For long enough commentators have usually assumed the Israel - Palestine armed conflict might be lawful, even if individual incidents on both sides attracted condemnation. But is that assumption right? May the conflict lack legality altogether, on one side or both? Have there been war crimes committed by both sides as many suggest? The 2014 Israel - Gaza conflict (that lasted some 52 days and that was called ‘Operation Protective Edge’ by the Israeli Defence Force) allows a way to explore some of the underlying issues of the overall conflict. General Sir Nick Parker explains how he advised Geoffrey Nice to approach the conflict's legality and reality from a military point of view. Geoffrey Nice explains what conclusions he then reached. Were war crimes committed by either side?

Introduction

No human is on this earth as a volunteer; we are all created by an act of force, sometimes of violence just as the universe itself arrived by force. We do not leave the world voluntarily but often by the force of disease. As pressed men on earth we operate according to rules of nature - gravity, energy etc. - and the rules we make for ourselves but focus much attention on what to do when our rules are broken, less on how to save ourselves from ever breaking them. That thought certainly will feature in later lectures on prison and sex in this last year of my lectures as Gresham Professor of Law but is also central to this and the next lecture both on Israel and on parts of its continuing conflict with Gaza. The Israel Palestinian Authority and Gaza conflicts generally generate emotion that can obstruct proper discussion and debate. These two lectures can readily be conducted calmly and will be. The subject of this one explains in particular why. You may recall that in 51 days of the summer of 2014 an armed conflict - a war - happened between Israel and the Palestinians of Gaza, known by Israel as 'Operation Protective Edge'.

The death toll in 'Protective Edge' was estimated at 66 Israeli military 6 Israeli civilians; the Gaza total was some 2,131 dead of whom 1,473 have been identified as civilians, including 501 children. [1]

By way of background, since 2005 there have been numerous unnamed cross border incidents and six formally named Israeli operations against Gaza:

1. 28 Jun 06 Operation SUMMER RAINS
2. 1 Nov 06 Operation AUTUMN CLOUDS
3. 29 Feb 08 Operation HOT WINTER
4. 27 Dec 08 Operation CAST LEAD
5. 9 Mar 12 Operation RETURNING ECHO
6. 14 Nov 12 Operation PILLAR OF DEFENCE

The first four of these were when Ehud Olmert (of the centrist/liberal Kadima Party formed by Ariel Sharon) was Prime Minister; the last two and the summer 2014 conflict were when Benjamin Netanyahu of the Likud right wing party was Prime Minister. In 2014 when 'Operation Protective Edge' [2] was under way I was asked if I could make a presentation about war crimes committed in the conflict. I explained two things: first that I could only make such a presentation with a multi-disciplinary team and second that no member of the team would express a conclusion about whether war crimes had been committed as we would have quite insufficient access to individuals or materials to reach such a conclusion. I was, however, prepared to make a presentation with a team about how the issue of the commission of war crimes would be approached. This was and is something of potential value in itself as we live in a time when the term ‘war crime’ is regularly used by commentators and politicians about one side or another or both of some conflict and the audiences - lay TV audiences or professional parliamentary audiences - are expected to make judgments on the subject, judgments that will affect how they vote as electors or parliamentarians. [3] An understanding of the term is essential in this area of conduct just as much as in, say, the forming of opinions about other human rules. [4]

In the event and for reasons that need not be considered here the planned presentation did not go ahead. However the team I had composed to make the presentation had done its work. Three of us got into Gaza late last year to see for ourselves what was left of the conflict to see. One of our numbers had been in Jerusalem as the conflict was in progress. All of us bar one were newcomers to this particular conflict and brought, we hoped, eyes and ears unaffected by emotion, prejudice, predisposition etc. One of our number - the historian Professor
Avi Shlaim [5] – had very well formed and very well-known views about the issue and for that reason we turned to him for matters of history but (without offence to him of any kind) tried to form our own opinions on war crimes independently of his. To do our task properly required expertise on law, political science and military matters but not to any especially great level of sophistication for our purposes. Laws by which we regulate ourselves need to be understandable by the reasonably well-informed citizen. If they are not they are not worthy of her / his respect. Military expertise is probably the most important for tonight's purpose and General Sir Nick Parker[6], who visited Gaza with me, is sharing this lecture. After the lecture two others from the team, Professor Shlaim the historian and Dr Nevenka Tromp[7] the political scientist will be available for questions. First a little history and a little law.

History

Some knowledge of relevant History is crucial to an understanding of how any armed conflict arose and of the mental state of possible offenders – ultimately its value is contained once a conflict is under way if society's rules are to be kept. By analogy, two men may get into a fistfight because one has wronged the other dreadfully and for a very long time. Once in the fight this 'victim' male is subject to the law and has no excuse for a criminal assault, for manslaughter or murder. His being wronged cannot save him from the force of law. It is much the same for states at war and it is why, of course, the citizens if not their political leaders hope for a world at peace regulated by arbitration not war, just as onlookers would at the fistfight, or even the participants. [8] (For summary of history see video lecture on website or online paper version).

Professor Shlaim suggests that Ze'ev Jabotinsky was the spiritual father of the Israeli Right whose influence continues until today. He published an article "On the Iron Wall (We and the Arabs)" in 1923 in which he argued that no nation in history ever agreed voluntarily to make way for another people to come and create a state on its land, and that Palestinian resistance to a Jewish state was an inescapable fact. The only way to realize the Zionist project of an independent Jewish state in Palestine was unilaterally and by military force. A Jewish state could only be built behind an iron wall of Jewish military power. The Arabs would hit their heads against the wall, but eventually they would despair and give up any hope of overpowering the Zionists. Then, and only then, would the time come for stage two, negotiating with the leaders of the Palestine Arabs about their rights and status in Palestine. [9][10]

'A voluntarily agreement between us [Jews] and the Arabs is inconceivable.... Every indigenous peoples will resist alien settlers as long as they see any hope of ridding themselves of the danger of foreign settlement. This is how the Arabs will behave and go on behaving so long as they possess a gleam of hope that they can prevent Palestine from becoming the Land of Israel.'

The Arab revolt of 1936-1939 seemed to confirm the premises of this approach, which was not the strategy of the right, or of the left, or of the centre but based on a broad consensus. Professor Shlaim says that the 'Iron Wall' became the national strategy for dealing with the Arabs from the 1930s onwards. Regardless of the political colour of the government of the day, it was the dominant strategy under successive Israeli prime ministers from David Ben-Gurion, the founder of the state, to Benjamin Netanyahu, the current incumbent. In 1939, Great Britain issued the White Paper, which stated that creating a Jewish state was no longer a British policy. During WWII Zionism developed and the manifest Iron Wall strategy and its reliance on military power. In 1947 the United Nations proposed the partition of Palestine into two states, one Arab and one Jewish.
On May 14, 1948, David Ben-Gurion, the head of the Jewish Agency, proclaimed the establishment of the State of Israel and U.S. President Harry S. Truman recognized the new nation on the same day.

Wars with Arab neighbours followed, all of which Israel won comprehensively until the first Lebanon War of 1982. Maps show what offers of territory Palestinian Arabs refused in succession as they lost wars while Israel grew in size. The following maps show the progression of loss of land by the Arabs.
The Gaza Strip is 40km (25 miles) long and 10km wide and is home to more than 1.8 million Palestinians. The shape of the territory was defined by the Armistice Line that followed the creation of Israel in 1948 and the subsequent war between the Israeli and Arab armies. Egypt administered the Strip for the next 19 years, but Israel captured it during the 1967 Arab-Israeli war popularly known as the Six Day War, when it took the Sinai Peninsula, the West Bank, and the Golan Heights. The 1967 war encouraged a revival of the "Greater Israel", envisaged by the founder of Zionism, Theodor Herzl, as extending "from the Brook of Egypt to the Euphrates." After 1967 Israel ruled the Palestinian territories as an occupying and colonial power. The main objective was to keep the occupied territories under control and to expand the Jewish population to the occupying territories by establishing settlements. The "Greater Israel" ideology excluded any possibility of national self-determination of the Palestinian nation and in the peace process from 1967 to 1993, a two-state solution never featured as an
Between 1993 and 2000 the Oslo Peace Process reflected Israeli Prime Minister Yitzak Rabin's initiative in moving on the Palestinian front from stage one, the building of military power, to stage two, serious negotiations. He did so by concluding the Oslo Accord with Yasser Arafat, the chairman of the PLO, on 13 September 1993 with whom he shared a famous if hesitant handshake on the White House lawn, not a radical breakthrough but a modest experiment in the Palestinian self-governing in West Bank and Gaza.

Critical to the architecture of Oslo, Professor Shlaim notes, was the notion of gradualism. The text did not address any of the key issues in this dispute: Jerusalem; the right of return of the 1948 Palestinian refugees; the status of the Jewish settlements built on occupied Palestinian land; or the borders of the Palestinian entity. All these "permanent status" issues were deferred for negotiations towards the end of the five-year transition period. Basically, this was a modest experiment in Palestinian self-government starting with the Gaza Strip and the West Bank town of Jericho. The text did not promise or even mention an independent Palestinian state at the end of the transition period. The Palestinians believed that in return for giving up their claim to 78 per cent of Mandate Palestine, they would gain an independent state in the remaining 22 per cent with a capital city in Jerusalem. They were to be bitterly disappointed.

On 4 November 1995 Yitzhak Rabin was assassinated by a Jewish fanatic at a peace rally and in 2000 the Oslo peace process broke down following the failure of the Camp David summit and the outbreak of the second intifada. Israelis claim that the Palestinians were responsible for the breakdown of the Oslo peace process because they made a strategic choice to return to violence and, consequently, there was no Palestinian partner for peace. Palestinian violence was indeed a contributory factor to the breakdown but not, according to Professor Shlaim, the main cause. The fundamental reason was that Israel reneged on its side of the deal following the assassination of Yitzhak Rabin. The Jewish fanatic who murdered Rabin also succeeded in derailing the peace train.

**Greater Israel Ideology and Benjamin Netanyahu**

Professor Shlaim maintains that Benjamin Netanyahu's vision of Israel corresponds to the Revisionist Zionist ideas as well as to the Greater Israel ideology, i.e. a state of Israel which includes the entire 'Land of Israel'.

Netanyahu, the present Prime Minister, was elected leader of the Likud in March 1993. He published a major book under the title A Place among the Nations: Israel and the World, seemingly inspired by the teaching both of Ze'ev Jabotinsky and of his, Netanyahu's, father the historian Benzion Netanyahu, who had been an adviser to Jabotinsky. The central element in Benjamin Netanyahu's worldview was the right of the Jewish people to the
whole Land of Israel. He argued that it was not the Jews who usurped the land from the Arabs, but the Arabs who usurped it from the Jews. Anti-Semitism was said to be at the root of universal and particularly Arab hostility to Israel. His book did not contain a single positive reference to the Arabs, their history, or their culture. He denied that the Palestinians had a right to national self-determination and argued that the primary cause of tension in the Middle East was inter-Arab rivalry. For Netanyahu, compromise with the PLO was completely out of the question because its goal was the destruction of the State of Israel, and this goal allegedly defined its very essence. [14]

In the worldview of Netanyahu, the brash scion of Revisionist Zionism, and of his even more extreme religious-nationalist partners, only Jews have historic rights over what they call "Judea and Samaria". Their policy is the expansion of Jewish settlements on the West Bank and the accelerated Judaization of East Jerusalem. As leader of the Opposition, Netanyahu denounced the Oslo Accords as incompatible with Israel's right to security and with the historic right of the Jewish people to the whole Land of Israel. The change of government in 1996 from [Peres] Labour to [Netanyahu] Likud had profound implications for the peace process. Likud is an ideological party which upholds the right of the Jewish people to the whole "Land of Israel". [15] Likud regards the West Bank – Judea and Samaria in its terminology – as an integral part of the historic homeland. In line with this view, it is opposed in principle to partition and in its electoral manifesto it explicitly rejects the idea of an independent Palestinian state alongside Israel. [16] After losing the elections in 1999, Netanyahu withdrew from politics, only to come back in 2003 as Minister in the Likud government of Ariel Sharon. In August 2005 a Likud government [now] headed by Ariel Sharon affected a unilateral Israeli pullout from Gaza, withdrawing all 8,000 settlers and destroying the houses that they had left behind. Netanyahu left the government after Israel's withdrawal from Gaza.

**Hamas**

Dr Tromp explains that at this point in the recent history, Hamas became a significant adversary. With the Oslo process collapsed and Israel determination to keep Palestinians outside of any power sharing schemes, the Hamas movement emerged as a new political force. Professor Shlaim describes it as follows: Hamas, the Islamic resistance movement, had conducted an effective campaign to drive the Israelis out of Gaza. The withdrawal was a victory for Hamas and a humiliation for the Israeli Defence Forces (IDF). Sharon presented the move as a contribution to peace based on a two-state solution. In the year after the withdrawal, another 12,000 Israelis settled on the West Bank, further reducing the scope for an independent and territorially contiguous Palestinian state. In January 2006 elections were held in the West Bank and the Gaza Strip and Hamas unexpectedly won a decisive victory over Fatah. Numerous international observers confirmed that the elections had been both peaceful and orderly. [17] Hamas won a clear majority (74 out of 132 seats) in the Palestinian Legislative Council and it proceeded to form a government. Israel refused to recognize the new government; the United States and European Union followed its lead. Israel resorted to withholding tax revenues while its western allies suspended direct aid to the Hamas-led Palestinian Authority.

The "Palestine Papers", a cache of 1,600 diplomatic documents of the Israel-PA negotiations leaked to Al Jazeera, revealed how Israel and America armed and trained the security forces of President Mahmoud Abbas with the aim of overthrowing Hamas. [18] American neoconservatives participated in a plot to instigate a Palestinian civil war. Hamas pre-empted a Fatah coup with a violent seizure of power in Gaza in June 2007. At this point the Palestinian national movement became fractured, with Fatah ruling the West Bank and Hamas ruling the Gaza Strip. Israel responded to the Hamas move by declaring the Gaza Strip a "hostile territory". It also enacted a series of social, economic, and military measures designed to isolate and undermine Hamas. By far the most significant of these measures was the imposition in 2007 of a blockade. The stated purpose of the blockade was to stop the transfer of weapons and military equipment to Hamas but it also restricted the flow of food, fuel, and medical supplies to the civilian population. The boycott applied not only to imports but, oddly, also to exports from Gaza.

**Punitive Expedition in Gaza**

From November 2008 there were four major attacks on Gaza, military incursions reflecting the new government policy of containment of Gaza - some would say by creating an open prison - that was enforced by the government of Ehud Olmert quite as much as by the later government of Netanyahu and that kept Fatah and Hamas separate under the 'divide and rule' principle. The June 2008 ceasefire is noteworthy. On 4 November 2008, with outgoing rockets from Gaza at a low rate the IDF launched a raid into Gaza to prevent the construction of a tunnel that was 540 metres inside Gaza. Building a tunnel was not a breach of the ceasefire but the armed incursion into Gaza definitely was. A fire-fight developed and six Hamas fighters were killed. Hamas retaliated to the Israeli raid by renewing the rockets attacks. On 27 December the IDF launched a massive air attack on Gaza and this was followed by a ground invasion on 3 January 2009. The stated aims were to stop rocket and mortar fire into Israel and to prevent the smuggling of weapons into the Gaza strip. The first aim, however, could have been achieved by pursuing the Hamas offer to renew the ceasefire.

In the twenty-two days of this 'Operation Cast Lead' Israel had 13 dead; the Gazans had 1,417 dead, including 313 children, and more than 5,500 wounded. According to one estimate, 83 per cent of the casualties were civilians. The IDF destroyed 600–700 factories, small industries, workshops and business enterprises, 24 mosques, and 31 security compounds. Eight hospitals, 26 primary health care clinics, and over 50 United
Nations facilities sustained damage during the war. The UN Human Rights Council established a Commission under Richard Goldstone. In the opinion of Goldstone and his colleagues, the grave breaches of the Fourth Geneva Convention committed by the Israeli armed forces in Gaza gave rise to individual criminal responsibility. They recommended that the UN Human Rights Council should formally submit their report to the Prosecutor of the International Criminal Court. But joint Israeli-American pressure on the Palestinian Authority and at the UN ensured that no further action was taken. There can be no doubt, however, that the Gaza war constituted a massive moral defeat for Israel and its army. \[19\]

**Rapprochement between Fatah and Hamas**

In 2014 Netanyahu came back as Prime Minister, at the first elections held after Cast Lead, defeating Olmert at the March 2009 elections. In his term as PM between 2009 and 2013, Israel's forces conducted a military operation Pillar of Defence in Gaza in December 2012. Professor Shlaim concludes that Violence was the defining characteristic of the Netanyahu government's approach to Hamas. Like its predecessors it shunned diplomacy and relied heavily on brute military force. In doing so, Professor Shlaim assesses, it missed one opportunity after another to end the cycle of violence. In November 2012, it ordered the extra-judicial assassination of Ahmed Jabari, the chief of Hamas's military wing in Gaza, while he was reviewing the terms of a proposal for a permanent truce from Israeli peace activist Gershon Baskin. \[20\]

The timing of the assassination suggests a deliberate attempt to pre-empt the threat of a diplomatic solution. At any rate, Israel broke the informal ceasefire to launch Operation Pillar of Defence, its second major military operation against Gaza following disengagement. In eight days of intense aerial bombardment, 132 Palestinians were killed. The operation ended with a ceasefire brokered by Egypt. This specified that Israel and the Palestinian factions would stop all hostilities and that Israel would open the border crossings to allow the movement of people and the transfer of goods. The sequel is described by Nathan Thrall, senior Middle East analyst of the International Crisis Group:

*During the three months that followed the ceasefire, Shin Bet recorded only a single attack: two mortar shells fired from Gaza in December 2012. Israeli officials were impressed. But they convinced themselves that the quiet on Gaza's border was primarily the result of Israeli deterrence and Palestinian self-interest. Israel therefore saw little incentive in upholding its end of the deal. In the three months following the ceasefire, its forces made regular incursions into Gaza, strafed Palestinian farmers and those collecting scrap and rubble across the border, and fired at boats, preventing fishermen from accessing the majority of Gaza's waters*.\[21\]

The end of the closure never came. Crossings were repeatedly shut. So-called buffer zones – agricultural lands that Gazan farmers could not enter without being fired on – were reinstated. Imports declined, exports were blocked, and fewer Gazans were given exit permits to Israel and the West Bank....The lesson for Hamas was clear. Even if an agreement was brokered by the US and Egypt, Israel could still fail to honour it. \[21\]

**The Beginnings of Operation Protective Edge**

One of the important factors in Israeli politics was to keep Fatah and Hamas hostile to each other. In April 2014 a breakthrough happened between Fatah and Hamas and they formed a unity government. The Hamas government in Gaza stepped down in favour of Fatah government led by Mahmoud Abbas from Ramallah. The significance of this has been described by Professor Shlaim: The unity government produced by an accord between Fatah and Hamas in 2014 was in fact remarkably moderate both in its composition and in its policies. It was a government of Fatah officials, technocrats, and independents without a single Hamas-affiliated member.

To escape isolation and bankruptcy, Hamas handed over power to the Fatah-dominated, pro-Western Palestinian Authority in Ramallah. The unity government explicitly accepted the three conditions of the Quartet (the United States, Russia, the United Nations, and European Union) for receiving Western aid: recognition of Israel; respect for past agreements; and renunciation of violence.

Israel showed nervousness at this new unity by hostile propaganda that was then followed by offensive and economic measures with a military assault on Gaza on 8 July 2014; it seems that Netanyahu's government may have been waiting for an excuse to start a punitive expedition against Gaza. The opportunity came with an abduction of three Israeli teenagers in West Bank. Netanyahu stated that Hamas was responsible for the abduction and that Hamas will pay the price. \[22\] He produced no evidence, however, to support the charge because there was no evidence. The murder was probably committed by a lone cell without the knowledge of the Hamas leadership. The Israeli authorities knew that the teenagers were killed soon after their abduction but they did not announce the death until eighteen days later. They used the intervening period to launch a powerful, worldwide propaganda offensive to denounce Hamas as a murderous organisation. At the same time, the IDF initiated Operation Brother's Keeper, ostensibly to search for the teenagers but in reality to deal a body blow to Hamas. As part of the operation, 350 Palestinians were arrested, including nearly all of Hamas's leaders on the West Bank. Netanyahu seemed to see an opportunity to destabilise the newly-established unity government and to undermine President Mahmoud Abbas. Reluctantly rising up to the challenge, Hamas responded with rockets. \[23\] The sequence of events clearly indicates that the murder of the three Israeli teenagers was the pretext, not the cause, for the next onslaught on Gaza.

**Covert and Overt War Aim**

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There was then an urge to punish the people of Gaza for electing Hamas and for continuing to support it in defiance of Israel's repeated warnings. Related to this was the irresistible urge to display Israel's raw military power. [24] The overriding aim, however, was to defeat the struggle for Palestinian independence, to maintain the colonial status quo, and to preserve Israel's position as the imperial overlord. Israel portrayed the attack as an act of self-defence in response to Hamas rockets launched against its civilian population. These rocket attacks may themselves be seen as a response to a violent crackdown against Hamas supporters on the West Bank following the abduction and murder of three Israeli teenagers on 12 June.

Professor Shlaim notes how official war aims for Protective Edge kept changing. First, in phase one of the war, which began with airstrikes on 8 July, the stated aim was to halt the rocket and mortar attacks from Gaza; then in phase two of the war, commencing in the late evening of 17 July with a full ground invasion lasting until 5 August, it was to destroy the "terror tunnels" that Hamas had dug under the border to launch raids inside Israeli territory; and subsequently it was said that war would continue until Hamas is completely disarmed. [25]

**Law: Defence of a State - meaning?**

Rodney Dixon QC [26] explains that whether or not an armed conflict is lawful, [27] it must be conducted in accordance with International Humanitarian Law (IHL). For Israel's attack on Gaza these issues need to be considered:

- Were there legitimate military objectives (rockets, tunnels etc)? Were civilians directly targeted?

- Did the military operations excessive and disproportionate in the circumstances; could other methods have been used?

The terms 'proportionate' and 'disproportionate' regularly feature in discourse on war crimes, just as by Rod Dixon. They do not appear in the Conventions or Protocols but in the authoritative International Committee of the Red Cross (ICRC) commentaries drawn from:

Additional Protocol 1 Article 51 (5) on Indiscriminate Attacks includes as an unlawful indiscriminate attack

'an attack which may be 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.

AND

Art 57. Precautions in attack

*In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects ......an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be 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.*

Thus when 'proportionality' is invoked – one way or the other – the test to be considered is whether civilian loss of all kinds is excessive in relation to concrete and direct military advantage. Further, at each level of command - strategic, operational, tactical – the combatant authority has to take all reasonable and necessary steps taken to prevent crimes and if they occurred to investigate and punish them, and make sure they did not reoccur. The basic position in law about defence of a state is this, as Rodney Dixon explains:

'[A State is entitled, in general, to use force in self-defence if it is attacked. However, strict requirements apply for the defensive actions to be deemed lawful. The State under attack must establish that its use of force is 'necessary' in order to defend itself from the attack and the actions taken must be 'proportionate' in repelling the attack. The International Court of Justice (ICJ) has held that in considering these requirements a State cannot rely on its subjective assessment of whether the measures are necessary to justify actions taken in self-defence. [28] The State's actions will be judged on whether the measures were objectively necessary. In taking defensive actions the State concerned must also comply with the laws applicable to the conduct of hostilities, in particular the clear protections afforded civilians.'

Rod Dixon further explains that whether a State's actions in purporting to defend itself against the threat or use of force is lawful or not will turn on an objective assessment of whether these actions were strictly necessary and proportionate to repel the threat. The court determining the matter (assuming there was one) would itself judge whether the State's actions were necessary in the circumstances as a defensive operation as well as whether they were reasonable and proportionate to defend the State concerned and its citizens. This determination would not depend on the subjective assessment of the State as to the threat it perceived and if its response was necessary and justified. Even if the threat was absolutely genuine, it would still need to be established that the defensive measures were necessary to counter the threat and were appropriately tailored specifically to address this threat and no more. In the event that the threat was not genuine, but the State nevertheless believed it was under attack, this belief alone would not be a sufficient basis to find that the State had acted lawfully in self-defence.
No Legal Self-Defence

If the legal requirements for self-defence are not met the whole attack is rendered unlawful, making the state and those who planned and directed the attack responsible for breaching the UN Charter and international law. Such action could be regarded as an illegitimate use of force or an aggressive war that amounts to a crime under international law. Crimes against Peace were described by the Nuremberg Tribunal as 'the supreme international crime'.

Incidents

As Operation Protective Edge was under way an investigator in Gaza was able to investigate some incidents, selected in discussion with me, for specific consideration. We were able, before obtaining General Parker's input, to begin to think how the law might apply to these incidents (summarized on lecture – available online):

Military Expertise –

General Sir Nick Parker:

My study of selected tactics used by the Israeli Defence Force (IDF) during Operation PROTECTIVE EDGE has allowed me to draw conclusions on their legitimacy from a technical military perspective. Initially the focus was around six specific incidents which were identified and which it was felt should be examined to identify possible illegal military activity. I am not going to go into the detail of the incidents because, even though my comments have been informed by this investigation, I have concentrated on the broader deductions. You should also note that I have had no access to secret material and my account has only been informed by open source material.

It is important when assessing why military actions are taken to examine the facts at a number of levels. There will be a Grand Strategic ‘narrative’ which has considerable influence. It will clearly set the baseline for the development of a National Security Strategy, but it will also work its way into doctrine, be discussed in colleges and establish the cultural approach of the armed forces. Inside a military organisation the ‘Chain of Command’ will exercise influence through the general tone and conduct of leaders, through the detailed direction given by policy and through the tone of specific orders given to complete tasks. And then at the coal face instinctive reactions will be conditioned by perceptions of the threat and the amount of freedom given to act.

The Strategic Context.

There is a considerable weight of evidence to indicate that the Israeli State considers itself to be constantly under a military threat. There have been many statements from Israeli political and military leaders expressing that the Defence of Israel is a matter of National survival [29] with threats from every neighbour, from hostile states with the capacity to fire missiles [30], from a possible Iranian nuclear capability and from Global terrorism. There is also evidence to show that Israel does not believe that it has the capacity to ‘defend in depth’, circumstances where the defender can choose ground that is most suitable for defence, lure the attacker in and then use secondary manoeuvre to outflank and defeat the incursion. This has some parallels to the uncompromising policy of forward defence that West Germany adopted in the Cold War which was approved by NATO and dictated the tactical plans of all of the Allies. [31]

It is therefore understandable from a military perspective why Israel's defensive posture appears to be to pre-empt and/or deter since they cannot afford to yield ground. Indeed this may also lead to Israeli tactical military objectives favouring the pro-active seizure of land in order to provide a strong political bargaining position.

Contemporary statements that reflect this approach include Benjamin Netanyahu's address to the 2014 UN General Assembly. In this he emphasises the threats to his country from anti-Semitism, militant Islam, and Iranian nuclear power, and he highlights his responsibility as prime minister of Israel in a very uncompromising tone that will clearly have an impact on the attitudes of military leaders and on the behaviour of individual soldiers. Focusing on Gaza for a moment, it could also be concluded that there is a deliberate Israeli policy to encourage the vilification of the Palestinians living there. The expansion of settlements, such as Sderot, close to the border, sustained by a new railway on which local residents can travel for free shows that the Government encourages its people to live under the threat of rockets. They clearly recognise that the Hamas capability is very limited, their counter-measures are effective, and the risk to the population is very low. But the external message is very different. This was highlighted during our investigation when we encountered a 'battlefield tour' party of middle-aged residents from Tel Aviv who were being taken in an organised bus party to three Kibbutzim and told about the 'war' from a very particular perspective.

The Palestinian Perspective

To complete the strategic perspective it is necessary to consider the Palestinian position. They are restricted to a narrow strip of land that cannot sustain the large population [32] and relies on life support through Israel. The flow of fuel, food, drugs, machinery is all regulated. Only 40% of electricity can be generated within the strip and only a proportion of their food consumption. All fuel has to be imported. People are concentrated into small areas; the population density in Gaza City is rated as the fifth highest in the world. From the sea, there are also constraints, the fishing limit has been reduced incrementally and is now 3 miles. The capacity to generate military
From April – July, a detailed plan will have been developed. This was not a spontaneous reaction to a single
stages:

capability within the Gaza Strip is limited although the motivation is high. There are a number of armed groups, loosely referred to as Hamas although they are not all controlled by a single chain of command. Their main offensive capabilities are rockets which have deadly capability although they are unsophisticated and have limited range and guidance systems. The threat they pose will have an impact on the lives of those living in Israel within range, although the evidence on the ground was that it was not materially significant. The armed groups have a capacity to make limited incursions into Israel on foot, using tunnels; it is possible that this could result in kidnap, small arms attacks or suicide bombs. To defend Gaza the principle weapons in use are small arms and mines/IEDs. There are rudimentary command and control systems, and it is very hard to identify well established Command and Control (C2) nodes.

The recent operation in Gaza has to be considered in the context of its historical importance as much as the threat it poses. Territory occupied after the '67 War is largely a home for refugees displaced from other parts of the Holy Land. Since withdrawal in 2005 Israel's approach to security has to be based on containment rather than internal security. But Israel still bears the responsibilities of an occupying power, controlling all borders bar one, and all resources entering the area. Perceptions within Israel are that Hamas is not just resisting the siege, but is also seen to have the objective of the destruction of Israel.

The IDF

Turning to the IDF, a standing force that is designed to protect the Israeli State which, as I have explained considers itself to be under constant threat. It is the sixth highest global military spender with a standing force of 176,500 active and 445,000 reserve personnel, and is the second highest spending per capita after the US. It depends on reserves to conduct operations and this means that there will be a planning lead time for any major engagement. Its mission is to defend the existence, territorial integrity and sovereignty of the state of Israel. To protect the inhabitants of Israel and to combat all forms of terrorism which threaten the daily life.

The overarching ethics of the IDF are consistent with the requirements of any military force; although there is an emphasis on the defence of the state and the tradition of the Jewish people. The 'main doctrine' highlights that Israel cannot afford to lose a single war, has to be defensive at the strategic level, and has no territorial ambitions; it also makes it clear that there is a desire to avoid war by political means and a credible deterrent posture; in combat there is a need to prevent escalation, and determine the outcome of war quickly and decisively with a very low casualty ratio. It stipulates that a small standing armed force will provide early warning and prepare for defence supported by an efficient mobilization system which will then allow the move to counter-attack. The attack will transfer the battle to the enemy's territory and the quick attainment of war objectives. There are some anomalies here which will be highlighted further shortly.

Operational Planning and Execution

I will now turn to a more detailed examination of Operation Protective Edge from an Operational and tactical perspective. Starting with the enemy there is no credible tactical, territorial military threat to Israel from Gaza. Armed groups are restricted to the use of rockets that are manufactured within the Strip, or possibly smuggled through tunnels, and the use of lightly armed infantry who will have the capacity for limited infiltration. These are largely contained by border and movement control although Hamas have constructed military tunnels to both enable communications and conduct raids into Israel.

At the highest level the IDF military posture is based on the perception of an existential threat. The IDF COS stated on 3 Oct: 14: "We are not in Milan here. We may be in the OECD, but we are in the heart of the Middle East, completely surrounded by enemies. The only thing standing between us and ISIS right now is that they are currently busy with more urgent matters.” The rocket threat from Gaza has triggered extensive defensive measures including requirements for shelters in public and residential buildings, filtration for chemical attack. Israel has an alarm system to warn of attack and an anti-missile defence system (Iron Dome). The rocket attacks' impact is psychological and cultural. Hamas and other fighters are hard to distinguish from the civilian population, in part because they will choose to use this as camouflage, and in part because the area is so densely populated that it is impossible to delineate a 'combat' zone. The normal distinction between the 'rear area' where civilians and support functions can exist in relative safely are not evident in Gaza, the whole area is a battle zone. In these circumstances, where there is so little tactical depth, the mixing of civilians and fighters means that it is almost impossible for Hamas not to appear to use civilians as a shield. The size of Hamas' military capability is difficult to determine but may amount to around 10,000 fighters.

Operation Protective Edge

It is worth highlighting that the routine Israeli military requirement to counter the Hamas threat drives the need for a high level of understanding (intelligence), to contain, and to neutralise rocket and ground incursion threats. The IDF occupy the key terrain, particularly over the Northern half of the Strip where Israeli positions overlook Gaza city. They also have surveillance systems that will give them a clear picture of activity in depth. It is safe to assume that they will have a very high level of situational awareness which will allow them to plan operations in great detail. In the case of Operation PROTECTIVE EDGE, it appears that the overall plan was executed in 4 stages:

From April – July, a detailed plan will have been developed. This was not a spontaneous reaction to a single
In order to generate the required capability some of the units involved had to be mobilised from other parts of Israel. This will have required political direction to initiate planning and then a series of ‘backbriefs’ to check that plans were being constructed correctly/appropriately. Depending on security, the early planning will have been conducted by regular forces. Contingency plans will have shortened the planning process but activity such as Intelligence Preparation of the Battlefield, the prepositioning of resources and the call up and integration of reserves will have taken time. The planning appears to have reached its crescendo in late June. The increase in Hamas rocket attacks in June may be an indicator either of provocation or reaction to IDF deployment. A key milestone in the planning will have been the decision to call up reserves, a critical part of IDF capability for both military and political reasons.

Phase 1:
The Air operation began on 7 July; it would be normal military practice for this phase of the operation to be designed to destroy C2 in depth and any other targets that could be pre-empted. The capture of Hosam Kawasmeh on 11 July was directly linked to the kidnapping of the 3 Israeli teenagers on 12 June and was probably a Special Forces operation deliberately synchronised in this phase. As the start time (H Hour) for the land engagement drew closer there will have been an increasing concentration on the areas where ground troops were to attack. It is unlikely that ceasefire negotiations at this stage were credible since the operational objectives required a land incursion to destroy tunnels, ‘dominate’ the terrain, intimidate any aggressors and provide a bargaining position for further political action.

Phase 2:
The main Land attack from 17 July to 10 August, with withdrawal starting on 3 August. The main objectives are likely to have been achieved by 3 August including the destruction of the tunnels and sufficient offensive action to overpower the opposition. The intensity of the fighting does seem to have increased around 1 August.

Phase 3:
Consolidation from 10 August to 26 August. Interestingly there seems to have been a significant Hamas rocket and mortar bombardment 22-26 August which does not seem to have provoked a commensurate retaliation by IDF suggesting that the objectives did not include the complete eradication of Hamas capability, but domination. Also worth noting that in opinion polling Israeli Government approval was far higher at the beginning of the operation than at the end. On 26 August an open ended ceasefire was declared.

Within the Ground Invasion it appears that there were three phases to the Operation. The first, starting on 17 July and rising to its maximum intensity between 20-23 July had at least 4 axis:

- attacking from the North,
- into Shuja'iyya,
- the Middle area
- and Khan Yunes.

The second phase, starting after the 26 July ceasefire focussed on Kuza'a, Rafah and the South. The third phase appears to have started on 1 August and involved some intense fighting in the South. The ground forces began their withdrawal on 3 August leaving a strip of significant destruction behind, it is possible that this is the ‘Protective Edge’ in the operation's title.

IDF Tactics

There are four particular aspects of IDF tactics that were evident during the operation and need to be considered:

The Hannibal Protocol:

This is the drill for the reaction to a kidnapped or captured soldier and may have been activated twice during this operation. In particular on 1 August, by the Givati brigade commander Col Winter in the Rafah area where there are reports of the disproportionate use of force. It appears that the authority for the execution of Hannibal was given by the CGS. Having a code word that is designed to ensure instant reaction and establish an immediate priority for resources is entirely logical from a military perspective – it is similar to RAT TRAP in Northern Ireland. It is assumed that Hannibal is called because an IDF kidnapping is suspected and there is a need to concentrate force in order to recover the individual. What is more difficult to understand is that the response requires the sanction of the CGS and the level of force required appears to result in a dramatic increase in fire, including artillery fire in depth. If the aim was to recover the captive there might be a need to cut off the enemy escape routes, and this might be done by fire, but it is more likely that offensive action to retake the ground where the incident occurred would be the priority. This would require the rapid deployment forward of ‘boots on the ground’. But it seems as if time is sacrificed to seek authority from the very highest level to
apply a huge weight of fire on the target area, with a high likelihood that captives and captors will be killed.

**Dahya Tactics** are the systematic and deliberate application of disproportionate force, including civilian suffering to deter and alienate the fighters from the population. It is also designed, in ground combat, to minimize the risk to the IDF. Providing effective covering fire is a necessary requirement when ground troops are manoeuvring. Ideally this will be precisely aimed at the enemy, but, particularly in a built up area, it is hard to pinpoint enemy firing positions. It is therefore entirely acceptable military practice to 'keep the enemy's head down' with heavy direct and indirect covering fire. It would be normal for a ground commander to be given orders for opening fire and rules of engagement that restrict the ability to risk large civilian casualties. In an area like Shuja'iyaa it is almost inevitable that the use of tank, mortar and 155mm artillery fire will cause civilian casualties. And given the size and population density in Gaza operations such as PROTECTIVE EDGE will cause civilian suffering and intimidation. It is highly unlikely that this will alienate the civilian from the fighter, indeed in an environment where there can be no escape it is likely to drive the uninvolved closer to those who are resisting. These tactics are therefore likely to make resistance stronger.

'Mowing the Grass' is a term used by the IDF to imply that every so often there will be an need to attack an area in order to dominate it, reduce enemy capacity and deter further action.[41] It is also accepted that over time the enemy military capability will be refreshed and further attack will be necessary. This is different other military forces where, particularly in counter-insurgency, withdrawal allows the terrorist back to influence the civilian population. Interestingly in the context of Afghanistan operations 'mowing the grass' was considered to represent tactical failure since offensive operations have to be followed up with development and capacity building activity.

**Knock on the roof**

At first sight the idea of 'knock on roof' seems sensible, it appears to be using precision capability to minimise casualties. But, in the case of Gaza it is illogical. It does not make sense to warn the occupants of a house that it is to be attacked and allow them to escape unless it is known that they are innocent and the target is hiding military capability. Since the Hamas command and control mechanisms are not dependent on infrastructure it can only be assumed that this tactic is designed to intimidate by the destruction of residential buildings.

**Conclusions**

There are three particular areas that emerge from this analysis which are worth highlighting:

1. The link between tactical, operational and strategic actions. It is extremely hard to judge where decisions were made without more detail of the planning, orders and assessment processes. It seems likely however, that Operation PROTECTIVE EDGE was a deliberate plan that was constructed over a number of months/weeks and that it was therefore cleared at the very highest levels of Government. [42] The overall scheme of manoeuvre will have to have been understood and authorised at the political level. It may be that the individual targeting process was delegated to the military chain of command once the plan was agreed, and it would be normal for there to be some guidance on the acceptability of civilian casualties in relation to the potential value of the target to be engaged. There is evidence to support targeting decisions being made at the very highest level which makes it difficult to concluded how much was actually delegated to senior commanders, particularly at the Operational level.[43] This slide shows once again the probable levels of the chain for Operation Protective Edge. It is also assumed that there were political briefings at key stages in the campaign: the start of the air bombardment (7 July), the ceasefire negotiations (14-17 July), the ordering of the ground invasion (17 July), humanitarian ceasefire (26 July) and the ordering of the withdrawal (3 August). On all these occasions a sufficient level of military detail will have been required for the political decision to be made.

2. The purpose of seizing ground. The ground incursions seized certain areas of ground, these may have had tunnels in them, or rocket stores, but they were almost certainly not the only areas in Gaza to have defensive construction. It is difficult to see why the areas were chosen other than to have an impact on the population, to provide a bargaining chip for ceasefire negotiations and to destroy industrial and agricultural capacity in furtherance of the 'mowing the grass' policy. Ground was not taken to provide a tactical military advantage but to intimidate and allow the best possible bargaining position with the time and resources available.[44]

3. The management of refugees. Normally it would be expected that there would be a plan for the management of refugees since innocent civilians will always be displaced by fighting. In the case of Gaza, since there is no escape route for refugees, it should be anticipated that there are declared safe areas for civilians. But there is no evidence of such a plan in the IDF orders. In fact attacks on the UN school and the Knock on the Roof give the appearance of a deliberate attempt to demonstrate that nowhere is safe."

**Sir Geoffrey Nice QC:**

Military expertise inevitably affected any untutored views I and others may have formed about whether what we saw could require consideration as war crimes. At this stage it became helpful to add in another category of material dealt with by Dr Tromp.

**Hate Speech and Propaganda; Incitement of Violence**
Dr Tromp, and researchers working with her, examined aspects of Operation Protective Edge not specifically covered by General Parker or Avi Shlaim, including what was said of relevance by Israeli public figures before, during and after the Israeli attack. This included the public statements of most members of the Security Cabinet, Knesset members (MKs) and military officers.

She explained, for example, how retired Major General Giora Eiland, the former head of Israel's National Security Council, published an article in Ynet News, claiming that there is no such thing as “innocent civilians” in Gaza, arguing that the citizens of Gaza share responsibility with their Hamas leaders for the violence against Israel. He even went as far as to compare Gaza under Hamas rule with Nazi Germany: "They are to blame for this situation", Eiland wrote, "just like Germany's residents were to blame for electing Hitler as their leader and paid a heavy price for that, and rightfully so." [45] What may be significant is that Eiland was not reprimanded for expressing publicly these extreme views which are widely shared by the defence establishment and by the Israeli public at large. If this reflects policy, says Dr Tromp, it follows that there will be more of the same: more violence, more bloodshed, more terror, more wanton destruction, more human suffering, more wars, and more war crimes because the Israeli narrative revolves round the demonisation of Hamas and demonisation leads directly to diplomatic deadlock.

The statements selected illustrate hostile attitudes towards the Arabs as a race, Muslims as a religious group and Palestinians as an ethnic group. The words uttered in media, public addresses of the Israeli politicians, senior military and other public figures could easily be qualified as “hate speech”. The function of the "hate speech" is to reinforce the projected division into two groups in a society - "us" and "them". The "them" group is invested with all evil and as a collective denied human characteristic in what is known in the literature as a “dehumanisation” process.

Widespread discrimination against the Arabs in Israel is revealed by Rabbis, Israeli politicians and pro—Zionist activists. Such unsanctioned / uncontrolled racism and religious intolerance creates an environment that can encourage sectarian violence as well inspire combat 'morale' of IDF soldiers during military campaigns such as Protective Edge. Once a “them-group” is stripped of human qualities such as empathy, sorrow or love but invested with the evilness aimed at the destruction of the "us" group the violence against any member of the group - a child, a mother, a young boy, an elderly man or a solider becomes desirable and accepted. Moshe Ya'alon made headlines in 2002 when, upon his appointment as IDF Chief of Staff, he stated that the Palestinians are a cancer. [46] One of the most vocal public figures in the dehumanisation of the Arabs as a group was the late Rabbi Ovadia Yosef, the spiritual leader of Israel's ultra-orthodox Shas party, who called in 2001 in a sermon for the annihilation of Arabs. "It is forbidden to be merciful to them. You must send missiles to them and annihilate them. They are evil and damnable," Rabbi Yosef said. In the same sermon he said that enemies have tried to hurt the Jewish people from the time of the exodus from Egypt to this day: "The Lord shall return the Arabs' deeds on their own heads, waste their seed and exterminate them, devastate them and vanish them from this world," he said.[47]

Despite protests and criticism Rabbi Yosef did not stop his inflammatory hate-speech. When discussing the peace making with Arabs in 2009, he said: "How can you make peace with a snake?"(...) "Those evildoers, the Arabs — it says in the Gemara [Talmud] that God is sorry he ever created those sons of Ishmael." [48] He characterised Muslims in racist terms: "They're stupid. Their religion is as ugly as they are."[49] "Hate-speech" and its effects have been experienced before, during and after the Protective Edge Operation took place.

Naftali Bennett, a leader of the ultra-right coalition party The Jewish Home has been Industry, Trade and Labor Minister since 2013 and as such attended the Security Cabinet as an additional member. During a heated argument with National Security Adviser Ya'akov Amidror about prisoner release, Bennett "proposed a problematic and controversial way for Israel to avoid having to put [captured terror suspects] on trial," saying:

Bennet: "If you catch terrorists, you have to simply kill them."

Amidror: "Listen, that's not legal."

Bennett: "I've killed lots of Arabs in my life – and there's no problem with that."

After repeated attempts by a +972 journalist to reach Naftali Bennett, his spokesperson said that either the reporter from Yedioth Ahronoth received wrong information on exactly what Bennett said at the meeting, or he decided to interpret it this way. The spokeswoman insisted that when Bennett referred to killing Arabs, it was in the context of "operations" he participated in while serving in combat situations in the army, and that he was expressing that a more effective policy is to "wipe out terrorists" rather than keeping them alive in prison and then releasing them. [50] Moshe Ya'alon, the Minister of Defence and a member of the ruling Likud party underlined the dangers of terrorism by suggesting that children of three are trained to be terrorists:

"As long as three-year old children are being educated to carry explosive belts at ceremonies and Israel does not appear on their maps, there is no chance for peace"[51]

Colonel Ofer Winter, commander of the Givati Brigade, represents a religious settler mentality. In his letter to his troops on the eve of the Protective Edge Operation Colonel Winter wrote:
“History has chosen us to be the sharp edge of the bayonet of fighting the terrorist enemy from Gaza which curses, defames and abuses the God of Israel’s battles … We will … wipe out the enemy … Using all means at our disposal and with all required force … I turn my eyes to the sky and call with you ‘Hear, O Israel. The Lord our God is one Lord. ’ God, the Lord of Israel, make our path successful, as we are about to fight for Your People, Israel, against an enemy who defames your name.”[52]

Ayelet Shaked, a member of the Knesset for The Jewish Home Party, Bennet's party, posted via social media inflammatory messages, which were extensively quoted by Israeli media, before they were erased from her Facebook.

On Monday, July 7 2004, just one day before the Protective Edge Operation started, Shaked posted on her Facebook page the following entry:

“They have to die and their houses should be demolished so that they cannot bear any more terrorists,” (…) “Behind every terrorist stand dozens of men and women, without whom he could not engage in terrorism. They are all enemy combatants, and their blood shall be on all their heads. Now this also includes the mothers of the martyrs, who send them to hell with flowers and kisses. They should follow their sons, nothing would be more just. They should go, as should the physical homes in which they raised the snakes. Otherwise, more little snakes will be raised there”[53]

Once the war was under way, Ayelet Shaked wrote:

“This is a war. Not a war on terror, not a war against extremists, or even a war against the Palestinian Authority. All are forms of evading reality. This is a war between the two nations. Who is the enemy? The Palestinian people. Why? Ask them, they started. What is so shocking in understanding that the whole of the Palestinian people are the enemy? Every war is between two nations, and all of the people that opened the war, as a whole, is the enemy”.[54]

One week after the war had started and two days before the IDF was to launch a land offensive on 08 July, Minister Naftali Bennet stated in front of the TV cameras:

“I think it is terrible that Hamas is butchering his own children. I would never take my children and place them next to a rocket launcher. Here’s what they are doing. Hamas is conducting massive self-genocide. They’re taking women and children, placing them next to missile launchers, and shooting the missiles at Israel.”[55]

Yair Lapid, a former TV journalist and the leader of the new party Yesh Atid, that surprisingly came second in the 2013 elections, is making his party one of the principal coalition partners in Netanyahu's government. As Minister of Finance he sat as a member appointed by law in the Security Cabinet. Lapid stressed the alleged inhuman nature of Hamas by stating that they sacrifice their own women and children by using them as 'human shields':

“She [an ordinary Gazan woman] is been held hostage by a terror organization who is using her for protection while shooting at us, […] Hamas is the only one to be blamed in this situation. […] Hamas is using their children in order to protect their force and their rockets and their missiles. […] Hamas is using these children as human shields.”[56]

Eli Ben Dahan – the Religions Deputy Minister said:

"Experience shows that women who go and marry a Muslim man, are returning to their homes after a painful and battered several years, sad to see the most beautiful years of their lives lost"

“[…] surely we should be disturbed, […] Her children will be Jewish according to Jewish law, but according to Muslim law, they will be Muslims. So what shall be with them?”

“You have to remember that the Jewish people, unfortunately, have been through a Holocaust. In the past century it is [the Jewish people] only getting smaller […] There is no doubt that it is a process that reduces the nation.

"[Mixed marriages] are a silent holocaust”[57]

After the Operation Protective Edge Naftali Bennet unwavering in his contempt for his Arab neighbors stated:

“Gentiles live beside us, raised on hatred. Kindergartners teach to kill Jews and summer camps are training how to kill Jews.”[58]

To say such things in a country so permanently in conflict with those dehumanised – to be permitted by that country to say such things without restraint by the law – is dangerous, and not just for the 'victim' group spoken of. Freedom to say such things will inevitably poison and degrade the humanity of the society itself, leading it one cannot know where. The freedom within Israel to say and hear such things makes it entirely likely that insincere reasons for attacking Gaza might be advanced by the government knowing that a majority of the people will be untroubled about whether the reason given is strictly accurate or not. The misfortune of the dehumanised is that
they cease to enjoy the normal regard of their fellow humans making it possible / probable that the real intentions of the government will have them as the true object of the attacks under the pretence of the state acting in self defence.

**The Hamas Perspective**

The question to be asked of Hamas is probably simpler to ask and maybe simpler to answer because whether war crimes were committed by Gaza (Hamas) turns on why rockets that could not be accurately targeted were aimed at Israel with limited prospects of getting through the nearly impregnable Israeli defence system called 'Iron Dome' and whether tunnels would be used for incursions of Gaza military into Israel for combat purposes and with what likely effect. These issues would have to be considered in light of a claim of defence of state where available weaponry that had to be used in defence was unavoidably less sophisticated than that of the IDF and could not be targeted as accurately as could IDF's weapons but where targeting was nevertheless of military personnel and objects. [59]

As with Israel, Hamas would have to be investigated by any court dealing with these issues for public statements that could show criminal intent of Hamas leaders. There is a great deal of material showing a clear intent to attack Israel as an enemy but only rarely are characteristics of dehumanizing / potentially criminal hate speech revealed.

**Conclusions**

General Parker's diagram of levels of command not only allows for each level of command to know the laws of war and to apply them but for both parties in a standard two party armed conflict to apply the law to the best of their abilities. Does that happen or is it more common to see one side acting within the law and the other side to be acting as if the law is not for them. It may be possible to conceive of WW2, Korea and Cyprus as wars largely fought lawfully on both sides whereas Vietnam, Northern Ireland, Iraq, Bosnia would not so qualify.

What does this say about rules, sanctions for rules and how to make people including states obey rules? There is a general principle (maybe more for the schoolroom) that you do not make a rule that cannot or will not ultimately be obeyed and respected. International Law as imposed generally will not be followed by either party in this conflict if both parties' fears are genuine and even more so if they are both genuine and apparently well founded.

At any trial of both parties for war crimes would Hamas be able to argue that. As an imprisoned state / entity, it must be allowed to fire rockets that are not capable of being accurately targeted regardless of the black and white letters of the law on armed conflict, because there is no other way to defend and advance its citizens' interests? Is Israel allowed to react beyond what that black and white letter law allows because the level of real risk (atomic weapon or similar from somewhere or other) allows breach of rules that are applicable only to others? In either case, with either or both parties caught by a law that will not be obeyed in the future, what do we learn about the vaunted 'rule of law'

If there has to be room for combatants to break unrealistic laws – or laws unrealistic in certain circumstances – then all surrounding factual circumstances become the main, not an associated, issue. The question whether Israel intends and is entitled through its own reasoning to destroy Gaza only pretending to obey the laws of war becomes not one feature / fact pointing to possible criminality but the critical circumstance, however proved, that may answer the question whether the law should be applied at all. Were Hamas to be hiding an unwavering desire to push Israelis into the sea by nominal reliance on the letter of the law in some way then the same issue arises. Does the rule of law really have any place in this conflict as presently structured and carried out?

Discussions with Zionists or supporters of Gaza bring arguments that often seem to the non-partisan extreme and beyond discussion – all contrary to the Natural Justice / Voltarian [60] principle of listening to and actually attending to the other side. It is for this reason that it is important for citizens and parliamentarians and members of government better to understand how to assess what the law of war would say if it were listened to and respected. As I suggested at the beginning it might be better to work out before things go wrong how to comply with the law rather than to devote ourselves to after-the-event analysis and criminal trials that follow devastation and death.

Are we, for this conflict and others, to be concerned - in reality - with whether the law should be applied at all or whether in this case and other conflicts (in some unappealing long term utilitarian way) the parties should be allowed to battle it out to extinction of one side or the other behind a closed wall of international inactivity? This completely unacceptable argument - logical though it may be and resonant of what happened in conflicts of centuries past that may have brought protracted and surprising periods of peaceful co-existence between neighbours - may drive us to ask whether either side in such conflicts should be trusted with anything. In the case of Israel-Gaza Must we wait for a two state solution finally to emerge with boundaries marked by oppressive walls and fences separating peoples harbouring enmities? Should all walls – the metaphorical Jabotinski Wall, the physical wall Israel is building on the West Bank, the wall of Palestinian resistance to the very existence of Israel, and the wall of international inactivity - be dismantled and the entire land of Palestine administered by outsiders until a single state of equal citizens can exist on the basis that there may yet be scope for true democracy of those peoples in a land they all claim to call home?
[1] UN OCHA September 2014

[2] ‘Protective Edge’ is a term that may reflect that the conflict was an Israeli initiative not an Israeli reaction to any initiative of Gaza. The original Hebrew name for this operation was Miv’tza Tzuk Eitan, meaning Operation “Mighty Cliff” or “Solid Rock”; the choice of translation is considered by some as a softening of the original Israeli term, masking the aggressive aims of the IDF mission to the international public. See Shoshana Kordova, “Word of the Day / Tzuk: Cast Lead II – Why is the English name of Operation Protective Edge so different from the Hebrew version? And what does Tzuk Eitan really mean anyway?” Ha'aretz, 19 July 2014:

http://www.haaretz.com/news/features/word-of-the-d... - see Avi Shlaim 'Israel, the Palestinians and the Conflict in Gaza'

[3] Many have said that in this conflict – it has been said of earlier conflicts but this time it is said much louder – the Israelis have committed war crimes:

The Secretary General of the UN said this of an Israeli attack on a school in Gaza:

'I saw whole communities destroyed, and an economy in ruins. I met with the parents of some of the more than 500 children killed in the fighting. I heard heart-breaking accounts of epic loss. So many people are homeless with winter approaching. .......... At the same time the level of destruction is serious, so serious, that I couldn't believe. I said that the level of destruction was much, much more serious than those in 2009. ............ the schools, they knew that people were being accommodated. They were all – children, women and old people – displaced people. I really strongly condemn how come Israeli soldiers who were firing against these schools. I saw for myself during my visit to Jabaliya school and other IDP [internally displaced person] collective centres. It was quite a heartbreaking experience for me.' The Secretary General also said through a spokesman:"The Israeli Defence Forces have been repeatedly informed of the location of these sites ..... This attack [at a school], along with other breaches of international law, must be swiftly investigated and those responsible held accountable. It is a moral outrage and a criminal act,"

Navi Pillay, outgoing UN High Commissioner for Human Rights speaking in Geneva said house demolitions and the killing of children raise the 'strong possibility' that Israel is violating international law. The Israeli army has been accused of targeting civilian areas, as well as using flechette shells[3] during its offensive in Gaza, which can cause widespread harm and death to civilians."

The Russell Tribunal, an informal tribunal of academics, lawyers and intellectuals, operating within the Bertrand Russell Peace Foundation has taken evidence about the Gaza conflicts and found established such overarching features of Israel's regime vis-à-vis the Palestinians such apartheid and 'sociocide'. Following the 2014 attack, for the first time, the crime of genocide has been mentioned in relation to the crimes committed in Gaza. The tribunal's decisions speak of the fine line between a crime against humanity and a crime of genocide noting the critical 'intent to destroy' element for the crime of genocide defined by the judges at the International Criminal Tribunal for the Former Yugoslavia (ICTY) as: 'When persecution escalates to the extreme form of willful and deliberate acts designed to destroy a group or part of a group, it can be held that such persecution amounts to genocide.

[4]In none of these topics does the citizen need to have spent years in research to have an informed view. It should be possible - and is where there is the will – to provide adequate information in a straightforward way because most human problems are ultimately themselves pretty straightforward – excessive complexity of understanding may be what is wished by rulers as a way to obscure not reveal how decisions can be made.

[5] Avraham "Avi" Shlaim FBA is an Iraqi-born British/Israeli historian. He is emeritus professor of International
Relations at the University of Oxford and a fellow of the British Academy


[7] Dr Tromp, a political scientist, worked for 12 years experience at the Prosecutor's office of the ICTY and was senior researcher for the Milošević trial throughout.

[8] It is the dream we spoke of when explaining how Ben Ferencz hopes it may be possible to accelerate the process of outlawing aggressive war through broad interpretation of Crimes Against Humanity as we explained in our last two lecture in the spring and summer. It is why - of course, onlookers at a vicious fist fight should wish that he man wronged had been able to air his grievances without any violence and without exposing himself - victim though he may be - to heavy punishment for breaking the rule of fighting.


[14] Likud Party Charter, 1999: "The Jewish communities in Judea, Samaria and Gaza are the realization of Zionist values. Settlement of the land is a clear expression of the unassailable right of the Jewish people to the Land of Israel and constitutes an important asset in the defense of the vital interests of the State of Israel. The Likud will continue to strengthen and develop these communities and will prevent their uprooting." See http://mondoweiss.net/2011/11/netanyahu%E2%80%99s-party-platform-flatly-rejects-establishment-of-palestinian-state#sthash.IUWvvMLM.dpuf.


The first two goals were the officially stated “Operation Goals” of Protective Edge on the IDF Blog:
http://www.idfblog.com/blog/2014/08/05/operation-protective-edge-numbers/.

Leading expert in the area and co-author of ‘Archbold International’ the authoritative international textbook on criminal courts.

The issue of the war unlawful from its start is dealt with later. Not clear


Comparable with UK in 1940 or the threat from nuclear attack during the Cold War.

The Iraq missile attacks in 1991 set the tone for an enduring awareness of this threat.

The 1(BR)Corps defensive plans were shaped by the neighbouring German Corps’ forward line of own troops (FLOT) which was as close to the Inner German Border as possible. This meant that the British had to use ground on the Hannover plain that was not best suited to executing the task in order to maintain a contiguous line of defence.

The largest group of Palestinian refugees originate from areas inside the state of Israel and were displaced during the 1948 Israeli-Arab war. http://www.forcedmigration.org/research-resources/expert-guides/palestinian-refugees-in-the-west-bank-and-the-gaza/alldocuments

The air activity which preceded landings in the Falklands in 1982 was not designed to bring Argentina to the negotiating table since the declared objective was to recapture the islands. In 1991 the preparatory bombardment of Iraq (including Baghdad) was designed to set the conditions for the expulsion of Iraqi forces from Kuwait.

There is evidence from a number of sources that the Land incursion into Gaza started on 17th July.

This may be related to the implementation of the Hannibal protocol.

Giora Eiland, "In Gaza, there is no such a thing as 'innocent civilians'". Ynet News, 8 May 2014: http://www.ynetnews.com/articles/0,7340,L-4554583,00.html; "Israeli General: No Civilians in Gaza," The Daily Beast, 4 August 2014: http://www.thedailybeast.com/cheats/2014/08/04/israeli-general-no-civilians-in-gaza.html. As another instance of dehumanisation of Palestinians, an op-ed article by blogger Yochanan Gordon entitled "When Genocide is Permissible" published in The Times of Israel on 1 August 2014, was removed due to its inappropriate content; see


[56] https://www.youtube.com/watch?v=KT_5Dz7ThYw. 16.07.2014

[57] http://www.ynet.co.il/articles/0,7340,L-4559989,00.html (18.08.2014)


[59] The USA, and probably Europe, will probably do a great deal to keep the Israel-Palestinian conflicts away from courts and for long enough the Palestinian authority, under Mahmoud Abbas, failed to take steps to refer the conflict to the International Criminal Court with both sides of the conflict being investigated. His approach may have reflected threats by the USA and Europe to penalize Gaza and the West Bank should there be a referral to the court. by the Authority. The Palestinian authority has now effectively referred the matter to the court; outcome awaited.

[60] I had been brought up by my father, a somewhat anti-establishment trade unionist, to follow the principle that he may have incorrectly attributed to Voltaire rather than to Voltaire's biographer of fighting to the death for the other person to have a right to express his opinion, however contrary. What Voltaire actually expressed (in different terms) and my father both meant was not that the other side should be allowed time to speak before the listener weighs in without thinking with her/his own strongly held views but that the other side should be attended to with open ears and minds. This principle was in the team's minds as we worked in a measured way being under no particular time pressures and we met bilaterally, trilaterally and finally quadrilaterally, sleeping on things in the meantime. If, in the end, we tended to reach identical conclusions then this process may have made our reasoning processes more than less reliable. But on this we can only express hope.