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Defending Israeli War Crimes

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In response to a series of reports by human rights organizations and international legal scholars documenting serious large-scale violations of international humanitarian law by Israeli armed forces in its recent war on the Gaza Strip, 10 U.S. state attorneys general sent a [letter](#) [.pdf] to Secretary of State Hillary Clinton defending the Israeli action. It is virtually unprecedented for state attorneys general – whose mandates focus on enforcement of state law – to weigh in on questions regarding the laws of war, particularly in a conflict on the far side of the world. More significantly, their statement runs directly counter to a broad consensus of international legal opinion that recognizes that Israel, as well as Hamas, engaged in war crimes.

The wording of the letter closely parallels arguments by Bush administration officials in support for Israel's devastating offensive during their final days in office. Having been signed nearly 11 weeks after the end of the fighting and made public only late last month, it may have been part of an effort to undermine tentative efforts by the Obama administration to take a more balanced approach to the Israeli-Palestinian conflict.

A statement by state attorneys general putting forth a legal rationale for the large-scale killings of civilians is particularly distressing as concerns about civilian casualties from U.S. air and missile strikes in Afghanistan and Pakistan have grown.

The attorneys general signing on to the letter included Republicans Rob McKenna of Washington, Mike Cox of Michigan, John Suthers of Colorado, Bill McCollum of Florida, Jon Bruning of Nebraska, and Mark Shurtleff of Utah. Signatories also included such prominent Democrats as Richard Cordray of Ohio, Patrick Lynch of Rhode Island, Jack Conway of Kentucky, and Buddy Caldwell of Louisiana.

Facile Legal Reasoning

The legal rationale put forward in the March 30 letter is extraordinarily facile. For example, they claim that the war waged on the civilian infrastructure of the Gaza Strip was taken in furtherance of Israel's "right to self-defense under Article 51 of the UN Charter." In reality, however, while Article 51 does allow countries the right to resist an armed attack, it doesn't grant any nation the right to engage in such a disproportionate response.

Israeli Defense Minister Ehud Barak admitted that the Israeli invasion had been planned for months, back when a six-month cease-fire was still in effect. Even when Hamas resumed firing rockets into Israel in December, following a deadly Israeli raid into Gaza the previous month, there were few casualties. Indeed, not a single Israeli had been killed by Hamas rocket attacks for more than half a year prior to Israel launching its war on Dec. 27. During the subsequent three weeks of fighting, Palestinians killed 10 Israelis, three of whom were civilians, while Israeli forces killed more than 1,400 Palestinians, the vast majority of whom were civilians.

Incredibly, these attorneys general insist that these mass killings by Israeli forces were "justified and, in our view, met the international legal standards."

The attorneys general also ignored the fact that Article 33 of the UN Charter explicitly prohibits nations going to war unless they "first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." However, Israel – with strong bipartisan U.S. support – had refused to even meet with Hamas to negotiate a long-term cease-fire, which Hamas had offered prior to the breakdown of the six-month lull in return for a lift in the Israeli siege of the enclave.

The letter correctly accuses Hamas, which had lobbed rockets into civilian-populated areas in southwestern Israel, of violating Article 48 of Protocol I to the Geneva Convention of 1948, which states: "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."

However, the attorneys general refused to acknowledge that Israel had also violated that same provision on a far grander scale. While virtually every human rights organization, intergovernmental organization, and international legal authority that researched this recent conflict recognizes both Hamas and Israel were guilty of war crimes, these attorneys general still insist that Hamas alone was to blame and that Israel's actions were perfectly legal.

Ignoring the Facts

Human Rights Watch (HRW) – which has been highly critical of Hamas attacks on civilian areas of Israel as well as repression by the Islamist group of Palestinian opponents within the Gaza Strip – [reported](#) during the fighting that in using heavy shelling against heavily populated civilian areas, "Israel is committing indiscriminate attacks in violation of the laws of war." In a [comprehensive report](#) published in March, HRW noted that "Israel's repeated firing of white

phosphorus shells over densely populated areas of Gaza during its recent military campaign was indiscriminate and is evidence of war crimes.”

Similarly, while [Amnesty International](#) also “found evidence of war crimes and other serious violations of international law by all parties to the conflict” and attacks by both sides against civilian areas in which no fighters were present, the attorneys general insisted that the Palestinian side alone was guilty of such illegal actions.

An independent United Nations inquiry [documented](#) six major Israeli attacks against UN buildings, including schools in which children were killed, noting that actions by Israeli forces “involved varying degrees of negligence or recklessness with regard to United Nations premises and to the safety of United Nations staff and other civilians within those premises, with consequent deaths, injuries, and extensive physical damage and loss of property.” The report concluded that “no military activity was carried out from within the United Nations premises in any of the incidents.”

Without presenting any evidence to the contrary, the attorneys general categorically rejected such findings, insisting that Israel was engaged only in “a limited and directed action against the source of Hamas’ military acts.”

The International Committee of the Red Cross (ICRC) focused on other war crimes, [noting how](#) the “Israeli military failed to meet its obligation under international humanitarian law to care for and evacuate the wounded,” citing instances in which Israeli forces prevented Red Cross or other medics safe access to assist seriously wounded civilians. The Israeli chapter of Physicians for Human Rights [reported](#) with “certainty” that Israel violated international humanitarian law by attacking medics, damaging medical buildings, engaging in indiscriminate attacks on civilians, and delaying medical treatment for the injured. The ICRC declared Israel’s “delay in allowing rescue services access unacceptable.” In addition, Israel rejected pleas by international humanitarian agencies by closing border crossings days at a time, denying access to food, medical supplies, fuel, and water sanitation equipment. Despite this, the attorneys general instead praised Israel for “allowing the entrance of humanitarian aid into Gaza.”

A report by a delegation of prominent U.S. attorneys which visited Gaza Strip soon after the fighting [reported that](#) “that Israeli forces deliberately targeted civilians during the Gaza offensive.” The [Israeli press](#) has reported testimony of Israeli soldiers who killed Palestinian civilians under highly permissive rules of engagement that allowed soldiers to kill any Palestinian in certain areas regardless of whether they were armed, and were ordered to intentionally destroy civilian property. An [investigation](#) by the British newspaper the *Guardian* revealed a series of Israeli missile attacks against clearly distinguishable civilian targets.

United Nations Special Rapporteur for Human Rights in the Occupied Territories Richard Falk, noting Israel’s “unlawful uses of force on a large scale” against Gazan society as a whole, [referred](#) to the operation as a “flagrant violation of international humanitarian law, as set forth in the Geneva Conventions.” Falk, an American Jew and emeritus professor at Princeton University who is arguably the country’s preeminent international legal scholar, also [noted](#) the illegality of

Hamas rocket attacks into Israel, but stressed that Israeli air strikes”were aimed at civilian areas in one of the most crowded stretches of land in the world.”

Ignoring such evidence, the attorneys general insisted that Israel was directing its artillery, bombings, and missile attacks only toward “the source of Hamas’ military attacks” and the Israeli government should therefore not be held responsible for any military action that harmed Palestinian civilians because they did so “unintentionally.”

Defending Mass Killings of Civilians

These attorneys general try to absolve Israel of any responsibility of the hundreds of civilian deaths by accusing Hamas of “using these civilians as human shields.” They provide no evidence for this charge, however, save for a quote from the notoriously right-wing editorial page of the *Wall Street Journal*.

Independent human rights groups have accused Hamas of less-severe violations of international humanitarian law, such as not taking all necessary steps it should to prevent civilian casualties when it positioned fighters and armaments too close to concentrations of civilians. However, this isn’t the same thing as deliberately using civilians as shields. Furthermore, the nature of urban warfare, particularly in a territory as densely populated as the Gaza Strip, makes the proximity of retreating fighters and their equipment to civilians unavoidable in many cases.

Even if Hamas were using human shields in the legal definition of the term, it still does not absolve Israel from its obligation to avoid civilian casualties. [Amnesty International has noted](#) that the Geneva Conventions make it clear that even if one side is shielding itself behind civilians, such a violation “shall not release the parties to the conflict from their legal obligations with respect to the civilian population and civilians.”

To argue otherwise, as do these attorneys general, is a dangerous legal position for the chief law enforcement official of a state to take, such as ordering their state police to kill innocent people in a hostage situation. By this logic, if a botched bank robbery led the would-be robbers to hold bank employees and customers at gunpoint, these attorneys general could then order state patrolmen to kill the gunmen and hostages alike, defending their action on the grounds that the bad guys were using “human shields.”

Denying Political Reality

It’s not just this flawed legal reasoning that underscores how this initiative by these attorneys general was based not upon a legitimate interpretation of law but for narrow ideological purposes. They reveal their political prejudices in their insistence in the letter to Clinton in claiming that “Israel withdrew from Gaza in 2005” but that the Palestinians failed to establish “a flourishing independent state.” In reality, despite the removal of illegal Israeli settlements and the withdrawal of occupation forces from that crowded urban enclave, Israel has maintained sole control over Gaza Strip’s airspace and territorial waters, thereby prohibiting movement of people and goods by land and sea, as well as largely controlling the Gaza Strip’s border with Egypt. With Israel effectively preventing any exports or imports, except for occasional humanitarian

aid, the economy has collapsed and, even prior to the war, the territory was experiencing a serious humanitarian crisis. Since Israel's "withdrawal," the Israeli government has also controlled the Gaza Strip's electricity, water, and telecommunications and has periodically engaged in air strikes and armed incursions into the enclave, murdering and kidnapping suspected militants. No people could reasonably be expected to establish "a flourishing independent state" under such circumstances. Furthermore, in maintaining their siege on the enclave, Israel legally remains the occupying power.

The attorneys general go on to accuse Hamas of taking advantage of Israel's "withdrawal" to "cause a civil war with the Palestinian Authority, leading to a coup d'etat in 2007." However, while Hamas is indeed guilty of innumerable political intrigues and inexcusable violence towards its Palestinian opponents, this is a gross misrepresentation of recent history.

Rather than making war against the Palestinian Authority, Hamas was part of the Palestinian Authority. Indeed, they controlled the legislative branch of government as well as the post of prime minister and most other ministries as a result of winning the plurality of the vote in parliamentary elections in January 2006. The following year, Saudi officials negotiated a power-sharing agreement between Hamas and Fatah, which still controlled the presidency. U.S. officials, however, unsuccessfully encouraged President Mahmoud Abbas to renounce the agreement, dismiss the entire government, and abolish parliament.

The Bush administration then began secretly arming Fatah groups to enable them to fight Hamas and pushing Fatah to [stage a coup](#). This is what led Hamas to launch a countercoup by overrunning Fatah offices and taking full control of the Gaza Strip in June 2007. Alvaro de Soto, former UN special coordinator for the Middle East peace process, [stated](#) [.pdf] in his confidential final report leaked to the press a few weeks before the Hamas takeover that "the Americans clearly encouraged a confrontation between Fatah and Hamas" and "worked to isolate and damage Hamas and build up Fatah with recognition and weaponry." De Soto also recalled how in the midst of Egyptian efforts to arrange a cease-fire following a flare-up in factional fighting earlier that year, a U.S. official told him that "I like this violence. ... [I]t means that other Palestinians are resisting Hamas."

Though all this has been well-documented and is widely known in both Israel and Palestine, this bipartisan group of attorneys general has instead sought to defend the Bush administration's provocative and illegal intervention by putting the entire blame on Hamas.

This letter to the secretary of state was put together by a right-wing group calling itself the American-Israel Friendship League (AIFL), which [boasts](#) that the organization has sent 42 state attorneys general to Israel in the past 21 years. It refers to the letter as "a strong rejoinder to those who have castigated Israel over its role in Gaza and used it in an attempt to delegitimize the Jewish state."

Dangerous Precedent

The Bush administration strongly supported Israel's war on the Gaza Strip as an extension of its "war on terror." It was in the name of this "war on terror" that President George W. Bush

shamelessly politicized the U.S. Justice Department to justify spying on nonviolent dissidents at home and the torture of suspects abroad. Now we have a bipartisan group of state attorneys general who have shown themselves similarly willing to politicize their offices by putting forward twisted and perverse interpretations of the law in the name of fighting terrorism. Unless these rogue attorneys general are challenged by elected officials and ordinary citizens in their respective states for their signing on to such a reckless statement, it could mark a dangerous precedent regarding respect for human rights and the rule of law