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Introduction – Recent Events in Gaza†

By ROSE MISHAAN*

On December 27, 2008, Israeli air and naval forces attacked the Gaza Strip. Israel's justification for the attack was self-defense, citing rockets launched into southern Israel in recent months as the basis for this claim.¹ The stated aim of the assault in Gaza was to rid the area of the Hamas militants who have carried out these missile attacks against Israeli civilians.² After a week of aerial bombardment, Israel began a ground invasion, sending soldiers and tanks into Gaza. On January 18, 2009, Israel and Hamas each declared unilateral cease-fires, ending the military assault.³ In the three-week conflict, over 1,300 Palestinians were killed, among them at least 288 children, and over 5,000 Palestinians were injured.⁴ Thirteen Israelis were killed, ten of them while serving in a military capacity.⁵ During the operation, Israel used its air force to bomb targets inside Gaza. The United Nations headquarters in Gaza,⁶ as well as several schools,⁷ hospitals and homes were hit in these

† This is an introduction for Carey James' commentary.

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1. *Livni: Israel Will No Longer Show Restraint When Attacked*, HAARETZ, Jan. 5, 2009, available at <http://www.haaretz.com/hasen/spages/1052821.html>.

2. *Id.*

3. *Israeli official: IDF to leave Gaza before Obama inauguration*, HAARETZ, Jan. 19, 2009, available at <http://www.haaretz.com/hasen/spages/1056757.html>.

4. Douglas Hamilton, *Final Gaza toll shows 960 civilians killed*, REUTERS UK, Mar. 12, 2009, available at <http://uk.reuters.com/article/worldNews/idUKTRE52B82F20090312?pageNumber=1&virtualBrandChannel=0>.

5. Amos Harel, *Four of Six IDF Soldiers Killed in Gaza Were Victims of Friendly Fire*, HAARETZ, Jan. 7, 2009, available at <http://www.haaretz.com/hasen/spages/1053402.html>.

6. *UN chief visits damaged Gaza headquarters*, S.F. CHRON., Jan. 20, 2009, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/n/a/2009/01/20/international/i025859S92.DTL&hw=gaza&sn=010&sc=363>.

7. United Nations, *Press Conference by Director of Gaza Operations*, United

strikes. Commenting on an Israeli air raid which hit a United Nations Relief and Works Agency ("UNRWA") school (the fourth such incident during the recent conflict), UNRWA spokesman Christopher Gunness stated: "Where you have a direct hit on an UNRWA school where about 1,600 people had taken refuge, where the Israeli Army knows the coordinates and knows who's there, where this comes as the latest in a catalogue of direct and indirect attacks on UNRWA facilities, there have to be investigations to establish whether war crimes have been committed."⁸ In response to Israeli attacks, Hamas continued to fire rockets targeted at Israeli towns near the border.⁹

Israel's assault followed an 18-month blockade of the Gaza Strip designed to starve Hamas out of power.¹⁰ The blockade was initially imposed after Hamas seized control over Gaza in 2007.¹¹ This drastically restricted the movement of people in and out of Gaza, as well as severely limiting the influx of food, fuel, medicine, imports, and aid.¹² During this period there were violent episodes, including Israeli incursions and attacks in Gaza and rocket launches by Hamas into Israel.¹³ The two parties agreed to a ceasefire in June 2008. One of the main provisions of the ceasefire provided that Israel would lift the blockade on Gaza to allow in necessities.¹⁴ The

Nations Relief and Works Agency for Palestine Refugees in the Near East, Jan. 6, 2009, available at <http://domino.un.org/unispal.nsf/db942872b9eae454852560f6005a76fb/ce9acc1cc8bc73ad8525753700596413!OpenDocument>; Interview with John Ging, Director of Gaza Operations, United Nations Refugee and Works Agency, in Gaza City, Gaza (Feb. 2, 2009).

8. Steven Erlanger, *Israel Declares Cease-Fire; Hamas Says It Will Fight On*, N.Y. TIMES, Jan. 17, 2009, available at http://www.nytimes.com/2009/01/18/world/middleeast/18mid-east.html?_r=2&pagewanted=2&hp.

9. Israel Defense Force Spokesperson, *Rocket Statistics*, Jan. 3, 2009, available at <http://idfspokesperson.com/2009/01/03/rocket-statistics-3-jan-2009/>.

10. Peter Beaumont, *Israeli Blockade 'Forces Palestinians to Search Rubbish Dumps for Food'*, THE GUARDIAN, Dec. 21, 2008, available at <http://www.guardian.co.uk/world/2008/dec/21/israel-gaza-strip-middle-east>.

11. Heather Sharp, *Guide: Gaza under blockade*, BBC NEWS, Nov. 11, 2008, available at http://news.bbc.co.uk/1/hi/world/middle_east/7545636.stm.

12. U.N. Office for the Coordination of Humanitarian Affairs, *The Closure of the Gaza Strip: the Economic and Humanitarian Consequences*, Dec. 2007, available at [http://www.reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDocUnidFilename/Y SAR-79UQSF-Full_Report.pdf/\\$File/Full_Report.pdf](http://www.reliefweb.int/rw/RWFiles2007.nsf/FilesByRWDocUnidFilename/Y SAR-79UQSF-Full_Report.pdf/$File/Full_Report.pdf).

13. Rushdi Abu Alouf & Richard Boudreaux, *Israeli Blockade Leave Much of Gaza City in the Dark*, L.A. TIMES, Nov. 14, 2008, available at <http://articles.latimes.com/2008/nov/14/world/fg-gaza14>.

14. *Id.*

violence largely subsided in the months that followed. However, on November 4, 2008, Israel violated the ceasefire by conducting a raid in Gaza, targeting and killing six Hamas operatives.¹⁵ After this incursion, rocket attacks into Israel increased, and on December 27, Israel launched its offensive.¹⁶

The recent conflict is not Israel's first aggressive act in Gaza since it announced the withdrawal of its military and civilian settlements from the Strip in 2005.¹⁷ However, the recent offensive, which Israel dubbed "Operation Cast Lead," was massive in scale and intensity compared to other actions in recent years. The situation for the people of Gaza remains dire, as access to necessary resources such as food, fuel, medicine, and clean water remains restricted.¹⁸ While the conflict raged, the international community expressed strong feelings about the legality and morality of Israel's actions. Some maintain that Israel was acting within its rights as a nation acting in self-defense against a hostile threat targeting its civilians.¹⁹ Others assert that Israel's actions violated international law, were grossly disproportionate to the threat presented, and resulted in an unacceptable level of civilian casualties.²⁰

15. Roy McCarthy, *Gaza truce broken as Israeli raid kills six Hamas gunmen*, THE GUARDIAN, Nov. 5, 2008, available at <http://www.guardian.co.uk/world/2008/nov/05/israelandthepalestinians>.

16. Israel Defense Force Spokesperson, *supra* note 9; Embassy of Israel, *Gaza-Hamas Fact Sheet*, Dec. 22, 2008, available at http://www.israelpolitik.org/wp-content/uploads/2008/12/gaza_fact_sheet.pdf.

17. John Dugard, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967*, Jan. 21, 2008, Part IV, Para. 14, available at <http://domino.un.org/UNISPAL.NSF/22f431edb91c6f548525678a0051be1d/f71be9fae0abbe1c852573ec006dde2e!OpenDocument> [hereinafter 2007 Report].

18. Human Rights Watch, *Israel/Egypt: Choking Gaza Harms Civilians*, Feb. 18, 2009, available at <http://www.hrw.org/en/news/2009/02/18/israeleypt-choking-gaza-harms-civilians>; U.N. Office for the Coordination of Humanitarian Affairs, *Field Update on Gaza From the Humanitarian Coordinator: 10-16 February, 2009*, 1700 hours, Feb. 2009, available at <http://www.ochaopt.org/gazacrisis/index.php?section=3>.

19. See, e.g., Allan Richarz, *In defense of Israel's 'disproportionate' response in Gaza*, CHRISTIAN SCI. MONITOR, Jan. 9, 2009, available at <http://www.csmonitor.com/2009/0109/p09s01-coop.html>; Charles Krauthammer, *The Israel-Gaza war is not complicated: Hamas attacks must end*, THE SEATTLE TIMES, Jan. 2, 2009, available at http://seattletimes.nwsource.com/html/opinion/2008584181_opin04krauthammer.html; Alan Dershowitz, *The Criminal Cynicism of Hamas*, THE GUARDIAN, Jan. 8, 2009, available at <http://www.guardian.co.uk/commentisfree/2009/jan/08/hamas-dershowitz-israel-gaza>.

20. See, e.g., Richard Falk, *Israel's War Crimes*, THE NATION, Dec. 29, 2008,

Many of these criticisms are based on Israel's status as an occupying power in the Gaza Strip - a status that the Israeli government disputes. As an occupying power, Israel has certain responsibilities under international law, such as to protect civilians in the occupied territory.²¹ Its status as a belligerent occupier may also weaken Israel's claim of self-defense.²² Aside from the humanitarian and moral questions involved in analyzing this conflict, determining Israel's legal relationship to the Gaza Strip is essential in evaluating the legality of its actions. The following comment will analyze Israel's attempts to transform the legal and political status of the Gaza Strip and therefore its own responsibilities in relation to the territory. As demonstrated by the latest inflammation of the conflict in Gaza, these questions remain vitally important.

available at [http://www.thenation.com/doc/20090112/falk?rel=hp_currently; Israel's bombardment of Gaza is not self-defence - it's a war crime](http://www.thenation.com/doc/20090112/falk?rel=hp_currently;Israel's%20bombardment%20of%20Gaza%20is%20not%20self-defence%20-%20it's%20a%20war%20crime), TIMES ONLINE, Jan. 11, 2009, available at <http://www.timesonline.co.uk/tol/comment/letters/article5488380.ece>; Victor Kattan, *Gaza: Not a War of Self-Defense*, JURIST, Jan. 15, 2009, available at <http://jurist.law.pitt.edu/forumy/2009/01/gaza-not-war-of-self-defense.php>.

21. Geneva Convention Relative to the Protection of Civilian Persons in Time of War part II, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 973.

22. Victor Kattan, *Gaza: Not a War of Self-Defense*, JURIST, Jan. 15, 2009, available at <http://jurist.law.pitt.edu/forumy/2009/01/gaza-not-war-of-self-defense.php>.