Legal Brief:

Israel's Evasion of Accountability for Grave International Crimes

July 2012

The aftermath of Operation Cast Lead marked a rare occasion when there was some movement among international institutions to hold Israel accountable for its actions in the occupied Palestinian territory. As will be reviewed below, the promise of these early steps has not been fulfilled, and in the meantime, as memories of the mass killing during Operation Cast Lead have faded, so has international interest in the human rights situation in Gaza. However, Israeli abuses against the Gazan population have persisted, while the perpetrators remain exempt from criminal or even civil liability.

Over the past year, Al Mezan has appealed to several United Nations human rights mechanisms for assistance in securing justice in specific cases of criminal Israeli conduct in the Gaza Strip. Alongside these targeted requests for legal and diplomatic intervention, Al Mezan hereby issues a plenary appeal to the United Nations and the international community in general to take determined legal and political action to end Israel's systematic immunity from enforcement of international law. This briefing paper provides details of six instances in which civilians were killed or injured by Israeli Occupation Forces (IOF), and one example of a systemic human rights abuse implemented as a matter of policy. In all these cases, Al Mezan filed petitions for legal action in Israel[1]; additional appeals to UN bodies were issued in four of the cases. To date, however, no perpetrators have faced a court sentence, or even an indictment, and none of the victims have received any form of redress.

Beyond the individual tragedies, these cases illustrate a record of Israeli impunity in the commission of grave violations of international humanitarian and human rights law. Israel predictably fails to hold its commanding military and political leaders or state institutions accountable. Civilian victims of Israeli military attacks and other abuses are only rarely able to secure monetary compensation for death, injury, and destruction sown, and have never seen policymakers at the military or political level held to standards of criminal liability. In the absence of accountability at the state level, it becomes the responsibility of international institutions to guarantee legal justice; but here, too, there has been a void of legal responsibility. The failure of the international community to take effective action against Israel's unlawful acts allows these acts to continue. Justice may be slow, but when international inaction remains an unbroken pattern over the long term, it becomes in effect, if not intent, a grant of immunity for breaches of international law.

[1] Due to the procedural difficulties facing lawyers and plaintiffs from Gaza attempting to pursue legal actions in Israel—not least of which is the denial of physical access—Al Mezan is forced to file all such petitions through the offices of partner lawyers inside Israel. For simplicity's sake, this brief will refer to Al Mezan as the petitioner in legal appeals before Israeli authorities. See Section III below for more on the barriers to justice confronting Palestinian plaintiffs in the Israeli legal system.

Section I:
Sample of Cases Pursued at the Domestic Israeli and International Levels in the Years Following Operation Cast Lead

Wounding of a Civilian Minor – Case of Mohammad as-Swayrki: The victim in this incident is a minor who was wounded by Israeli gunfire while collecting scrap metal for resale from the solid waste dump east of his village, Juhr ad-Deek (also known as Wadi Gaza), which lies southeast of Gaza City. During recent years, scrap collection became a common economic activity for many unemployed laborers, including children who drop out of school to help support their families, in Juhr ad-Deek and other villages near the border. At roughly 6:00 am on the morning of 3 October 2011, 16-year-old Mohammad began collecting scrap with two friends, also minors, at a distance of 400-500 meters from the border. The officially stated depth of the "buffer zone" Israel imposes on Gazan territory is 300 meters.[2] Several hours after the three had started working, at approximately 9:00 am, Israeli forces stationed behind the separation fence fired a shot. The boys began running westwards, away from the border. At least one additional shot was fired, hitting Mohammad in the thigh and causing him to collapse as he tried to run away. His thighbone was fractured by the injury. The circumstances are devoid of any possible argument of military necessity, and strongly indicate that Mohammad was shot deliberately. There is no doubt that, at a minimum, the responsible Israeli forces fired with wanton disregard for civilian life.

Al Mezan filed notice of the incident to the Israeli Ministry of Defense[3] (MoD), receipt of which was acknowledged on 15 December 2011, and on 19 January 2012 requested that Israel's Military Advocate General (MAG) open a criminal investigation. Al Mezan also sent letters (on 11 January 2012) to the United Nations' Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 (Mr. Richard Falk) and the Special Representative of the Secretary-General for Children and Armed Conflict (Ms. Radhika Coomaraswamy), requesting their intervention with Israeli authorities in an effort to secure accountability and compensation for Mohammad and his family. On 22 April 2012, the IOF's

[2] IOF edicts to the Gazan population amount to the only officially stated Israeli policy on the "buffer zone." There have been several IOF proclamations on the matter. On 11 September 2005, following completion of the "disengagement" from Gaza, the IOF declared that Palestinians should keep a distance of at least 150 meters from the border. On 28 December 2005 the IOF dropped leaflets on Gaza proclaiming the former northern settlement areas and the village of as-Siafa off-limits. Leaflets dropped over Gaza on 7 January 2010, 17 March 2011, and 2 April 2012 stated the depth of the "buffer zone" as 300 meters. The IOF has restated the 300-meter demarcation in writing to the United Nations. United Nations Office for the Coordination of Humanitarian Affairs – occupied Palestinian territory (OCHA), *Humanitarian Update*, November – December 2006 ("Special Focus: The Gaza Strip after disengagement") (available online; PDF format), p. 6 (11 September and 28 December 2005 statements); Al Mezan, "IOF Drops Warning Leaflets on Gaza Strip Districts," news briefs of 7 January 2010, online, and 17 March 2011, online, and "IOF Drops Warning Leaflets North of Beit Lahiya," news brief, 2 April 2012, online; OCHA, *Easing the Blockade: Assessing the Humanitarian Impact on the Population of the Gaza Strip*, March 2011(available online; PDF format), p. 9 (confirmation in writing). Notwithstanding the "official" depth of 300 meters, people have been shot by IOF forces up to two kilometers from the border fence. For more on this topic, see Al Mezan, "Displacement in the 'Buffer Zone' Three Years after Operation Cast Lead," factsheet, 1 January 2012, online.

[3] Amendments to Israeli law since 2001 require filing of a "civil notice" of injuries or property destruction with the MoD in order to preserve the right to file a suit for damages. This is the form of notice referred to in the cases covered in this brief.

legal department responded that, after consulting the relevant military units, it was closing the file because it had concluded that Mohammad was present in "suspicious" circumstances and that he had been shot according to Israel's standard procedure and rules of engagement.[4]

Killing of a Civilian – Case of Isma'il Ammoum: On 24 August 2011, the elderly farmer Isma'il Ammoum was killed by a drone northeast of al-Bureij refugee camp, in an area roughly 1.5 kilometers from the border, far outside the declared perimeter of the "buffer zone." Ammoum was tending an agricultural field by himself during the dawn hours when residents of the area reported hearing an explosion. Later in the day his dismembered body was discovered in the field, next to a small hole in the earth and scattered metal fragments, consistent with a drone-fired missile. Ammoum, a 62-year-old resident of al-Bureij camp, was known for his quiet character. He was the breadwinner for his sister Zana, two years younger. Al Mezan received no reports of Palestinian military activity in the area at the time. The circumstances indicate that Ammoum was deliberately targeted with intent to kill, outside any context which might give rise to a claim of military necessity.

On 16 April 2012, Al Mezan submitted a request for criminal investigation to the MAG. A letter of allegation was sent to the United Nations' Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, Mr. Christof Heyns, on 5 October 2011.[5] The IOF verified receipt of the request for investigation and stated that it would examine the matter.[6] Al Mezan knows of no concrete actions taken to date to hold the responsible forces accountable, and no form of redress has been provided to the victim's family.

Indiscriminate Extrajudicial Execution – Case of the Qreeqe' Family: On 19 August 2011, an Israeli aircraft, most likely a drone, killed Mu'taz Qreeqe', known for his affiliation with the Islamic Jihad movement, with an air-to-surface missile. Israel carried out the assassination as Qreeqe' was riding a motorcycle with his brother and infant son at the intersection of a central Gaza City street. Both civilian family members were killed in the missile strike, and five passersby were wounded. The three members of the Qreeqe' family were returning from Ash-Shifa Hospital, where they had brought Mu'taz's son for treatment after he fell and injured his head. It is characteristic of Israel's assassination policy that the targeted individual was not carrying out any military activity when killed and that the timing, location, and means of assassination guaranteed death and injury to civilians. Under these circumstances the deliberate collateral killing of Qreeqe's brother and child amount to a grave breach of international humanitarian law. Even assuming Mu'taz Qreeqe' himself had a military role in Islamic Jihad,

[4] IOF responses dated 15 December 2011, 31 January 2012, and 22 April 2012, contents relayed by office of Israeli partner lawyer in emails dated 23 April and 9 May 2012 (all documents in Al Mezan's files).

[5] Though this killing may technically be regarded as an extrajudicial execution, Al Mezan knows of no affiliation with a military or political movement that would have made Mr. Ammoum a target of Israel's policy of assassination *per se*. The Special Rapporteur on extrajudicial executions was chosen as his mandate most closely corresponds to the facts of the case. It is a curiosity of the UN system that among its constellation of human rights mechanisms, there is still no body dealing specifically with military killings of civilians.

[6] IOF response to request for criminal investigation dated 22 April 2012, details relayed by office of Israeli partner lawyer in email dated 24 April 2012 (both documents in Al Mezan's files).

the manner of his killing amounts to an extrajudicial execution, which is impermissible under international law.

Al Mezan filed civil notice with the MoD on 11 October 2011 and requested a criminal investigation by the MAG on 12 February 2012. A letter of allegation was also filed with the United Nations' Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions on 1 November 2011. On 20 February 2012, the IOF's legal department responded that it had requested information from the relevant military units and that the case was under consideration. On 22 May 2012 it responded to a request for an update with a note that the case was still under review.[7] No other information regarding the request for criminal investigation has been received. Al Mezan knows of no concrete steps to hold any perpetrator accountable or to provide compensation to the victims' surviving family members.

Attack on a Civilian Home – Case of the Abu Is'ayid Family: On 28 April 2011, the IOF bombarded a plot of land owned by the Abu Is'ayid family, who live on the border near the village of Juhr ad-Deek, with multiple explosive rounds fired by artillery and/or drones. The explosives landed on and around the main house built on the land, injuring four family members, including a woman hit by shrapnel and two young children (one was wounded by debris, the other by shrapnel to the belly and neck). Medical tests later revealed that a third child from the family, who suffered from head pains following the attack, had a small piece of shrapnel lodged in his skull. Ambulances attempting to reach the wounded were delayed for more than half an hour waiting for permission from the IOF to evacuate the wounded. The top floor of the main family house was completely destroyed, while the ground floor suffered partial damages. Field workers from Al Mezan investigated this attack in considerable depth and found nil evidence of military activity by Palestinian armed factions or any other unusual activity in the area at the time of the bombardment. Residents of the area who listen to Hebrew radio news reported that the IOF had announced that it attacked the house by mistake. This was in fact the second time the IOF had bombarded the Abu Is'ayid family—in an earlier attack on 13 July 2010, one woman from the family was killed and two women and an elderly man were injured.

Photo: Bassem Abu Irzi – Deir Al Balah fieldworker – Al Mezan

The Palestinian Centre for Human Rights submitted notice to the Israeli Ministry of Defense and a complaint to the MAG on 15 August 2010 concerning the first attack. Al Mezan filed a request for criminal investigation into the second attack on 23 July 2011, and twice sent letters to the

[7] IOF responses dated 20 February 2012 and 22 May 2012, contents relayed by office of Israeli partner lawyer in emails dated 21 February 2012 and 30 May 2012 (both documents in Al Mezan's files).

IOF noting that, over a year after the first shelling, no investigation had been opened. On 14 March 2012, 19 months after the first shelling, Al Mezan received a reply from the IOF's legal department stating that the Military Police – Criminal Investigation Division was opening an investigation into that incident, and in April the military police requested coordination to take statements from three family members at Erez crossing.[8] The outcome of the investigation is not yet known. To date no response has been received concerning the second shelling, and no steps have been taken to compensate the family, whose home remains partly destroyed.

Targeting of Medical Personnel – Case of Hasan al-Hila: On 7 April 2011, the IOF fired several artillery shells at a group of young men gathered on a sand dune outside of Ash-Shawkah village, near the defunct Gazan airport in southeastern Rafah district. Four persons, including a minor, were killed in this incident, and 14 injured. When a Gazan Red Crescent ambulance arrived to evacuate the wounded, the IOF again opened fire, launching two artillery shells towards the ambulance. The first landed only a few meters from the vehicle; the second landed behind it as the crew tried to drive to safety. One paramedic, Hasan al-Hila, was wounded in the arm, and the ambulance suffered substantial damage as it was peppered with more than 50 pieces of shrapnel. Given the precise timing and placement of the artillery shells, it is evident that the IOF deliberately targeted the ambulance, which was marked with the usual distinctive medical insignia and had approached the area with its siren on.

Photo: Mohammed Abdallah – Rafah fieldworker – Al Mezan

Al Mezan sent notice to the Ministry of Defense on 28 April 2011 and a request that the MAG open a criminal investigation on 4 April 2012. Israel has taken no initiative to punish the forces responsible for this flagrant breach of international humanitarian law, or to compensate al-Hila or the local Red Crescent office for medical and material damages.

Killing of a Fisherman in Gazan Waters – Case of Mohammad Bakr: At roughly 9:15 on the morning of 24 September 2010, IOF naval forces shot and killed the young fisherman Mohammad Bakr a short distance off the coast of Gaza. The boat carrying Bakr and three of his cousins had already been fired on earlier in the morning, as they were trying to fish in the waters northwest of Beit Lahiya. The firing forced the fishermen to move inland, to a distance just over one nautical mile[9] from shore, roughly 2,000 meters off the Beit Lahiya coastline. Seeing an

[8] IOF letter dated 14 March 2012, contents relayed by office of Israeli partner lawyer in email dated 15 March 2012, and request for victim interviews relayed by Israeli partner lawyer in email dated 23 April 2012 (documents in Al Mezan's files).

[9] A nautical mile is 1,852 meters.

Israeli naval cruiser approaching them for a second time, the men reeled in their fishing lines and attempted to move southwards, towards the Gaza City port. As they began fleeing, the IOF vessel opened fire while in pursuit, without giving prior warning or ordering the fishermen to stop their boat. Bakr was hit in the lower right side during the firing. Both vessels halted as Bakr's cousins attempted to staunch the bleeding, and the IOF cruiser ceased firing. Another Gazan fishing vessel owned by the same extended family approached, and Bakr's cousins moved him to this boat for transport to the hospital. Twice during their efforts to bandage and move Bakr, his cousins called and signaled for help to the Israeli vessel, their hands covered in blood. Throughout the incident the Israeli cruiser was close enough that the fishermen could clearly see the individual soldiers aboard, including the colors of their uniforms. The IOF warship left the scene, heading for the deep sea, after Bakr had been moved to the second boat. He was dead by the time he reached the hospital. It should be noted that this incident not only occurred in Gazan waters—like all IOF attacks on fishermen—but took place deep inside the fishing zone officially approved by the IOF (a box extending three nautical miles off Gaza's coastline).[10]

Al Mezan filed notice to the Israeli Ministry of Defense on 25 October 2010, and on 14 March 2012 filed a request with the MAG for criminal investigation of the case. Other than acknowledgment that the notice to the MoD was received, there has been no Israeli response.[11]

Use of Live Fire on Demonstrators – Case of Ahmad Salim Deeb: On 28 April 2010, scores of Palestinian citizens congregated near the border east of al-Maghazi refugee camp to protest Israel's imposition of the "buffer zone" inside Gazan territory. The demonstrators marched to a point along the border fence opposite an IOF military barracks and watchtower. The conduct of the demonstration was largely peaceful, though a small group of young men who had moved closest to the border fence threw stones at the Israeli military barracks. A witness in the front ranks of the demonstration stated in an affidavit to Al Mezan that the stones were falling around the border fence, while the military barracks was located roughly thirty-five meters beyond the border. The same affiant reports that he saw approximately seven young men throwing stones, out of more than 200 protesters. The IOF opened live fire on the protesters, and Ahmad Salim Deeb, a young man at the forefront of the demonstration but not among those throwing stones, was shot; he died of his wounds later the same day. Stone-throwing poses no conceivable threat to a military barracks lying beyond an unbreached barrier. The use of indiscriminate live fire was plainly excessive and unlawful under these circumstances.

Al Mezan filed a request for criminal investigation on 27 May 2010. Other than a letter acknowledging receipt dated 13 July 2010, there has been no response.[12] Israel has taken no steps to hold the forces responsible to account, or to compensate the Salim Deeb family.

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[10] For more information on the IOF's attacks on fishermen, particularly the effect of this policy on children, see Al Mezan, "Israel Abuses of Child Fishers in Gaza: The Need for Protection," factsheet, 31 December 2011, online. For a review from an earlier period of Israel's progressively harsher siege on Gaza's fisheries, see OCHA, *Gaza Fishing: An Industry in Danger*, April 2007 (available online; PDF format).

[11] IOF response to civil complaint dated 27 December 2010 and emails from office of Israeli partner lawyer dated 14 March and 6 June 2012 (all documents in Al Mezan's files).

[12] IOF response of 13 July 2010 and email from office of Israeli partner lawyer dated 6 June 2012 (both documents in Al Mezan's files).

Denial and Obstruction of the Right to Education – Case of Bir Zeit Students: Israel as a matter of general policy has since 2000 forbidden any educational travel between the Gaza Strip and the West Bank. In autumn 2011, Al Mezan provided technical and legal assistance to four women whose MA studies at Bir Zeit University were cut short by Israel's policy. They have been waiting since 2000 to complete their degrees. In 2011, the students were granted academic reinstatement at Bir Zeit and were enrolled for the next academic term. Al Mezan assisted them in submitting applications for academic travel to the Israeli authorities. On 10 October 2011 these applications were denied without explanation. Two other students newly registered at Bir Zeit were also denied permission to travel to the university in August 2011.

Al Mezan submitted an urgent appeal on this matter to the UN's Special Rapporteurs on the Right to Education; the Situation of Human Rights in the Palestinian Territories Occupied since 1967; the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism; and Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance. Israeli authorities have taken no steps to end the collective violation of human rights entailed in its ban on educational travel within the occupied Palestinian territory. It is important to note that, beyond foreclosing life opportunities for individual students, Israel's ban on academic travel inflicts structural harm on the Palestinian educational system, and hence on Palestinian society at large, in flat violation of the prohibition on collective punishments under international law. It should also be recalled that legally the occupied Palestinian lands form a unified and indivisible territorial unit, as has been recognized by the UN Security Council.[13] The territorial identity of Gaza with the West Bank has been formally recognized even by Israel, in the express terms of the Oslo accords of the 1990s.[14] Under international law, Israeli prohibition of movement between the territories is not a matter of the State of Israel's sovereignty but a violation of Palestinian rights on Palestinian land.

[13] United Nations Security Council Resolution 1860, adopted 8 January 2009, UN doc. S/RES/1860, preambular 2 ("Stressing that the Gaza Strip constitutes an integral part of the territory occupied in 1967 and will be a part of the Palestinian state").

[14] Declaration of Principles on Interim Self-Government Arrangements with attached Annexes and Agreed Minutes, signed by Israel and the Palestine Liberation Organization (PLO) on 13 September 1993, *International Legal Materials*, vol. 32, no. 6, November 1993, pp. 1527–41 (henceforth cited as Declaration of Principles), Art. IV, at p. 1528 ("The two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period"); Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, with selected attached Annexes and Maps, signed by Israel and the PLO on 28 September 1995, *International Legal Materials*, vol. 36, no. 3, May 1997, pp. 557–649 (henceforth cited as 1995 Interim Agreement), Arts. XI:1 ("The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity of and status of which will be preserved during the interim period"), XVII:1(a) ("In accordance with the DOP [Declaration of Principles], the jurisdiction of the [Palestinian] Council will cover West Bank and Gaza Strip territory as a single territorial unit. . . ."), XXXI:8 (text effectively identical to Art. XI:1), Annex I, Arts. I:2 ("In order to maintain the territorial integrity of the West Bank and the Gaza Strip as a single territorial unit . . ."), XIII:11 ("Guided by the principle that the two sides view the West Bank and Gaza Strip as a single territorial unit . . ."), at pp. 561, 564, 568, 569, 586. See also Declaration of Principles, Annex II, 6, at p. 1537 (". . . the status of the Gaza Strip and Jericho area will continue to be an integral part of the West Bank and Gaza Strip"); 1995 Interim Agreement, Art. XXXI:7 ("Neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations") and Annex I, Art. I:4 ("the unity and integrity of the Palestinian people in the West Bank and the Gaza Strip shall be maintained and respected"), at pp. 568, 569.

Section II:
Background on Legal Impunity for Crimes Committed in Operation Cast Lead

The institutional absence of accountability for human rights abuses and war crimes prevailing in Israel began to receive some international attention in the wake of Operation Cast Lead. Following on resolutions by the UN General Assembly and Human Rights Council, a Committee of Independent Experts specializing in international human rights and humanitarian law was empaneled to examine what steps the Israeli and Palestinian governments had taken to investigate war crimes and hold perpetrators accountable. This committee has issued two reports, both of which highlight the continued culture of impunity in Israel. The first report, from September 2010, found that Israel's "military investigations thus far appear to have produced very little" in the way of results; that "access to justice is rarely guaranteed in practice to Palestinian complainants"; and that Israel "has not met its duty" to investigate "the actions of those who designed, planned, ordered and oversaw 'Operation Cast Lead.'"[15] The committee also noted "the military's inherent conflict of interest" in "examining its own role in designing and executing" the attack on Gaza.[16] The second report, the final draft of which was issued in May 2011, again found "no indication that Israel has opened investigations into the actions of those who designed, planned, ordered and oversaw Operation Cast Lead."[17] The information gathered by the committee indicated that, more than two years after Cast Lead, no one had been held criminally accountable (or even subject to military discipline) in 33 of 36 cases of *prima facie* international crimes documented by a UN fact-finding mission.[18]

UN efforts to track the state of accountability for Operation Cast Lead have faced a wall of Israeli obstructionism. Indeed, it is a measure of the degree of contempt for international law prevailing in Israel that the Committee of Independent Experts was not even able to fulfill its mandate with respect to Israel due to a complete lack of cooperation. The committee was forced

[15] Report of the Committee of Independent Experts in International Humanitarian and Human Rights Laws to Monitor and Assess Any Domestic, Legal or Other Proceedings Undertaken by Both the Government of Israel and the Palestinian Side, in the Light of General Assembly Resolution 64/254, Including the Independence, Effectiveness, Genuineness of These Investigations and Their Conformity with International Standards, submitted to the 15th session of the UN Human Rights Council (13 September – 1 October 2010), 23 September 2010, UN doc. no. A/HRC/15/50 (available online; PDF format) (henceforth cited as Committee of Independent Experts' report I), 55, 58, 95, pp. 16, 17, 23; see also 64, p. 18.

[16] *Ibid*., 95, 64, pp. 23, 18; see also 91, p. 22.

[17] Report of the Committee of Independent Experts in International Humanitarian and Human Rights Law Established Pursuant to Council Resolution 13/9, submitted to the 16th session of the UN Human Rights Council (28 February – 25 March 2011), 5 May 2011, UN doc. no. A/HRC/16/24 (available online; PDF format) (henceforth cited as Committee of Independent Experts' report II), 79, p. 19.

[18] *Ibid*., Annex II, pp. 23–5. The status of two of these 36 cases, both involving attacks on hospitals, was listed as "Unclear," with "Possible disciplinary action." As Al Mezan is aware of no information appearing before or after the Committee of Independent Experts' final report which corroborates that anyone was disciplined in connection with these attacks, they are counted here in the tally of 33 cases of complete nonaccountability. Seven cases were still putatively ongoing or under review at the time of the committee's final report. Given the record to date and the recent result in the iconic as-Samouni case, discussed below, there is no realistic hope that this handful of open cases will yield a belated modicum of justice.

to rely entirely on publicly issued reports of the Israeli government and third-party sources for its assessment of Israel's justice process, resulting in multiple cases in which the committee could not even determine if Israel had opened investigations.[19] Throughout its investigations, the committee was denied access to Israel and the occupied West Bank, including East Jerusalem, and denied entry to Gaza via the access points Israel controls, which prevented it from visiting Gaza during its second reporting period.[20]

At the most recent session (July 2010) reviewing Israel's record before the Human Rights Committee—which monitors implementation of the International Covenant on Civil and Political Rights—that body likewise noted with "concern" that the "few investigations" undertaken had been "carried out on the basis of confidential operational debriefings." It concluded that Israel had "not yet conducted independent and credible investigations into serious violations of international human rights law [during Operation Cast Lead], such as the direct targeting of civilians and civilian infrastructure, such as waste water plants and sewage facilities, the use of civilians as 'human shields,' refusal to evacuate the wounded, […] and detention in degrading conditions."[21]

In a final development confirming that Israel has closed the file on its record during Cast Lead, this month the MAG's office announced that it considered as "comprehensively refuted" any allegation of wrongdoing of any sort—intentional, reckless, or negligent—in the case of an airstrike that killed twenty-one members of the extended as-Samouni family. (A military sanction—freezing of further promotion—was imposed on the commanding officer responsible, for "professional shortcomings.")[22] The facts of the case are shocking. Roughly 100 family members, all unarmed civilians, were herded into a single house by IOF soldiers who had taken full control of their neighborhood, and after remaining there overnight, were directly targeted by multiple airstrikes at a time when several family members were outside gathering firewood within direct eyeline of Israeli soldiers deployed on surrounding rooftops.[23] It has been reported in the Israeli media that the officer ordering the attack was warned by the Air Force that there might be civilians present.[24] The MAG's press release on the conclusions of its investigation reveals no new extenuating circumstances. It refers to "RPG fire […] directed towards the IDF ground forces in the area" at some unspecified time "prior to the Incident [i.e., the airstrikes],"

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[19] Committee of Independent Experts' report I, 12, 44–5, 47–51, 89, pp. 5, 13, 14–5, 22, and Annex II, pp. 27–8; Committee of Independent Experts' report II, 10, 12–3, 21, 27, 29, 43, 76–7, pp. 4, 5, 7–8, 11, 19, and Annex II, pp. 24–5.

[20] Committee of Independent Experts' report I, 12, 15, pp. 5, 6; Committee of Independent Experts' report II, 11, 22, 76, pp. 4, 5, 19.

[21] Human Rights Committee, "Concluding observations of the Human Rights Committee: Israel," adopted 29 July 2010 (99th session, 12 – 30 July 2010), published 3 September 2010, UN doc. no. CCPR/C/ISR/CO/3, 9, pp. 3–4 (available online; PDF format).

[22] Israeli Military Advocate General, "MAG's Legal Opinion Regarding the Al-Samouni Family Fatalities," press release, 1 May 2012, online (consulted 8 May 2012).

[23] This was in fact the most lethal incident in a cluster of killings of as-Samouni family members. Three incidents—manifestly war crimes in light of the known facts—are documented in the Report of the United Nations Fact-Finding Mission on the Gaza Conflict, submitted to the 12th session of the UN Human Rights Council (14 September – 2 October 2009), 25 September 2009, UN doc. no. A/HRC/12/48 (available online; PDF format) (henceforth cited as Fact-Finding Mission), 706–44, pp. 159–68.

[24] Amos Harel and Anshel Pfeffer, "IDF probes top officers on Gaza war strike that killed 21 family members," *Haaretz* online, 22 October 2010 (consulted 3 May 2012).

but this by itself is meaningless. The report of the UN Fact-Finding Mission found that fully 24 hours prior to the airstrike, any armed engagements in the immediate vicinity had ceased and "the Israeli armed forces were in full control of the al-Samouni neighbourhood."[25] "Operational" difficulties, such as combat in "a heavily populated urban environment," are also mentioned by the MAG, but this has no bearing on IOF actions in the as-Samouni neighborhood, which is rural and only sparsely built-up.[26] If Israel's legal system will not find even a negligent degree of responsibility for the ordering of lethal attacks against civilians by a mid-level officer in such clear and egregious circumstances, there can be no reason to expect justice from its institutional workings in general.

Following the IOF's self-exoneration in the as-Samouni case, B'Tselem noted that—though the record was difficult to ascertain because the office of the MAG had "created a haze" around its investigations—the sum of Israeli domestic accountability for Operation Cast Lead amounted to three indictments and three cases of purely disciplinary action within the military.[27] This for a "war" in which the majority of the dead—hundreds upon hundreds of souls—were civilians, and the invading army suffered five fatalities from enemy fire.[28] The degree of impunity is even more apparent in the case-by-case details. The instances in which soldiers faced purely intra-military disciplinary measures, with no criminal accountability, concerned, by B'Tselem's account: the shelling of a mosque which left 15 dead; the use of a civilian as a human shield; and the shelling of a United Nations facility.[29] As for criminal prosecution, one soldier was indicted for manslaughter of an adult male "walking with a group of people waving a white flag," according to the Israeli military.[30] In point of fact, the available evidence establishes that two women were killed.[31] The MAG holds, however, that "gaps between the testimonies given by the soldiers [involved] and those given by Palestinians" mean it is "impossible to make a criminal connection."[32] The soldier's trial was immediately suspended for further investigation and appears not to have been resumed.[33] In another case, two soldiers who used a nine-year-old

[25] Fact-Finding Mission, 725, p. 164.
[26] See *ibid*., 707, p. 159, and Amira Hass, "Death in the Samouni compound," *Haaretz* online, 24 September 2009 (consulted 8 May 2012), for descriptions of the area.
[27] B'Tselem, "Army closes investigation into the killing of 21 members of the a-Samuni family in Gaza," press release, 1 May 2012, online (consulted 6 May 2012).
[28] Israeli military casualties reported in "Operation Cast Lead, 27 Dec. '08 to 18 Jan. '09," B'Tselem website, page dated 1 January 2011 (consulted 6 May 2012). The figures on civilians killed in Operation Cast Lead vary according to the authority providing the estimate—as is always the case in situations of mass violence—but there is an unqualified consensus among all independent human rights bodies that the majority of those killed were civilians. B'Tselem, for example, estimates that 759 out of 1,389 Palestinians killed (roughly 55%) "did not take part in the hostilities." *Ibid*. It was reported in the Israeli press that, at the close of Operation Cast Lead, the IOF estimated that nearly two-thirds of those it had killed were civilians. Reuven Pedatzur, "The war that wasn't," *Haaretz* online, January 25, 2009 (consulted 6 May 2012). Al Mezan maintains a comprehensive Arabic list of its count of the fatalities, and their status as civilians, combatants, or police officers, though the list has not been translated into English. "Qā'imah bi-Asmā' ash-Shuhadā' Allādhīn Saqaṭū Khilāl 'Amalīyat ar-Raṣāṣ al-Maṣbūb" ["Table of Names of Martyrs Who Fell during Operation Cast Lead"], Al Mezan website, page dated 7 March 2009.
[29] B'Tselem press release, 1 May 2012, *op. cit*. B'Tselem's details tally with those reported by the Committee of Independent Experts (report I, Annex II, pp. 27–8, and report II, Annex II, pp. 23–5).
[30] "IDF Military Advocate General Takes Disciplinary Action," Israel Defense Forces (IDF) website, blog posting dated 6 July 2010 (consulted 6 May 2012).
[31] Fact-Finding Mission, 764–9, pp. 172–3.
[32] IDF blog posting, 6 July 2010, *op. cit*.
[33] Committee of Independent Experts' report II, 26, pp. 6–7, citing Israeli press reports.

boy as a human shield in an IOF search for booby-traps were convicted, with a prison sentence of three months, suspended. Lastly, an Israeli soldier was sentenced to seven-and-a-half months in prison for theft of a Palestinian credit card. In short, the killing of hundreds of civilians has been met with two findings of criminality, the sterner one issued for the crime of petty theft, with a cumulative prison sentence of less than a year.[34]

Section III:
Legal Analysis of Israeli and International Responsibility

This brief will not undertake a point-by-point, article-by-article review of the specific provisions of international law violated by the Israeli acts described in Section I above. Killing and injury of civilians, attacks on civilian property and medical personnel, and obstruction of the right to education in occupied territory are all major international crimes which essentially wear their illegality on their sleeve. It cannot be seriously contended that these acts escape the strict prohibition of international law; most are grave violations of the fourth Geneva Convention's shield of protection for civilians in occupied territories.[35] Any of these abuses which might escape censure under the fourth Geneva Convention would be covered by the International Covenant on Civil and Political Rights.[36] Israel has signed both treaties without relevant reservations.[37] The fourth Geneva Convention applies to the occupied Palestinian territory by its very object and purpose. The International Covenant on Civil and Political Rights also applies to occupied territories and peoples, in accordance with its provision of protection to "all individuals

[34] *Ibid*., 30–2, p. 8. The "harsher penalty was imposed for acts that did not entail danger to the life or physical integrity of a civilian, much less to a 9-year-old child," in the Committee of Independent Experts' words. *Ibid*., 32, p. 8.

[35] Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, *United Nations Treaty Series*, vol. 75 (1950) (no publishing information printed), treaty no. 973, pp. 287–392 (henceforth cited as fourth Geneva Convention).

[36] International Covenant on Civil and Political Rights, adopted 16 December 1966 as Annex to General Assembly Resolution 2200A (*General Assembly, Official Records: Twenty-First Session*, Supplement No. 16, UN doc. no. A/6316 (New York: United Nations, 1967), pp. 49, 52–8), *United Nations Treaty Series*, vol. 999 (1976) (New York: United Nations, 1983), treaty no. 14668, pp. 171–86 (henceforth cited as ICCPR).

[37] Fourth Geneva Convention: *United Nations Treaty Series*, vol. 75 (1950) (no publishing information printed), treaty no. 973, pp. 397, 12 (Israel's signatures of 12 August 1949, of both the Convention itself and the Final Act of the Diplomatic Conference held in Geneva, 21 April – 12 August 1949); *United Nations Treaty Series*, vol. 96 (1951) (no publishing information printed), treaty no. 973, p. 326 (ratification deposited 6 July 1951). International Covenant on Civil and Political Rights: *United Nations Treaty Series*, vol. 999 (1976) (New York: United Nations, 1983), treaty no. 14668, p. 267 (signature, left undated but signed on 19 December 1966); *United Nations Treaty Series*, vol. 1651 (1991) (New York: United Nations, 1998), treaty no. 14668, pp. 566–7 (ratification deposited 3 October 1991 with accompanying declaration and reservation). Israel made a declaration, on ratification of the ICCPR, that it has remained in an official state of emergency since its formation in 1948, and therefore derogated from its obligations under Article 9 concerning detention and trial. Whatever the legal merits of this derogation, it is not relevant to the abuses discussed in this brief. Israel's only stipulation on signing the Geneva Conventions was that it would use the Red Shield of David as its international humanitarian symbol, rather than the Red Cross or Red Crescent. *United Nations Treaty Series*, vol. 1651 (1991) (New York: United Nations, 1998), treaty no. 14668, pp. 566–7 (declaration on ICCPR derogation); *United Nations Treaty Series*, vol. 75 (1950) (no publishing information printed), treaty no. 973, pp. 436–8 (Geneva stipulation).

[…] subject to […] [the] jurisdiction" of a state party.[38] As the Covenant's official monitoring and interpretive body, the Human Rights Committee, has determined:

> States parties are required […] to respect and to ensure the Covenant rights […] to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within the territory of the State party. […] [T]he enjoyment of Covenant rights is not limited to citizens of States parties but must also be available to all individuals, regardless of nationality or statelessness, […] who may find themselves […] subject to the jurisdiction of the State party. This principle also applies to those within the power or effective control of the forces of a State party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained.[39]

Furthermore, the Human Rights Committee has held that "the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable."[40] In other words, human rights protections do not disappear in the face of armed violence. The Israeli acts, military and otherwise, described in this brief are clear breaches of both international humanitarian and human rights law. That should be evident enough without an extensive legal discussion at this point.

What will be reviewed here are the legal bases for the principle of accountability, which require Israel to investigate, prosecute, and punish the perpetrators of the crimes described, including perpetrators in the highest positions of civil and military authority. Among the greatest advances made in the era of modern international law is the application of legal responsibility to political and military leaders. In circumstances involving use of armed force, this principle, known as "command responsibility," holds superior officers up to the top of the chain of command responsible for war crimes committed by their subordinates with their knowledge. The civilian masters of the military among the political leadership are likewise accountable for crimes they order or otherwise condone. The principal of command responsibility dates at least to 1907, when it was codified in the fourth Hague Convention governing the conduct of war: "A belligerent party which violates the provisions [of the treaty] […] shall be responsible for all acts committed by persons forming part of its armed forces."[41] The basic principle was reaffirmed by

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[38] ICCPR, Art. 2, 1, at p. 173.

[39] Human Rights Committee, General Comment no. 31, "The nature of the general legal obligation imposed on States parties to the Covenant," adopted 29 March 2004 (80th session, 15 March – 2 April 2004), in *Report of the Human Rights Committee*, vol. 1, *General Assembly, Official Records: Fifty-Ninth Session*, Supplement No. 40, UN doc. no. A/59/40 (New York: United Nations, 2004), Annex III, pp. 175–9 (henceforth cited as Human Rights Committee, General Comment no. 31), 10, at p. 177.

[40] *Ibid*., 11, at p. 177.

[41] Hague Convention Respecting the Laws and Customs of War on Land including annexed Regulations Respecting the Laws and Customs of War on Land, signed 18 October 1907, printed in *United States Statutes at Large* (March 1909 – March 1911) (Washington, DC: Government Printing Office, 1911), vol. 36, part 2, pp. 2277–2309, treaty Art. 3, at p. 2290. The fourth Hague Convention is binding on all states as a matter of customary international law. See the Judgment of the International Military Tribunal at Nürnberg, 1 October 1946, printed in *Trial of the Major War Criminals before the International Military Tribunal, Nuremberg, 14 November 1945 – 1 October 1946* (Nürnberg: Secretariat of the Tribunal, 1947), vol. 1, pp. 171–364, at p. 254: "by 1939 these rules laid down in the

the fourth Geneva Convention of 1949, which requires that states parties "search for" and "provide effective penal sanctions" against "persons […] ordering to be committed, any […] grave breaches of the present Convention."[42] (Grave breaches include killing or "wilfully causing great suffering or serious injury to body or health" of civilians, and destruction of property in the absence of military necessity.[43] Other acts are criminalized and must be "suppress[ed]" by states parties, but are not described as "grave breaches."[44]) In plain language, Israel must investigate, arrest, and prosecute the generals and political leaders who have ordered the commission of war crimes.

Official responsibility is also codified in human rights law. The International Covenant on Civil and Political Rights requires that victims of violations be given "effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity."[45] The Human Rights Committee adds that the right to remedy entails the "general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies,"[46] and has held that failure to investigate human rights violations and prosecute the perpetrators can in itself amount to a violation of the Covenant.[47]

[fourth Hague] Convention were recognized by all civilized nations, and were regarded as being declaratory of the laws and customs of war."

[42] Fourth Geneva Convention, Art. 146, 1–2, at p. 386.

[43] *Ibid*., Art. 147, at p. 388.

[44] *Ibid*., Art. 146, 3, at p. 386.

[45] ICCPR, Art. 2, 3(a), at p. 174. Accord Universal Declaration of Human Rights, adopted 10 December 1948 as part A of UN General Assembly Resolution 217 (III), in *Official Records of the Third Session of the General Assembly*, Part I, *Resolutions, 21 September – 12 December 1948* (Palais de Chaillot, Paris: United Nations, 1948), pp. 71–7, Art. 8, at p. 73 ("Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him […] by law"); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 10 December 1984 as Annex to General Assembly Resolution 39/46 (*General Assembly, Official Records: Thirty-Ninth Session*, Supplement No. 51, UN doc. no. A/39/51 (New York: United Nations, 1985), pp. 197–201), *United Nations Treaty Series*, vol. 1465 (1987) (New York: United Nations, 1996), treaty no. 24841, pp. 85 and 113–22, Art. 5:1, 6:1-2, 7:1, 12, 13, 14:1, 16:1, at pp. 114, 115, 116.

[46] Human Rights Committee, General Comment no. 31, 15, at p. 178.

[47] *Ibid*., 15 ("A failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant"), 18 ("As with failure to investigate, failure to bring to justice perpetrators of […] violations could in and of itself give rise to a separate breach of the Covenant"). Accord e.g. Human Rights Committee, communication no. 1436/2005, *Sathasivam et al. v. Sri Lanka*, adopted 8 July 2008 (93rd session, 7 – 25 July 2008), *Report of the Human Rights Committee*, vol. 2, *General Assembly, Official Records: Sixty-Third Session*, Supplement No. 40, UN doc. no. A/63/40 (New York: United Nations, 2008), Annex V.R, pp. 181–90, 6.4, p. 188 (holding the state party in breach of multiple Covenant articles due its failure to investigate and prosecute); Human Rights Committee, communication no. 1447/2006, *Amirov v. Russian Federation*, adopted 2 April 2009 (95th session, 16 March – 3 April 2009), *Report of the Human Rights Committee*, vol. 2, *General Assembly, Official Records: Sixty-Fourth Session*, Supplement No. 40, UN doc. no. A/64/40 (New York: United Nations, 2009), Annex VII.X, pp. 199–215, 11.4, 11.6, pp. 213, 214 (holding state party in breach of Covenant for failure to adequately investigate). See also Human Rights Committee, communication no. 1250/2004, *Rajapakse v. Sri Lanka*, adopted 14 July 2006 (87th session, 10 – 28 July 2006), *Report of the Human Rights Committee*, vol. 2, *General Assembly, Official Records: Sixty-First Session*, Supp. No. 40, UN doc. no. A/61/40 (New York: United Nations, 2006), Annex V.QQ, pp. 357–68, 9.5, 9.6, 10, pp. 365, 366 (holding state party in breach of Covenant due to unreasonable delays in court proceedings).

The UN General Assembly has also affirmed the legal duty to investigate, detain, and prosecute violators of international humanitarian and human rights law.[48]

As the cases reviewed in this brief and the record of proceedings following Operation Cast Lead illustrate, Israel does not hold itself accountable, and efforts to pursue justice via Israel's domestic legal system have proved unavailing. With respect to Cast Lead, greater legal responsibility was imposed for a single petty theft than for sustained violation of international humanitarian law on a massive scale. The anodyne and trifling responses in the handful of cases leading to military discipline or criminal indictment do not merit the term *remedies* with respect to the victims,[49] let alone amount to a just accounting against the perpetrators of grave crimes. With respect to the more recent cases of unlawful use of lethal force reviewed here, all of which resulted in death or injury to civilians, five of six incidents have seen no opening of a criminal investigation despite the passage of eight months' time or more. In the sixth case, the repeated bombardment of the Abu Is'ayid family, which inflicted death, injuries, and home destruction on civilians in the absence of any military pretext, Israel has only recently opened a criminal investigation into the first incident, more than a year and a half after it occurred; there has not yet been any movement with regard to the second attack. As for the prohibition of educational travel, a structural denial of socioeconomic rights, the violation is in fact official policy, which remains unchanged.[50] In no case can legal justice be seen to have been done, despite good-faith efforts to pursue redress within the framework of Israeli domestic law.

It should be noted here that the ability to seek justice through the Israeli legal system has increasingly been foreclosed even at the formal-legal level over the past decade. Legislation

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[48] United Nations General Assembly Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law with annexed document of the same title, adopted 16 December 2005, 60th session (13 September 2005 – 11 September 2006), UN doc. no. A/RES/60/147, Annex, preambular 8, 3(b), 4.

[49] As the Human Rights Committee has held, "if the alleged offence is particularly serious, as in the case of violations of basic human rights, in particular the right to life, purely administrative and disciplinary remedies cannot be considered adequate and effective. This conclusion applies in particular in situations where […] the victims or their families may not be party to or even intervene in the proceedings before military jurisdictions, thereby precluding any possibility of obtaining redress before these jurisdictions." Human Rights Committee, communication no. 612/1995, *Arhuacos v. Colombia*, adopted 29 July 1997 (60th session, 14 July – 1 August 1997), *Report of the Human Rights Committee*, vol. 2, *General Assembly, Official Records: Fifty-Second Session*, Supplement No. 40, UN doc. no. A/52/40 (New York: United Nations, 1999), Annex VI.Q, pp. 173–82, 5.2, p. 178. Accord Human Rights Committee, communication no. 563/1993, *Nydia Bautista de Arellana v. Colombia*, adopted 27 October 1995 (55th session, 16 October – 3 November 1995), *Report of the Human Rights Committee*, vol. 2, *General Assembly, Official Records: Fifty-First Session*, Supplement No. 40, UN doc. no. A/51/40 (New York: United Nations, 1997), Annex VII.S, pp. 132–43, 8.2, p. 141: "purely disciplinary and administrative remedies cannot be deemed to constitute adequate and effective remedies […] in the event of particularly serious violations of human rights, notably in the event of an alleged violation of the right to life." See Fact-Finding Mission, 1858–60, pp. 399–400, for a précis on the right to remedy and reparation under international law.

[50] On 23 May 2012, Israel's High Court of Justice ordered the state to reconsider its denial of passage to the four women, enrolled at Bir Zeit since 2000 but unable to complete their studies, whose case is covered in this brief. The Israeli executive was instructed to reply to the High Court within 45 days. As of this brief's publication, the state has not yet given its response. The High Court's ruling left the overall policy untouched. See Gisha – Legal Center for Freedom of Movement and Al Mezan Center for Human Rights, "For the first time in 12 years: Israeli Supreme Court orders military to reconsider application of Gaza-West Bank student ban," joint press release, 23 May 2012, online.

enacted after the start of the second *intifadah* exempts the IOF from civil liability for any "Wartime Action" in the occupied Palestinian territory, a term defined as encompassing "any action […] combating" or "intended to prevent" "terror, hostile actions, or insurrection." Another newly legislated provision of the law exempts the state from liability for harm to anyone linked, even secondarily, to a "terrorist organization" as defined in Israeli law.[51] The active scope and validity of these laws has yet to be fully tested in court,[52] but they have the potential to eliminate what vestiges remain of access to the Israeli court system.

Even where a formal right to access the courts exists, the reality is that civil cases are extremely costly and impose severe practical burdens on complainants from Gaza. Israeli law, not surprisingly, requires that plaintiffs and their witnesses sign documents in the presence of Israeli lawyers and appear before Israeli courts to present their testimony. (Some cases may also require medical tests administered by Israeli doctors.) But these prosaic duties, required for the day-to-day functioning of the courts in any country, are stymied by the inability of Palestinians from Gaza to enter Israel. Since 2007, residents of Gaza have been able to enter or pass through Israeli territory only in a highly restricted class of "humanitarian" circumstances, principally urgent medical cases. Al Mezan is unaware of a single case in which a resident of Gaza has been granted permission to enter Israel in order to vindicate his or her right to pursue reparation from the state. Thus Israel simultaneously requires that Palestinian victims be physically present before its courts to exercise their legal rights, and retains exclusive power over their ability to physically access those courts—a power which it uses to keep them out. In short, the state both requires and forbids plaintiffs' presence in its courtrooms.[53] Equally egregious, Israel has begun demanding that plaintiffs in cases stemming from human rights abuses in the occupied Palestinian territories front a sizable monetary deposit—as "insurance" which the state appropriates if it succeeds in contesting the claim—before proceedings are even opened. The amounts demanded are far beyond the means of ordinary Palestinians, and so high that even donor-funded legal aid organizations can pursue only a handful of the most egregious cases. The

[51] Israel's Civil Wrongs (Liability of the State) Law, 5712–1952 (amended), as reproduced in English translation by HaMoked – Center for the Defence of the Individual on its website (PDF format; document dated 10 August 2005, consulted 13 June 2012) (henceforth cited as Civil Wrongs Law), §§ 1 (definition of "Wartime Action"), 5 (civil immunity for "Wartime Action"), and 5B (civil immunity against individuals linked to terrorist organizations). Section 5B of the law extends civil immunity to cover harm to anyone "acting as an agent or on behalf of […] a member of a terrorist organization, or a person active therein." *Ibid*., § 5B(a). Such language is broad enough to be used in bad faith by an abusive state, with the acquiescence of docile courts, to cover, for example, a bank teller handling the personal account of ("acting as an agent or on behalf of") a public supporter of a political party with a military arm that has engaged in terrorist acts ("person active therein").

[52] Judicial signals to date have been mixed. On the one hand, Israel's High Court of Justice struck down, in the year following its passage, a new legislative provision granting the Minister of Defense the power to quash civil claims by retroactively declaring any area in the occupied Palestinian territory a "zone of conflict" in which civil liability did not exist. See Civil Wrongs Law, § 5C, and Fact-Finding Mission, 1871, p. 402 (High Court of Justice). On the other hand, the other restrictive provisions in the civil liability law already cited remain on the books, and have already been put to predictably cynical use. The UN Fact-Finding Mission noted a case at the Magistrate Court level in which the judgment held that, regardless of the victim's civilian status under international humanitarian law, a Palestinian killed during 2002's Operation Defensive Shield in the West Bank died due to an "act of war" for which the state was immune to civil liability. Fact-Finding Mission, 1872, pp. 402–3.

[53] See Adalah – The Legal Center for Arab Minority Rights in Israel, Al Mezan Center for Human Rights, Palestinian Centre for Human Rights, & Physicians for Human Rights – Israel, "Adalah Petitions against the Ban on Gaza Residents from Entering Israel to Access the Courts for Tort Cases against the Israeli Security Forces," joint press release, 27 October 2011, online.

As-Samouni family, for example, whose case was described above, was required to put up over $32,000 (U.S.) simply to raise a civil suit.[54]

Between the absurd conundrum as to physical access to the courts, financial requirements which are prohibitive for the vast majority of Gaza's population, and the drastic curtailment of the state's civil liability under recently enacted laws, access to justice in Israel has been vitiated to the point of disappearance. This development has begun to receive recognition by authoritative international bodies. The Committee on the Elimination of Racial Discrimination, in its recent periodic review of Israel's human rights record, took note of "the monetary and physical obstacles faced by Palestinians seeking compensation before Israeli tribunals for loss suffered, in particular as a consequence of the IDF Operation Cast Lead."[55] The Committee of Independent Experts put the matter more bluntly, recognizing, at the close of its mandate, that although there is a pretense of access to the Israeli justice system at a formal level, "the reality for Gaza residents is that […] their right to a remedy and reparation is limited in such a way as to render it virtually ineffective."[56]

In such a situation, the responsibility to enforce the law, and therefore to preserve civilian life, falls to the international community. This is more than an aspiration; it is an affirmative legal duty, dating back to the 1949 Geneva Conventions, the first common article of which requires states parties ("High Contracting Parties") not only to themselves respect, but to "ensure respect for the present Convention[s] in all circumstances."[57] This duty is further elaborated in the Fourth Geneva Convention's Article 146: "Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, […] grave breaches [of the Convention], and shall bring such persons, *regardless of their nationality*, before its own courts" (emphasis added).[58] The injunction to pursue accountability regardless of nationality makes clear that even in 1949 there was a clear and explicit basis in international law for "universal jurisdiction" for war crimes, long before the term became fashionable in legal circles. The development of international law in the years since, particularly in the past two decades, has consistently reaffirmed that those responsible for the gravest of international crimes cannot hide from justice behind the formality of state sovereignty. If a state will not hold its own war criminals to account, they are to be tried in international fora, as has occurred in response to multiple conflicts around the world. Faced with domestic impunity in Israel, it has become an international legal duty for states and global institutions to bring to justice the perpetrators of war crimes in Israel and the occupied Palestinian territory.

[54] Information supplied by the Palestinian Center for Human Rights in email of 18 June 2012 (in Al Mezan's files); information provided by two Israeli lawyers via email (29 May 2012; in Al Mezan's files) and telephone conversation (20 June 2012).
[55] Committee on the Elimination of Racial Discrimination, "Concluding observations of the UN Committee on the Elimination of Racial Discrimination: Israel," adopted 28 February 2012 (80th session, 13 February – 9 March 2012), published 9 March 2012, UN doc. no. CERD/C/ISR/CO/14-16, 27, p. 7 (available online; PDF format).
[56] Independent Committee of Experts' report II, 72, p. 18.
[57] Quoted from fourth Geneva Convention, Art. I, at p. 288.
[58] *Ibid*., Art. 146, 2, at p. 386.