



**LEGAL MEMORANDUM IN SUPPORT OF ISRAEL'S RESPONSE TO
ONGOING PALESTINIAN ATTACKS FROM THE GAZA STRIP**

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By way of introduction, the American Center for Law and Justice (ACLJ) is a non-profit organization dedicated to defending constitutional liberties secured by law. ACLJ attorneys have successfully argued numerous free speech and religious freedom cases before the Supreme Court of the United States.

Facts

On or about 14 November 2012, the Israel Defense Forces (IDF) launched Operation “Pillar of Defense” in response to escalating rocket and mortar attacks by Palestinian terrorist groups in the Gaza Strip.

The Palestinian escalation began on or about 23 October 2012, when an explosive device wounded an IDF officer near the Gaza border. The Popular Front for the Liberation of Palestine claimed responsibility. On 6 November, Palestinians stepped up their attacks by injuring three IDF soldiers with an explosive device, by firing a Kassam rocket into southern Israel, and by blowing up a massive tunnel along the Gaza border. While no one was injured in the explosion, the detonation of the tunnel was powerful enough to flip an IDF jeep onto its side.

Then, on 9 November, Palestinians fired an anti-tank missile at an Israeli jeep, wounding four IDF soldiers. Israeli tanks returned fire, killing five and wounding more than twenty Palestinians. Palestinians responded by firing additional Kassam rockets into southern Israel. Between 10 November and 13 November, the four days immediately preceding Israel’s launch of Operation “Pillar of Defense,” Hamas and other Palestinian terrorist groups fired more than one hundred rockets and mortar rounds into southern Israel.

Finally on 14 November, four more rockets hit southern Israel, triggering the launch of Operation “Pillar of Defense.” Specifically, Operation “Pillar of Defense” began with an Israel Air Force (IAF) pinpoint attack on Ahmed Jabari, head of Hamas’s armed wing, followed shortly thereafter by IAF attacks on numerous long-range rocket storage sites within Gaza.

Since Operation “Pillar of Defense” began, Palestinians have fired over 800 rockets into Israel including several long-range rockets at both Tel Aviv and Jerusalem, thereby escalating the conflict still further. Moreover, the Palestinians’ possession and use of rockets capable of reaching Tel Aviv and Jerusalem indicate that the conflict between Palestinians and Israelis has

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reached a new stage, a stage that increases the danger to Israeli citizens throughout the southern half of Israel. Over three million Israelis are now under the threat of rocket fire from Gaza. The new attacks against Israel and the greater range and lethality of the weapons used raise the grim specter of a wider Palestinian-Israeli conflict in the region.

ISRAEL HAS AN INHERENT RIGHT TO SELF-DEFENSE¹

Although the UN Charter clearly forbids “aggressive war,”² Article 51 of the Charter explicitly recognizes a state’s inherent right of self-defense against another state: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations”³ Customary international law also recognizes the right of self-defense against non-State actors.⁴ When acting in self-defense, international law “does not require a defender to limit itself to actions that merely repel an attack; *a state may use force in self-defense to remove a continuing threat to future security.*”⁵ Thus, a state has full authority to act unilaterally or collectively in its self-defense.

It is essential to note that Article 51 *does not create* the right of self-defense; it is an inherent right of all states under customary international law.

Article 51 neither creates, nor abolishes, a right of self-defense. Nor, for that matter, does it purport to define one. In fact, by its own terms it appears to be nothing more than a rule of construction—making clear that nothing else in the Charter purports to eliminate the right of self-defense in the face of armed attack⁶

While the UN Charter and customary international law both recognize the inherent right of self-defense, the responsibility for determining when self-defense is appropriate lies, as it always has, with the government of each state. Under the Charter, however, the UN Security Council is charged with the responsibility to lift the burden of individual national self-defense and to take appropriate steps internationally to restore international peace and security.⁷ Having said that, it

¹It must be clearly noted that Israel is already in an ongoing armed conflict with Hamas and other Palestinian terrorist groups in the Gaza Strip. As such, Israel requires no specific *ius ad bellum* justification for her actions.

²*See, e.g.*, U.N. Charter art. 2, para. 4 (“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”). In these circumstances, it is the Palestinians in the Gaza Strip who are engaging in aggressive war. As such, they are the ones to condemn and prosecute for war crimes.

³*Id.* art. 51 (noting that such self-defense is conditioned in the Charter as follows: self-defense is recognized as legitimate under the Charter “until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”).

⁴*See* Armed Activities (Dem. Rep. Congo v. Uganda), 2005 I.C.J. 334, para. 11 (17 Dec.) (separate opinion of Judge Simma), available at <http://www.icj-cij.org/docket/files/116/10467.pdf>.

⁵SEAN D. MURPHY, PRINCIPLES OF INTERNATIONAL LAW 447 (2006) (emphasis added).

⁶David B. Rivkin et al., *Preemption and Law in the Twenty-First Century*, 5 CHI. J. INT’L L. 467, 476 (2005).

⁷Geoffrey Corn & Dennis Gyllensporre, *International Legality, the Use of Military Force, and Burdens of Persuasion: Self-Defense, the Initiation of Hostilities, and the Impact of the Choice Between Two Evils on the Perception of International Legitimacy*, 30 PACE L. REV. 484, 507 (2010) (noting that the Security Council

must be readily admitted that the muscular Security Council originally envisioned in the UN Charter has never materialized, and, hence, the Security Council has failed repeatedly in fulfilling its responsibilities in such circumstances. As such, threatened states are almost always required to make their own decisions and bear their own burdens when threatened. Such is the current case with Israel; it must defend itself against Palestinian attacks from the Gaza Strip.

THE LAW OF ARMED CONFLICT (LOAC) GOVERNS THE CONDUCT OF COMBATANTS DURING ARMED HOSTILITIES

The Law of Armed Conflict (LOAC)—also known as the Law of War and International Humanitarian Law (IHL)—governs how combatants should conduct themselves during armed hostilities.⁸ LOAC is intended to bind both sides in an armed conflict,⁹ and failure to abide by the rules of LOAC in many cases will constitute a war crime.

One of the fundamental aims of LOAC is to prevent unnecessary casualties and destruction during an armed conflict.¹⁰ In pursuit of that goal, three fundamental principles govern: the principles of necessity, distinction, and proportionality.¹¹ Each will be briefly discussed in turn.

Principle of Necessity

In general, “necessity” requires that combatants only attack targets necessary to accomplish their military objectives.¹² Article 52(2) of Additional Protocol I notes that “military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, *in the circumstances ruling at the time*, offers a definite military advantage.”¹³ Thus, necessity can vary over time as circumstances change on the battlefield.

For example, the ICRC Commentary aptly notes that, “[c]learly, there are objects which by their nature have no military function but which, by virtue of their location, make an effective contribution to military action.”¹⁴ This could be “a site which is of special importance for military operations in view of its location, either because it is a site that must be seized or because it is important to prevent the enemy from seizing it, or otherwise because it is a matter of

maintains the authority to critique the state’s judgment and to “take actions to reverse an unjustified assertion of the inherent right of self-defence . . .”).

⁸See, e.g., Geneva Convention Relative to the Treatment of Prisoners of War, 12 Aug. 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

⁹See, e.g., JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, Vol. I: Rules 139 (2005) [hereinafter ICRC Manual].

¹⁰*Id.* Rule 15.

¹¹Andrew Burt & Alex Wagner, *Blurred Lines: An Argument for a More Robust Legal Framework Governing the CIA Drone Program*, 38 YALE J. INT’L L. ONLINE 1, 13 n.57 (2012).

¹²Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 52(2), 8 June 1977, 1125 U.N.T.S. 3 [hereinafter Additional Protocol I].

¹³*Id.* (emphasis added).

¹⁴INT’L COMM. RED CROSS, COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 art. 52(2), para. 2021 (1987) [hereinafter ICRC COMMENTARY ON ADDITIONAL PROTOCOL I], available at http://www.loc.gov/frd/Military_Law/pdf/Commentary_GC_Protocols.pdf.

forcing the enemy to retreat from it.”¹⁵ The Commentary further explains that “[m]ost civilian objects can become useful objects to the armed forces. Thus, for example, a school or a hotel is a civilian object, *but if they are used to accommodate troops or headquarters staff, they become military objectives.*”¹⁶ Objects that appear to be civilian in nature might actually be legitimate targets of military strikes. All that they have to do is provide a contribution to military action by virtue of their nature, location, purpose *or* use.

Principle of Distinction

“Distinction” requires that combatants not only distinguish between civilians and combatants, but that they also distinguish themselves from civilians (through the wearing of distinctive insignia, use of clearly identified military vehicles, etc.).¹⁷ “By definition, the principle of distinction does not forbid the targeting of combatants, *nor the targeting of civilians who take a direct part in the hostilities.*”¹⁸ Moreover, LOAC recognizes and excuses the possibility of civilian deaths or damage to civilian infrastructure in the course of an attack on a military objective so long as the expected resulting civilian casualties and damage are not “excessive in relation to the concrete and direct military advantage anticipated.”¹⁹

Article 48 of Additional Protocol I sets forth the following basic rule of distinction: “In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”²⁰

“Distinction” forbids indiscriminate attacks. Indiscriminate attacks are those that are launched without consideration as to where harm will fall²¹—*just like the ongoing Palestinian rocket attacks into southern Israel*. Indiscriminate attacks are defined as

- (a) [T]hose which are not directed at a specific military objective;
- (b) [T]hose which employ a method or means of combat which cannot be directed at a specific military objective; or
- (c) [T]hose which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.²²

¹⁵*Id.*

¹⁶*Id.* para. 2022 (emphasis added).

¹⁷Additional Protocol I, *supra* note 12, art. 51(2), (4).

¹⁸MINISTRY OF FOREIGN AFFAIRS, OPERATION IN GAZA para. 96 (2009) [hereinafter MFA], [http://www.mfa.gov.il/NR/rdonlyres/E89E699D-A435-491B-B2D0-017675DAFEF7/0/GazaOperationw Links.pdf](http://www.mfa.gov.il/NR/rdonlyres/E89E699D-A435-491B-B2D0-017675DAFEF7/0/GazaOperationw%20Links.pdf) (emphasis added).

¹⁹Additional Protocol I, *supra* note 12, art. 51(5)(b).

²⁰*Id.* art. 48.

²¹*See id.* art. 51(4).

²²*Id.*

The fact that tragic accidents occur during military conflict that result in civilian deaths does not, in and of itself, establish a violation of law—or even wrongdoing for that matter. The Office of the Prosecutor at the International Tribunal for the former Yugoslavia reached the same conclusion, and the Committee Established to Review the 1999 NATO Bombing Campaign Against the Federal Republic of Yugoslavia reported to the Prosecutor “that where individual (and legitimate) attacks on military objectives are concerned, the mere cumulation of such instances, all of which are deemed to have been lawful, cannot *ipso facto* be said to amount to a crime.”²³ While military forces are clearly prohibited from deliberately targeting those civilians who are not taking a direct part in hostilities, the principle of distinction relates to the process of distinguishing between lawful objects of attack (military objectives) and all other persons and things in the battle-space. It does not address incidental injury and collateral damage caused when engaging a lawful military objective. Only when such expected injury or damage is excessive in relation to the expected benefit of a lawful attack is the law violated.²⁴

The American Red Cross recognizes, *inter alia*, that

not all civilian deaths are unlawful during war. [IHL] does not outlaw armed conflict, but instead attempts to balance a nation’s acknowledged legal right to attack legitimate military targets during war with the right of the civilian population to be protected from the effects of the hostilities. In other words, *given the nature of warfare, IHL anticipates a certain amount of “collateral damage,” which sometimes, regrettably, may include civilian casualties.*²⁵

The International Committee of the Red Cross (“ICRC”) Commentary to Additional Protocol I states that, “[i]n combat areas it often happens that purely civilian buildings or installations are occupied or used by the armed forces and such objectives may be attacked, provided that this does not result in excessive losses among the civilian population.”²⁶ The key factor is an anticipation of *excessiveness*.

²³INT’L CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY), FINAL REPORT TO THE PROSECUTOR BY THE COMMITTEE ESTABLISHED TO REVIEW THE NATO BOMBING CAMPAIGN AGAINST THE FEDERAL REPUBLIC OF YUGOSLAVIA para. 52 (2000), <http://www.icty.org/x/file/Press/nato061300.pdf>.

²⁴Many countries, including Australia, Canada, France, Italy, New Zealand, and the United Kingdom, all stated upon ratification that article 52(2) of Additional Protocol I was neither intended to address, nor did it address, the question of incidental or collateral damage resulting from an attack directed at a military objective. *See Ratification of the Additional Protocols by the United Kingdom of Great Britain and Northern Ireland*, 322 INT’L REV. RED CROSS 186, 186 (1998), available at <http://www.icrc.org/web/eng/siteeng0.nsf/html/57JP54>; Australia, Reservation/Declaration Text, available at <http://www.icrc.org/ihl.nsf/NORM/10312B4E9047086EC1256402003FB253?OpenDocument>; Canada, Reservation/Declaration Text, available at <http://www.icrc.org/ihl.nsf/NORM/172FFEC04ADC80F2C1256402003FB314?OpenDocument>; France, Reservation/Declaration Text, available at <http://www.icrc.org/ihl.nsf/a/d8041036b40ebc44c1256a34004897b2?open document>; Italy, Reservation/Declaration Text, available at <http://www.icrc.org/ihl.nsf/NORM/E2F248CE54CF09B5C1256402003FB443?OpenDocument>; New Zealand, Reservation/Declaration Text, available at <http://www.icrc.org/ihl.nsf/NORM/8FEC3861203ABE21C1256402003FB53B?OpenDocument>.

²⁵Am. Red Cross, Introduction to International Humanitarian Law (IHL), <http://www.redcross.org/portal/site/en/menuitem.d8aaecf214c576bf971e4cfe43181aa0/?vgnnextoid=d7e1eea14fcbb110VgnVCM10000089f0870aRCRD&vgnnextchannel=22874749b48bb110VgnVCM10000089f0870aRCRD> (last visited 17 Nov. 2010) (emphasis added).

²⁶ICRC COMMENTARY ON ADDITIONAL PROTOCOL I, *supra* note 14, para. 1953.

Principle of Proportionality

Finally, “proportionality” requires that a combatant use only that amount of force necessary to achieve the military objective. The standard for self-defense, however, does *not* limit the victim of the attack to a totally like-kind response, but provides the necessary flexibility to reduce or eliminate the existing threat. As such, the degree of force employed in self-defense can be considerably greater than that used in the original armed attack.²⁷

Indiscriminate attacks are also *disproportionate* if they are “expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, *which would be excessive in relation to the concrete and direct military advantage anticipated.*”²⁸

Ongoing Actions by Palestinians Against Israel Constitute War Crimes

When one reviews the recent actions of the Palestinians vis-à-vis Israel, there can be no doubt that the Palestinians have repeatedly violated the requirements of LOAC. All serious violations of LOAC constitute war crimes.²⁹

Since the initiation of Palestinian hostilities on or about 23 October, every Palestinian rocket attack on Israel has constituted a war crime.³⁰ Palestinian rocket attacks—which are intentionally aimed in the direction of Israeli cities, towns, and villages—clearly violate the rules of necessity and distinction. In fact, it is difficult to discern any true military purpose for attacks that are far more likely to hit schools and homes than they are military targets. Such weapons are meant to spread terror, itself a war crime.³¹ Worse, there is no indication that the Palestinians even *try* to aim their rockets at military targets. But there is an additional, less obvious manner in which these rocket attacks constitute war crimes: Because they are launched from civilian areas by men wearing civilian clothes, the Palestinians violate their obligation to distinguish their own combatants from noncombatants.³² Wearing civilian clothes and blending in with the civilian population is a violation of the laws of war.³³ In fact, fighting while wearing civilian garb would be a war crime *even if* the Palestinians were only attacking military targets.

Moreover, the Palestinians’ use of civilian buildings for military purposes changes the status of these buildings from civilian to military.³⁴ It is vital to understand that obligations under LOAC are not unilateral and unconditional; they are often reciprocal and conditional. For example, a civilian object becomes a legitimate military target when used for military purposes. Even

²⁷ROSALYN HIGGINS, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT 232 (1995); *see also* CHRISTOPHER GREENWOOD, ESSAYS ON WAR IN INTERNATIONAL LAW 80 (2006).

²⁸Additional Protocol I, *supra* note 12, art. 51(5)(b) (emphasis added).

²⁹ICRC Manual, *supra* note 9, Rule 156.

³⁰*See, e.g., id.* Rules 11 & 12 (identifying attacks not directed at specific military objectives or which cannot be directed at a specific military objective being indiscriminate and in violation of principle of distinction); *see also id.* Rule 71 (prohibiting use of indiscriminate weapons).

³¹*Id.* Rule 2.

³²ICRC Manual, *supra* note 9, Rule 106.

³³*Id.*

³⁴*Id.* Rule 10 (“Civilian objects are protected against attack, *unless and for such time as they are military objectives . . .*” (emphasis added)).

buildings specially protected under international law—including mosques and hospitals—lose their protected status when used for military purposes. Accordingly, when the Palestinians fire a rocket from a school, or reinforce their fighters by transporting them in ambulances³⁵ (otherwise protected by a Red Cross or Red Crescent symbol), that school and those ambulances become legitimate military targets. They are no longer “civilian” in any meaningful sense *or under the laws of war*.

Further, *because of their actions*, the Palestinians bear legal responsibility for civilian deaths in Gaza.³⁶ Unless there is evidence that Israel clearly and intentionally targets civilians, the Palestinians are responsible for the civilian deaths that result from their decisions to fight wearing civilian clothes (thereby making it impossible to identify combatants from noncombatants), to launch rockets from densely populated civilian areas, and to embed their military infrastructure in these areas. In other words, but for the Palestinians’ decision to use Gaza residents as human shields³⁷ (itself a war crime), those civilians would not be at risk from Israeli operations.

Israel’s Response to Palestinian Attacks Complies with the Law of Armed Conflict

Israel launched Operation Pillar of Defense as a *defensive* response to ongoing Palestinian attacks against Israel launched from the Gaza Strip. Article 51 of the U.N. Charter proclaims “the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations.”³⁸ Customary international law also recognizes the right of self-defense against non-State actors.³⁹ U.N. Security Council Resolutions 1368 and 1373 not only recognize the right of self-defense against acts of terrorism, but they also mandate that states take specific action against terrorists.⁴⁰

³⁵*Id.* Rule 29 (noting that medical transports “lose their protection” when used improperly).

³⁶*Id.* Rule 22 (“The parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects *under their control* against the effects of attacks” (emphasis added)). *See also id.* Rules 23, 24.

³⁷*Id.* Rule 97 (forbidding use of human shields).

³⁸U.N. Charter, *supra* note 2, art. 51, *available at* <http://www.un.org/en/documents/charter/chapter7.shtml>.

³⁹*See* Armed Activities, *supra* note 4.

⁴⁰S.C. Res. 1373, for example, requires that states do the following:

- Prevent and suppress the financing of terrorist acts;
- Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
- Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;
- Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;
- Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;
- Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts; and

Israel has a well-known and well documented record of complying with LOAC. Israeli military strikes, for example, are always carried out in the reasonable, good faith belief that the people and objects attacked qualify as lawful military objectives. The IDF checks and cross-checks targets and often refrains from carrying out attacks or diverts them due to potential civilian casualties.⁴¹ These practices are powerful evidence that Israeli strikes are not indiscriminate. That should not be understood to mean that operational errors do not occur (they do in every military conflict), but it does mean that the IDF attempts to avoid collateral damage whenever possible, reflecting an overall pattern of good faith compliance with the law of armed conflict, a pattern that cannot be attributed at all to the Palestinians and their notorious use of rockets aimed intentionally at civilian communities.

On 15 November, the day after launching Operation Pillar of Defense, the IDF was already dispersing leaflets in various areas of the Gaza Strip to notify the inhabitants of the nature of upcoming Israeli attacks so that the civilians could evacuate the area.⁴² On 16 November, the IDF sent approximately 12,000 text messages to residents of the Gaza Strip to warn them of upcoming attacks.⁴³ These warnings are consistent with the longstanding Israeli practice of providing warning to Palestinian civilians in an attempt to avoid civilian casualties. During Operation Cast Lead, the Israelis used “knock-on-the-roof” missiles—teaser missiles with little or no explosive—that are fired onto the roof of a building to warn the occupants to evacuate, once again in an attempt to minimize civilian casualties.⁴⁴

One of the best examples of the Israeli military’s record of restraint was its refraining during Operation Cast Lead from attacking Shifa Hospital in Gaza City, where the Palestinian terrorist group Hamas—in clear violation of the law of armed conflict—had set up its main headquarters. That Israel declined to attack the hospital out of concern for civilians present in the area is one of many clear indications that the Israeli military did not engage in indiscriminate attacks, as had been widely alleged.⁴⁵ Other sensitive sites like U.N. and Red Cross facilities were also marked on IDF operational maps and photographs, and the IDF distributed this information at all levels of command in an attempt to avoid mistakes in the heat of battle.⁴⁶

As Operation Pillar of Defense progresses, it is clear that the Israelis are continuing to execute their military operations in compliance with LOAC, which should come as no surprise to those

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- Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents.

⁴¹MFA, *supra* note 18, para. 115.

⁴²IDF Drops Warning Leaflets Over Khan Yunis in the Gaza Strip, YOUTUBE (15 Nov. 2012), <http://www.youtube.com/watch?v=iPGHfTrgkY&feature=youtube>. Note also that during Operation Cast Lead the IDF dropped more than 2.5 million leaflet warnings, often to their own detriment, since the prior notice destroyed the element of surprise. MFA, *supra* note 18, para. 8.

⁴³Operation Pillar of Defense – IDF Updates, ISR. MINISTRY OF FOREIGN AFFAIRS (16 Nov. 2012), https://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Operation_Pillar_of_Defense_Nov_2012-IDF_updates.htm.

⁴⁴Steve Erlanger, *A Gaza War Full of Traps and Trickery*, N.Y. Times, 11 Jan. 2009, at A1 (emphasis added), available at http://www.nytimes.com/2009/01/11/world/middleeast/11hamas.html?pagewanted=1&_r=1&sq=Gaza%20war%20full%20of%20traps&st=cse&scp=1.

⁴⁵MFA, *supra* note 18, para. 131.

⁴⁶*Id.* para. 259.

who follow Middle East conflicts. Despite numerous, continuing Palestinian violations of LOAC, the Israelis continue to uphold the rule of law.

Nations Supporting Palestinian Attacks on Israel Undermine International Law and Are Complicit in the Palestinian Violation of the Law of Armed Conflict

The UN Charter expressly forbids the actual or threatened use of armed force by UN member states against any state: “All Members *shall refrain* in their international relations *from the threat or use of force against the territorial integrity or political independence of any state*, or in any other manner inconsistent with the Purposes of the United Nations.”⁴⁷ Despite solemn assurances that the entity of Palestine is ready to assume the responsibilities of statehood consistent with the principles enshrined in the UN Charter (as part of its current attempt to obtain a form of statehood recognition by the UN General Assembly), Palestinian officials repeatedly threaten the destruction of Israel, a UN Member State.⁴⁸ Leaders of nations supporting the Palestinians often make similar threats.⁴⁹ By standing with Hamas and other Palestinian terrorist groups who wholly disregard the Law of Armed Conflict, any state supporting the Palestinian violence undermines and mocks the fundamental principles of the United Nations and the Law of Armed Conflict. Furthermore, nations that continue to provide support to the Palestinians despite reprehensible Palestinian behavior on the world scene share responsibility for the violence that such behavior engenders. Any state that values the rule of law must reject and condemn what Palestinian terror groups are currently doing; to do otherwise is to promote international lawlessness.

RESPONSIBILITY FOR THE ONGOING CONFLICT LIES WITH THE PALESTINIAN TERRORIST ORGANIZATIONS WHOSE HISTORY OF OPEN AND NOTORIOUS LOAC VIOLATIONS MUST BE RECOGNIZED AND CONDEMNED BY THE INTERNATIONAL COMMUNITY

In the ongoing conflict between Israel and the Palestinians, the Palestinians are the aggressors. It is they who initiated hostilities against Israel. It is they who have raised the stakes in the region by importing and firing long-range rockets that can strike major Israeli population centers, including Tel Aviv and Jerusalem. Israel is the victim of unprovoked aggression and has the absolute right to defend itself. Moreover, nations like Egypt that are giving succor and encouragement to the Palestinians are acting irresponsibly and are violating their international obligations under the Egyptian-Israeli peace treaty as well as their obligations under the UN Charter.⁵⁰

It is time for the international community to condemn the Palestinian attacks against Israel for what they are and to support publicly the right of Israel to defend its people and territory against Palestinian aggression. This is not the first time that the Palestinians have acted lawlessly and

⁴⁷U.N. Charter, *supra* note 2 (emphasis added).

⁴⁸*Deputy Hamas Minister of Religious Endowments Abdallah Jarbu’: Only a Madman Would Think Jews are Human*, MEMRI.TV (19 Mar. 2010), <http://www.memritv.org/clip/en/0/0/0/0/0/2430.htm>.

⁴⁹*See, e.g., Turkey’s Erdogan Calls Israel a “Terrorist State”*, REUTERS (19 Nov. 2012), <http://www.reuters.com/article/2012/11/19/us-palestinians-israel-turkey-idUSBRE8AI0FH20121119>.

⁵⁰U.N. Charter, *supra* note 2, art. 2, para. 4.

recklessly in attacking Israel, and, *if the world community continues to excuse the Palestinians' lawless and reckless conduct*, it won't be the last. It is time for the international community *itself* to act responsibly and to recognize that it is the reckless, irresponsible Palestinian behavior that destabilizes the region. It is time to stop excusing Palestinian misconduct—which merely encourages similar misconduct in the future.

CALL FOR ACTION

In light of the foregoing, we urge the international community to act as follows:

- 1) Condemn the indiscriminate Palestinian attacks on Israel as violations of the Law of Armed Conflict and, hence, war crimes;
- 2) Note publicly Palestinian responsibility for the current conflict;
- 3) Cut or withhold all aid to the Palestinians until they cease their reckless activities and begin to act responsibly;
- 4) Cut or withhold all aid to nations such as Egypt that are supporting or encouraging the Palestinians' reckless course of action;
- 5) Recognize that providing aid to Palestinians and their allies in the region makes the aid-giver complicit in the Palestinians' violations of the Law of Armed Conflict;
- 6) Deny entry and travel permits to Palestinian leaders and officials who refuse to condemn Palestinian attacks on Israel;
- 7) Identify Palestinian leaders in your country who advocate, plan, and/or carry out indiscriminate attacks on Israel;
- 8) Arrest for war crimes Palestinian leaders in your country who advocate, plan, and/or carry out indiscriminate attacks on Israel;
- 9) Prosecute for war crimes in national courts or refer to the International Criminal Court (ICC) Palestinian leaders who advocate, plan, and/or carry out indiscriminate attacks on Israel; and
- 10) Refuse to support any change in Palestine's status at the UN until the Palestinians demonstrate that they will halt their attacks on Israel and will agree to resolve in good faith all outstanding issues between them and Israel via direct, bilateral negotiations, without preconditions.

Dated this 19th day of November, 2012.