



Israeli Committee Against House Demolitions – USA
PO Box 2565 Chapel Hill, NC 27515
919.277.0632 <http://icahdusa.org> info@icahdusa.org

The Second Battle of Gaza: Israel's Undermining of International Law

By Jeff Halper

The Israeli attack on Gaza in December 2008/January 2009 was not merely a military assault on a primarily civilian population, impoverished and the victim of occupation and besiegement these past 42 years. It was also part of an ongoing assault on international humanitarian law by a highly coordinated team of Israeli lawyers, military officers, PR people, and politicians, led by (no less) a philosopher of ethics. It is an effort coordinated as well with other governments whose political and military leaders are looking for ways to pursue “asymmetrical warfare” against peoples resisting domination and the plundering of their resources and labor without the encumbrances of human rights and current international law. It is a campaign that is making progress and had better be taken seriously by us all.

Since Ariel Sharon was indicted by a Belgian court in 2001 over his involvement in the Sabra and Shatila massacres, and Israel faced accusations of war crimes in the wake of its 2002 invasion of the cities of the West Bank, with its high toll in civilian casualties (some 500 people killed, 1,500 wounded, more than 4,000 arrested), hundreds of homes demolished, and the urban infrastructure utterly destroyed, Israel has adopted a bold and aggressive strategy: alter international law so that non-state actors caught in a conflict with states and deemed by the states as “non-legitimate actors” (“terrorists,” “insurgents” and “non-state actors,” as well as the civilian population that supports them) can no longer claim protection from invading armies. The urgency of this campaign has been underscored by a series of notable setbacks Israel subsequently incurred at the hands of the UN. In 2004, at the request of the General Assembly, the International Court of Justice in The Hague ruled that Israel’s construction of the wall inside Palestinian territory is “contrary to international law” and must be dismantled — a ruling adopted almost unanimously by the General Assembly, with only Israel, the US, Australia, and a few Pacific atolls dissenting. In 2006 the UN Commission of Inquiry concluded that “a significant pattern of excessive, indiscriminate and disproportionate use of force by the IDF against Lebanese civilians and civilian objects, failed to distinguish civilians from combatants and civilian objects from military targets.” The harsh criticism of the UN’s Goldstone report on Gaza accusing the Israeli government and military again of targeting Palestinian civilians and causing disproportionate destruction has made this campaign even more urgent.

Fortunately, it is an uphill battle. The thrust of just war theory, from which international humanitarian law (IHL) draws, is to limit warfare and, in particular, to regulate its conduct and scope. Wars between states should never be total wars between nations or peoples. Whatever happens to the two armies involved, whichever one wins or loses, whatever the nature of the battles or the extent of the casualties, the two nations, the two peoples, must be functioning communities at the war’s end. The war cannot be a war of extermination or ethnic cleansing. And what is true for states is also true for state-like political bodies such as Hamas and Hezbollah, whether they practice terrorism or not. The people they represent or claim to represent are a people like any other (Margalit and Walzer 2009). Protecting the lives, property, and human rights of civilians caught up in warfare from the power and impunity of states is especially relevant in our age when, as British General Rupert Smith (2005) tells us, modern warfare is rapidly moving away from the

traditional inter-state model to what he calls a “new paradigm” — “war amongst the people” — in which “[w]e fight amongst the people, not on the battlefield.” A more popular term used by military people, “asymmetrical warfare,” is perhaps more honest and revealing, since it highlights the vast power differential that exists between states and their militaries and the relative weakness of the non-state forces confronting them.

Now the issue of adapting laws and ethical approaches coming out of traditional inter-state warfare to new forms of “asymmetrical warfare” is a legitimate and vital endeavor. As Judge Richard Goldstone indicated in the report of the United Nations Fact Finding Mission on the Gaza Conflict (2009:5), “The Mission interpreted [its] mandate as requiring it to place the civilian population of the region at the centre of its concerns regarding the violations of international law.” Two prime issues of concern arise here: protecting *all* non-combatants finding themselves caught up in armed conflict, whether from state or non-state adversaries, and the degree to which non-state actors must be held accountable under IHL, no matter how just their cause may be. Thus the Goldstone Report, recognizing the limitations under which non-state actors operate, specified as well the obligation of Palestinian armed groups “to exercise care and take feasible precautions to protect the civilian population in Gaza from the inherent dangers of the military operations.”

Common sense and justice argue against a symmetry of responsibility between heavily armed and coordinated state-sponsored armies able to exert enormous force in order to exercise effective control over a territory and its people (Israel over the Occupied Palestinian Territories, in this case) and the military weakness, financial constraints, and fundamental difficulties of non-state actors resisting oppression in either protecting their people or creating a neutral “battleground” separate from its civilian populations (as in the case of the Palestinians). Nonetheless, even a certain implied symmetry introduced by the Goldstone committee in which non-state actors possess legitimacy as “a side” is unacceptable to Israeli political and military leaders. This, despite the fact that, in 1960, the UN General Assembly’s Declaration on the Granting of Independence to Colonial Countries and Peoples endorsed the right of peoples to self-determination and, by extension, their right to resist “alien subjugation, domination and exploitation” — again, with the obligations set out by the Goldstone Report. Nor is the notion that states and their armies should be significantly constrained in their military actions by IHL acceptable to Israeli decision-makers, political and military. They seek, therefore, to alter international law in ways that enable them — and by extension other states involved in “wars on terror” — to effectively pursue warfare amongst the people while eliminating both the legitimacy and protections enjoyed by their non-state foes.

This campaign is led by two Israeli figures: Asa Kasher, a professor of philosophy and “practical ethics” at Tel Aviv University, the author of the Israeli army’s Code of Conduct, and Major General Amos Yadlin, former head of the IDF’s National Defense College, under whose auspices Kasher and his “team” formulated the Code of Conduct, and today the head of Military Intelligence. And, Kasher vigorously asserts, it is completely appropriate and understandable that Israel should be leading it. “The decisive question,” he says,

is how enlightened countries conduct themselves. We in Israel are in a key position in the development of law in this field because we are on the front lines in the fight against terrorism. This is gradually being recognized both in the Israeli legal system and abroad. After the debate before the High Court of Justice on the issue of targeted killings there was no need to revise the document [on the ethics of fighting terrorism] that Yadlin and I drafted even by one comma. *What we are doing is becoming the law.* These are concepts that are not purely legal, but also contain strong ethical elements.

The Geneva Conventions are based on hundreds of years of tradition of the fair rules of combat.

They were appropriate for classic warfare, where one army fought another. But in our time the whole business of rules of fair combat has been pushed aside. *There are international efforts underway to revise the rules to accommodate the war against terrorism. According to the new provisions, there is still a distinction between who can and cannot be hit, but not in the blatant approach which existed in the past. The concept of proportionality has also changed* (emphasis added, qtd. in *Ha'aretz*, Feb. 6, 2009).

Customary international law accrues through an historic process. If states are involved in a certain type of military activity against other states, militias, and the like, and if all of them act quite similarly to each other, then there is a chance that it will become customary international law.... I am not optimistic enough to assume that the world will soon acknowledge Israel's lead in developing customary international law. My hope is that our doctrine, give or take some amendments, will in this fashion be incorporated into customary international law in order to regulate warfare and limit its calamities (Kasher 2009:7).

In their assault on protections afforded to non-state actors and the populations that support them by IHL, Kasher and Yadlin go after two of the most fundamental principles of IHL: the Principle of Distinction and the Principle of Proportionality.

The Principle of Distinction, embodied in the four Geneva Conventions of 1949 and their two Additional Protocols of 1977, lays down a hard-and-fast rule: civilians cannot be targeted by armies and, on the contrary, must be protected. Article 3 of the Fourth Geneva Convention states: "Persons taking no active part in the hostilities...shall in all circumstances be treated humanely...To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: violence to life and person...and outrages upon personal dignity."

The Principle of Proportionality, embodied in the 1977 Protocols to the Fourth Geneva Conventions (to which neither the US nor Israel is a signatory, but which nevertheless, as customary law, binds them), considers it a war crime to intentionally attack a military objective in the knowledge that the incidental civilian injuries would be clearly excessive in relation to the anticipated military advantage. "The presence within the civilian population of individuals who do not come within the definition of civilians," says Protocol I, Article 50 (3), "does not deprive the population of its civilian character." Undermining these principles is therefore a key to what Kasher and Yadlin (2005) put forward as their "new doctrine of military ethics." It is based on privileging states in their conflicts with non-state actors and on giving them the authority to deem an adversary a "terrorist," a term lacking any agreed-upon definition in IHL and one which obviously removes any legitimacy a non-state actor so labeled might otherwise have. Indeed, Kasher and Yadlin's "Just War Doctrine of Fighting Terror" is grounded on a tendentious definition of "terrorism" custom-tailored to legitimize state policies and actions. We define an "act of terror," they (2005:2) write,

as an act, carried out by individuals or organizations, not on behalf of any state, for the purpose of killing or otherwise injuring persons, insofar as they are members of a particular population, in order to instill fear among the members of that population ('terrorize' them), so as to cause them to change the nature of the related regime or of the related government or of policies implemented by related institutions, whether for political or ideological (including religious) reasons.

By defining terrorism as "an act" carried out by an individual or organization, Kasher and Yadlin both de-contextualize and de-politicize the protracted struggles of non-state actors, including those of all peoples oppressed by state (and corporate) regimes. Although they admit a certain legitimacy to "guerilla warfare," reducing a popular struggle to a series of discrete acts makes it possible to label an entire resistance

movement “terrorist” purely on the basis of one or more particular acts, with no regard to its situation or the justness of its cause. Once this is done, it is easy to criminalize non-state resistance, since terrorism is, in Kasher’s words, “utterly immoral.” When, for example, Palestinians or the Hezbollah attack Israeli soldiers on active duty, Kasher refers to these acts as “kidnapping” rather than “capturing” them.

This very language and approach also has the effect of privileging state actors, since it implies that state actions are by definition legitimate and not “utterly immoral.” Even when a country is accused of war crimes, it is often able to justify its actions by “military necessity.” It is extremely difficult to actually sanction or punish a country for war crimes even when they are deemed to have occurred, and even when all this takes place, “war crimes” possess a different meaning than the type of criminalization applied to non-state actors. States may be sanctioned, but their existential legitimacy is not removed. Germany was judged as having committed horrendous war crimes during the Nazi era, and paid certain penalties, but that did not prevent it from rejoining the international community immediately after the war. Thus Kasher and Yadlin define an act as terror by its “purpose” of terrorizing a particular population without the slightest thought of applying that principle to Israel’s own policies and actions over its occupation of 42 years, despite exhaustive documentation of that terrorization.

Just how self-serving the tendentious use of the concept “terror” can be is evident in Israel’s own attempts to have the Iranian Revolutionary Guards declared a “terror organization” even though, being an agent of a state, it would not fit into Kasher and Yadlin’s own state/non-state dichotomy. What, then, should prevent the international community from naming the IDF and various covert Israeli agencies such as the Mossad or the Shin Bet (the General Security Services) as “terror organizations”? The Goldstone Report itself concluded that Israel’s offensive against Gaza during Operation Cast Lead was “a deliberately disproportionate attack designed to punish, humiliate and terrorize a civilian population.” Cognizant of this contradiction, Kasher and Yadlin are careful to add a caveat: they define an act of terror as one carried out “not on behalf of any state.”

Having de-legitimized state-defined “acts of terrorism,” Kasher and Yadlin then go on to further legitimize state actions such as those taken by Israel against Hezbollah, Hamas, or, indeed, all Palestinian resistance by invoking “self-defense” — again, a claim which, according to Just War Theory and Article 51 of the UN Charter, only a state can make. In order to do so they begin the narrative of events leading up to the attack on Gaza with what the “terrorist” organization alone had done, launching rockets on the town of Sderot and its vicinity. Nothing of the fact that the vast majority of Gazans are refugees from 1948, denied their right of return and deprived of all their properties and assets. Nothing of the occupation since 1967 and the deliberate de-development of the Gazan economy; nothing of the exclusion since 1989 of Gazan workers from the Israeli job market upon which they had been made dependent, and thus their subsequent impoverishment; nothing of the years of settlement in which 7,000 Israelis lorded it over a million and a half Palestinians at a cost to the Palestinians of much in terms of their lives and livelihoods; nothing of the siege illegally imposed since 2006, or of the transformation of Gaza into the world’s largest open-air prison; nothing of the fact that until today much of the land of Gaza — and the sea — are off-limits to Palestinian farmers and fishermen; nothing of the fact that Gazans live in mud and sewage created by Israel’s wholesale destruction of their infrastructure; nothing of the wasted lives of the young people; nothing of the fact that Hamas observed an 18-month ceasefire and was willing to extend it, until Israel broke it on Nov. 4, 2008, setting off the rocket attacks. Nothing, in short, which would call into question whether the assault on Gaza was genuinely an act of self-defense.

Indeed, the process of de-contextualization is a prerequisite to the ethics Kasher offers as the basis of international morality, law, political practice, and warfare. Rather than taking into account Israel’s four decades and more of occupation over Gaza and the West Bank, in which the Occupying Power may be said

to have at least a modicum of responsibility for what transpires, Kasher instead bases his entire moral justification of what Israel has done over the years on a disembodied “double effect” principle, according to which, “when we are seeking a goal that is morally justified in and of itself, then it is also morally justified to achieve it, even if this may lead to undesirable consequences — on the condition that the undesirable consequences are unavoidable and unintentional, and that an effort was made to minimize their negative effects.” As if maintaining a belligerent occupation for almost a half-century is unavoidable and unintentional, and Israel actually took steps to minimize its negative effects. This, then, sets up a hierarchy of priorities — indeed, “obligations” on states — that turn IHL on its head. The Principle of Distinction cannot be honored, Kasher and Yadlin argue, because “terrorists do not play by the rules.” Nothing less is required than a fundamental “updating the concept of war.” “As we sought to try and formulate how to fight terror,” Yadlin (2004) writes,

we understood that we were in a different kind of war, where the laws and ethics of conventional war did not apply. It involves not only the asymmetry of tanks.... The main asymmetry is in the values of the two societies involved in the conflict — in the rules they obey.

A new model of warfare — the counter-terrorism war — requires a new set of rules on how to fight it. The other side is fighting outside the rules and we have to create new ethical rules for the international law of armed conflict. The duty of the state is to defend its citizens. Any time a terrorist gets away because of concerns about collateral damage, we may be violating our main duty to protect our citizens. We look for alternatives so as not to cause collateral damage, or to cause the minimum amount of collateral damage, but the main obligation is to defend our citizens.

Thus, says Kasher, in an area such as the Gaza Strip in which the IDF does not have effective control, “the responsibility for distinguishing between terrorists and noncombatants is not placed upon [Israel's] shoulders, since it is not the effective ruler.” Military commanders must thus place prime importance on achieving their military objectives, since this is what self-defense depends upon. Next in priority is protecting soldiers’ lives — indeed, Kasher and Yadlin define soldiers as “civilians in uniforms,” thereby eliding the principle of a state’s duty to protect its citizens with its deployment of trained and armed combatants sworn to pursue its military aims. Only then does the army have to worry about avoiding injury to civilian non-combatants. “Sending a soldier [to Gaza] to fight terrorists is justified,” writes Kasher, “but why should I force him to endanger himself much more than that so that the terrorist’s neighbor isn’t killed?” asks Kasher. “From the standpoint of the state of Israel, the neighbor is much less important. I owe the soldier more. If it’s between the soldier and the terrorist’s neighbor, the priority is the soldier. Any country would do the same.”

Kasher introduces a radically new principle of distinction — that in territories where it does not exercise effective control a country does not bear the moral responsibility for properly separating between dangerous individuals and harmless ones (Kasher 2010) — as if simply asserting it lends it the necessary authority.

And this is, in fact, the point. “If you do something for long enough,” says Colonel (res.) Daniel Reisner, former head of the IDF’s Legal Department, “the world will accept it. The whole of international law is now based on the notion that an act that is forbidden today becomes permissible if executed by enough countries.... International law progresses through violations. We invented the targeted assassinations thesis [that extra-judicial killings are permitted when it is necessary to stop a certain operation against the citizens of Israel and when the role played by the target is crucial to the operation] and we had to push it. Eight years later it is in the center of the bounds of legality” (quoted in Kearney 2010:29). Or, as Kasher (2010) puts it, “The more often Western states apply principles that originated in Israel to their own non-traditional conflicts in places like Afghanistan and Iraq, then the greater the chance these principles have of becoming a valuable part of international law.”

Even the attempt to distinguish civilians from combatants was abandoned in the assault on Gaza. According to another report in *Ha'aretz* (3.2.10), “The Israel Defense Forces chose to risk civilians in Gaza in order to protect its soldiers during Operation Cast Lead, a high-ranking Israeli military officer told the British daily *The Independent* on Wednesday. The IDF officer claimed the traditional ‘means and intentions’ engagement principle — stating that a suspect must have both a weapon and a visible intent to use it before being fired at — was discarded during Israel’s Gaza incursion in late 2008 and early 2009.”

Does that mean that states cannot engage in terrorism? This is a pretty bold claim. In fact, the non-state “terrorism from below” which so concerns Kasher and Yadlin pales in its horror when compared to “terrorism from above:” State Terrorism. In his book *Death by Government* (1994:13), R.J. Rummel points out that over the course of the 20th century about 170,000 innocent civilians were killed by non-state actors, a significant figure to be sure. But, he adds,

during the first eighty-eight years of this [20th] century, almost 170 million men, women and children have been shot, beaten, tortured, knifed, burned, starved, frozen, crushed or worked to death; buried alive, drowned, hung, bombed or killed in any other of the myriad ways governments have inflicted death on unarmed, helpless citizens and foreigners. The dead could conceivably be nearly 360 million people.

And that doesn’t include Zaire, Bosnia, Somalia, Sudan, Rwanda, Saddam Hussein’s reign, the impact of UN sanctions on the Iraqi civilian population, and other state-sponsored murders that occurred after Rummel compiled his figures. It also does not account for all the forms of State Terrorism that do not result in death: torture, imprisonment, repression, house demolitions, induced starvation, intimidation, and all the rest.

“We do not deny,” Kasher (2009) concedes, “that a state can act for the purpose of killing persons in order to terrorize a population with the goal of achieving some political or ideological goal.” He then adds another crucial caveat:

However, when such acts are performed on behalf of a state, or by some of its overt or covert agencies or proxies, we apply to the ensuing conflict moral, ethical and legal principles that are commonly held to pertain to ordinary international conflicts between states or similar political entities. In such a context, *a state that killed numerous citizens of another state in order to terrorize its citizenry* would be guilty of what is commonly regarded as a war crime (emphasis added).

Kasher’s caveat — “a state that killed numerous citizens of another state in order to terrorize its citizenry” — apparently means that states can neither be accused of terrorism nor be held accountable for war crimes arising out of killing or terrorizing civilian populations such as the people of Gaza, since the latter are not citizens of another state.

As for the Principle of Proportionality, that, too, is a casualty of Kasher and Yadlin’s assault on IHL. Their alternative is what is known by the IDF as its Dahiya Doctrine. Coming out of the second Lebanon war of 2006, in which Israel destroyed the Hezbollah stronghold of Dahiya in Beirut, the Dahiya Doctrine states that attacks against Israel will be deterred by “harming the civilian population to such an extent that it will bring pressure to bear on the enemy combatants [...] through the damage and destruction of civilian and military infrastructures which necessitate long and expensive reconstruction actions which would crush the will of those who wish to act against Israel” (PCATI 2009). According to the Goldstone Report (2009:48),

The tactics used by Israeli military armed forces in the Gaza offensive are consistent with previous practices, most recently during the Lebanon war in 2006. A concept known as the Dahiya doctrine

emerged then, involving the application of disproportionate force and the causing of great damage and destruction to civilian property and infrastructure, and suffering to civilian populations. The Mission concludes from a review of the facts on the ground that it witnessed for itself that what was prescribed as the best strategy appears to have been precisely what was put into practice.

It then goes on to quote the head of Israel's Northern Command, Gen. Gadi Eisenkott: "What happened in the Dahiya quarter of Beirut in 2006 will happen in every village from which Israel is fired on. [...] We will apply disproportionate force on it and cause great damage and destruction there. From our standpoint, these are not civilian villages, they are military bases. [...] This is not a recommendation. This is a plan. And it has been approved." But here again, it is the assertion of a new version of the principle that is important.

Thus, declares Kasher, the Principle of Proportionality does not have to do with inflicting civilian injuries clearly excessive in relation to the anticipated military advantage, as the international community now thinks, but the exact opposite: "Proportionality is justifiability of the collateral damage on grounds of the military advantage gained" (Kasher 2010).

The upshot of Kasher and Yadlin's "updating the concept of war" was clearly evident in the attack on Gaza. "When senior Israel Defense Forces officers are asked about the killing of hundreds of Palestinian civilians during the fighting in the Gaza Strip," *Ha'aretz* (Feb.6, 2009) reported,

they almost all give the same answer: The use of massive force was designed to protect the lives of the soldiers, and when faced with a choice between protecting the lives of Israeli soldiers and those of enemy civilians under whose protection the Hamas terrorists are operating, the soldiers take precedence. The IDF's response to criticism does not sound improvised or argumentative. And it operated there not only with the backing of the legal opinion of the office of the Military Advocate General, but also on the basis of ethical theory, developed several years ago, that justifies its actions.

Prof. Asa Kasher of Tel Aviv University, an Israel Prize laureate in philosophy, is the philosopher who told the IDF that it was possible. In a recent interview with *Ha'aretz*, Kasher said the army operated in accordance with a code of conduct developed about five years ago for fighting terrorism. "The norms followed by the commanders in Gaza were generally appropriate," Kasher said. In Kasher's opinion there is no justification for endangering the lives of soldiers to avoid the killing of civilians who live in the vicinity of terrorists. According to Kasher, IDF Chief of Staff Gabi Ashkenazi "has been very familiar with our principles from the time the first document was drafted in 2003 to the present."

Kasher's argument is that in an area such as the Gaza Strip in which the IDF does not have effective control the overriding principle guiding the commanders is achieving their military objectives. Next in priority is protecting soldiers' lives, followed by avoiding injury to enemy civilians.... Prof. Kasher has strong, long-standing ties with the army. He drafted the IDF ethical code of conduct in the mid-1990s. In 2003 he and Maj. Gen Amos Yadlin, now the head of Military Intelligence, published an article entitled "The Ethical Fight Against Terror." It justified the targeted assassination of terrorists, even at the price of hitting nearby Palestinian civilians. Lt. Gen. Moshe Ya'alon, who was the IDF Chief of Staff at the time, did not make the document binding, but Kasher says the ideas in the document were adopted in principle by Ya'alon and his successors. Kasher has presented them to IDF and Shin Bet security service personnel dozens of times.

Such arguments are also being taken up by "pro-Israeli" critics of IHL. Amichai Cohen (2010), for example,

writing in the *Global Law Forum* of the neo-con Jerusalem Center for Public Affairs, sums up Kasher and Yadlin's argument succinctly (though marshalling numerous legal citations just as Kasher mobilizes ethical arguments): "The concept of proportionality permits military personnel to kill innocent civilians, provided that the intended targets of the operation are enemy forces and not civilians."

And yet, when challenged, the philosophy, ethics, and principled argumentation of Kasher and Yadlin dissipate, and one is found in the same kind of emotional and half-baked discourse that typifies shouting matches in bars or on the street. When, for example, Uri Avnery (2009) challenges Kasher's reduction of the Gaza operation as merely a justified defensive reaction to "continued rocket attacks on Israel by the terrorist organizations in the Gaza Strip," Kasher (2009) retreats from his philosophical argumentation into personal attacks: "Nor is it a surprise," he writes, "that Avnery does not want us to use the term 'terrorists' to describe the Palestinians — with whom he identifies — because of these negative moral connotations. He himself does not wish to be morally tainted as someone who identifies with terrorists."

From here Kasher abandons intellectual analysis completely and descends into mere personal opinion and unsupportable suppositions. "Some people claim that a peace agreement between Israel and the Palestinians would provide Israeli citizens with the best protection against rockets and missiles, suicide attacks, and other horrors of terrorism," he begins.

It is true that a democratic state is required to seek peace agreements with neighboring states and peoples. However, the idea that it is possible to reach a political settlement with the Palestinians that would be upheld by Hamas, Islamic Jihad, and other terrorist organizations *is quite doubtful*. Even if we accepted the plausibility of such a claim, *it is all but certain* that rocket attacks on Israel would continue throughout the negotiations. In fact, they *would likely increase*. Leaving a state's citizens vulnerable to persistent threat is not morally justified by *the mere fact of* ongoing negotiations. Nor can the fact that negotiations are taking place justify avoiding the last-resort option after all alternative courses of action have failed.... There are those who call on Israel to engage in direct negotiations with Hamas, in order to rid its citizens of the threats posed to them by rocket attacks and other kinds of terrorist activity. This argument warrants a similar response. From a moral standpoint, *demanding that Israel engage in direct negotiations with a terrorist organization that does not recognize its right to exist cannot be justified* (emphasis added, Kasher 2009).

Apparently this method is common when Israelis attempt to alter IHL in order to justify unjustifiable practices. A few years ago the *Up Front* weekend magazine of *The Jerusalem Post* (April 15, 2005, p. 34) published an interview with an Israeli "expert in international law" who, tellingly, chose to remain anonymous. This what s/he said:

International law is the language of the world and it's more or less the yardstick by which we measure ourselves today. It's the lingua franca of international organizations. So you have to play the game if you want to be a member of the world community. And the game works like this. As long as you claim you are working within international law and you come up with a reasonable argument as to why what you are doing is within the context of international law, you're fine. That's how it goes. This is a very cynical view of how the world works. So, even if you're being inventive, or even if you're being a bit radical, as long as you can explain it in that context, most countries will not say you're a war criminal.

This is a serious stuff. We are in the midst of the second battle of Gaza, a campaign not only to refute and defame the UN's Goldstone Report and sanitize Israel's actions there but to change international

humanitarian law in a way that protects the powerful states and their armies while removing the fundamental rights of the world's poor and downtrodden to resist. The stakes are high. What will happen to the Palestinians — or oppressed peoples everywhere — if Kasher & Co. succeed in striking the Principles of Distinction and Proportionality from international law? Imagine an entire world unprotected against occupation, invasions, exploitation, and warehousing — a global Gaza. It would be a world that reflects current reality: everyone would be either an Israeli Jew, part of a privileged global minority whose main ethical responsibility is towards defending itself against “terrorists,” or a Palestinian, part of an impoverished, occupied majority with no control over its resources or its future, which nevertheless carries responsibility for the well-being and security of its violent “zero-tolerant” masters.

Standing on the ramparts of international law to guarantee its integrity should be an integral part of the struggle against oppression everywhere. If the people of Gaza can become fair game, so can any of us. In terms of vulnerability as well as solidarity, we are all, indeed, Palestinians. If IHL needs to be altered to take into account the rise of non-state actors in international conflicts — and here we should note the increased use of “outsourced” private military contractors by states and corporations, the emergence of “failed states,” many of which combine state apparatus with criminal activity, and even the role played by NGOs — then it must be done in a way that continues to protect civilians and oppressed peoples against states, often their own. Kasher and Yadlin's assault on IHL, sponsored and legitimized by the Israel government “in the name of” other states engaged in so-called wars of terrorism, threatens to give powerful governments, their militaries, and allied corporations a free hand in bringing about a global “order” friendly to their interests at the expense of the world's peoples.

Given what Michael Klare calls “the new landscape of global conflict” — state-initiated resource wars (initiated or fueled, it must be noted, primarily by the powerful *democratic* states which control the global economic system and account for more than 80 percent of the world's arms trade, whose revenues reached \$1.46 trillion in 2008) — the prospect of states free of the constraints of IHL should give us all pause. For, as it turns out, the sites of future wars are largely in the very areas where people — framed as “terrorists” — are resisting the plundering of their resources, neo-colonialism, and their own permanent warehousing. These sites, Klare (2001) tells us,

will be places that harbor particularly abundant supplies of vital materials — oil, water, diamonds, minerals, old-growth timber — along with supply routes that connect these areas to major markets around the world. These regions will command attention from the media, dominate the deliberations of international policy makers, and invite the heaviest concentrations of military power.... [They comprise] a wide band of territory straddling the equator.

Israel's attempt to globalize its legal, moral, political, and military justifications for what it did — and continues to do — in Gaza, the West Bank, and Lebanon should concern us all. Just as Israel used Gaza as a laboratory for tactics and weapons of “counterinsurgency” and urban warfare, so, too, is it attempting to export its “new doctrines” in a way that fundamentally compromises the well-being of people caught in conflicts worldwide. As Kasher and Yadlin (2005:4) write explicitly,

the proposed principles are meant to be justified and practically applicable under any parallel circumstances. Moreover, those principles are intended to be universal in an additional crucial sense.... The different defense agencies of a democratic state that faces terror should follow principles that rest on universal moral grounds and on the professional and organizational ethical grounds related to each of those state agencies on its own, be it military, regular police, combat police or preventive intelligence.

In this sense, everyone resisting oppression is a Palestinian. The stakes involved in losing this second battle of Gaza are high indeed. Israel's attempt to "globalize" Gaza imperils us all.

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