority and two trucks supplied by UNICEF. But two truckloads of medical aid provided by the IDF were turned away when the origin of the equipment became apparent.”
- 4 October 2018: The Times of Israel reported on the PA preventing “Gaza from receiving Qatari fuel aid, increasing danger of violence.”<sup>128</sup>
- 23 October 2018: 1,941 crossings into Israel took place, including 542 humanitarian crossings, during the week.<sup>129</sup>
- 24 October 2018: COGAT reported that 17,349 tons of goods entered Gaza. There were also 8 ambulance crossings and 180 Palestinian humanitarian crossings that took place.<sup>130</sup>
- 27 October 2018: COGAT reported that Palestinian terrorists struck the ambulance crossing at the Erez Crossing between Israel and Gaza.<sup>131</sup>
- 30 October 2018: COGAT reported that 15,496 tons of goods entered Gaza. There were also 9 ambulance crossings and 103 Palestinian humanitarian crossings.<sup>132</sup>
- 6 November 2018: COGAT reported that 12,437 tons of goods entered Gaza. There were also 8 ambulance crossings and 143 Palestinian humanitarian crossings.<sup>133</sup>

**In order for the COI to be credible, it must examine the military strategy and numerous violations committed by Palestinian armed groups. It must not erase or whitewash Palestinian violence, in contrast to the UNHRC, OHCHR officials, and NGOs that have done so.**

**Conclusion**

Palestinian armed groups such as Hamas, Palestinian Islamic Jihad, and the PFLP have orchestrated the Gaza border violence as part of its military strategy and operations. As a result of this conduct, thousands of Palestinian and Israeli civilians have been endangered. In order to play a constructive role in holding Palestinian groups accountable, the COI must produce a credible and objective report. It must adhere to the fact-finding standards detailed in this submission. It must properly apply legal standards. It must not decontextualize or erase Palestinian violence. If it fails to do so, as its predecessors have done, this will be yet another failed opportunity by a UNHRC mechanism to enhance civilian protection and decrease conflict.

Respectfully submitted,

Anne Herzberg  
Legal Advisor, NGO Monitor  
UN Liaison, Institute for NGO Research

November 15, 2018



## Annex I: Violations of IHL and Human Rights Law Treaty Obligations by “State of Palestine”<sup>134</sup>

Treaty	Article Violated	Action
Additional Protocol I	Arts. 48, 51(2), 52(1)	Deliberate rocket attacks directed at Israel’s civilian population centers
Additional Protocol I	Art. 51(7)	Staging attacks from residential areas and protected sites
Additional Protocol I	Art. 51(7)	Use of civilian homes and protected sites, and public institutions as bases of operation
The 1907 Regulations annexed to the Hague Convention IV respecting the Laws and Customs of War on Land	Art. 23(f)	Misuse of medical facilities and ambulances
Additional Protocol I	Art. 51(7)	Booby-trapping of civilian areas
ICRC rule	Rule 97	Blending in with Civilians and Use of Human Shields
Additional Protocol I	Art. 77(2)	Exploitation of children
Fourth Geneva Convention	Arts. 59-60	Interference with humanitarian relief efforts
Fourth Geneva Conventions	Art. 34	Hostage-taking
Additional Protocol I	Art. 51(2)	Violence aimed at spreading terror among the civilian population
Additional Protocol I	Arts. 48, 52(2)	Targeting civilian objects, such as airports or nuclear power plants
Additional Protocol I	Art. 51(4)	Indiscriminate attacks
Additional Protocol I	Art. 57(2)(c)	Failure to provide advance warning of attacks which may affect the civilian population
Additional Protocol I	Art. 58(c)	Failure to protecting civilians
1899 and 1907 Hague Regulations	Art. 27	Attacking medical units
First Geneva Convention	Art. 19	
Additional Protocol I	Art. 12	
Additional Protocol I	Art. 79	Failure to protect journalists
Convention on the Rights of the Child (CRC)	Art. 3	Recruitment and use of child soldiers, staging attacks from residential areas, schools; hiding weaponry in schools; forcing children to riot and engage in attacks; failure to prevent children from participating in attacks
CRC	Art. 17	Subjecting children to mass media campaigns of anti-Jewish incitement and racism; creation of children’s programming glorifying terrorism, violence, and genocide; naming schools and public sites after terrorists
CRC	Art. 24	Denial of clean water and health care by diverting humanitarian



		assistance to Hamas war effort; conducting military activities from within medical facilities; denial of permits to obtain medical treatment in Israel and elsewhere; attacks on border crossings to prevent humanitarian assistance and medical treatment
CRC	Art. 32	Conscription of children to build Hamas attack tunnels and other war infrastructure
CRC	Art. 36	Conscription children for Palestinian war effort; forcing children to riot and engage in other harmful activities
CRC	Art. 38	Conscription of child soldiers under age 15
Convention Against Torture (CAT)	Art. 2	Failure to take action to prevent torture; summary executions of "collaborators"
CAT	Art. 14	Failure to provide system of redress for torture victims
Convention Against Genocide (CAG)	Art. 1	Failure to prevent and punish crime of genocide
CAG	Art. 2	Engaging in acts of genocide — killing and causing harm with intent to destroy national and religious group
CAG	Art. 3	Engaging in genocide, conspiracy to commit genocide, public incitement to genocide, attempts to commit genocide, and complicity in genocide
CAG	Art. 5	Failure to enact legislation to prevent acts of and incitement to genocide
International Covenant on Civil and Political Rights (ICCPR)	Art. 6	Violation of the right to life by deliberate attacks on Israeli civilians, use of human shields, and summary executions
ICCPR	Art. 7	Torture, execution and degrading treatment in prisons and on street
ICCPR	Art. 10	Failure to provide persons deprived of liberty with humanity and respect
ICCPR	Art. 18, 19	Denial of freedom of thought conscience and religion
ICCPR	Art. 20	Mass system of war propaganda including manipulation of casualties, covering up crimes, and intimidation of journalists
ICCPR	Art. 20	Advocacy of national and religious hatred against Israelis and Jews to incite discrimination, hostility, and violence

<sup>1</sup> Thomas M Franck & Scott H. Fairley, "Procedural Due Process in Human Rights Fact-Finding by International Tribunals," *American Journal of International Law*, 74:1 (1980)

<sup>2</sup> The Raoul Wallenberg Institute of Human Rights and International Law, "International Human rights Fact Finding Guidelines," <http://www.ibanet.org/Document/Default.aspx?DocumentUid=D7BFB4EA-8EB6-474F-B221-62F9A5E302AE>

<sup>3</sup> <https://www.ejiltalk.org/after-gaza-2014-schabas/>

<sup>4</sup> Michael N. Schmitt, 'Investigating Violations of International Law in Armed Conflict (2011) 2 *Harvard National Security Journal*, 31 and 84. Corn (n 85) 12-14.

<sup>5</sup> Hendel concurrence para 2, <http://versa.cardozo.yu.edu/viewpoints/recent-developments-israeli-law-0>

<sup>6</sup> *Id*, Hayut concurrence at para. 4.

<sup>7</sup> Professor Geoffrey Corn, 'Analysis of the U.N. Report on the 2014 Gaza Conflict: The Distorting Effects of Flawed Foundations,' June 2015, [http://www.jinsa.org/files/AnalysisOfTheU.N.Report\\_ProfCorn.pdf](http://www.jinsa.org/files/AnalysisOfTheU.N.Report_ProfCorn.pdf)

<sup>8</sup> Laurie R. Blank, 'Asymmetries and proportionalities,' *The Hill*, 29 July 2014, <http://thehill.com/blogs/pundits-blog/international/213546-asymmetries-and-proportionalities>

<sup>9</sup> Luis Moreno-Ocampo Chief Prosecutor of the International Criminal Court, 'Letter to Senders regarding Iraq,' 9 February 2006, [http://www.icc-cpi.int/NR/rdonlyres/04D143C8-19FB-466C-AB77-4CDB2FDEBEF7/143682/OTP\\_letter\\_to\\_senders\\_re\\_Iraq\\_9\\_February\\_2006.pdf](http://www.icc-cpi.int/NR/rdonlyres/04D143C8-19FB-466C-AB77-4CDB2FDEBEF7/143682/OTP_letter_to_senders_re_Iraq_9_February_2006.pdf)

<sup>10</sup> Avinoam Sharon, "Recent Developments in Israeli Law," May 3, 2018: <http://versa.cardozo.yu.edu/viewpoints/recent-developments-israeli-law-0>

<sup>11</sup> *Ibid*.

<sup>12</sup> GroundBrief, "Gaza's Kushuk Unit," October 19, 2018: <https://groundbrief.substack.com/p/groundbrief>

<sup>13</sup> The Meir Amit Intelligence and Terrorism Information Center, "Summary of Recent Escalation Along the Gaza Strip Border," October 2, 2018: [https://www.terrorism-info.org.il/app/uploads/2018/10/E\\_237\\_18.pdf](https://www.terrorism-info.org.il/app/uploads/2018/10/E_237_18.pdf)

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