



The EU's Schizophrenic Position on Hamas



An Evaluation of European Policy towards Hamas
and Recommendations for a Better Future in the Gaza Strip



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Executive Summary

In 2017, the European Court of Justice ruled on an appeal by the European Council and set forth that Hamas will remain on the list of terror organizations. This appears to indicate that the European Union (EU) is convinced of the terrorist nature of Hamas, de-legitimizes the organization and tries to prevent its funding. However, this report shows that the EU's position concerning Hamas is not so clear-cut. Firstly, the EU faces challenges implementing the prevention of funding to Hamas due to its own provision of humanitarian aid to the Gaza Strip, which often implicitly benefits Hamas who maintain effective control over the area. More interestingly, the EU's political response is often highly critical of Israel when addressing the blockade of the Gaza Strip and the hostilities there. This latest report shows that this criticism is an attempt to transfer responsibility from Hamas to Israel. It is important to understand that these political responses by the EU implicitly consolidate Hamas' rule and in a sense, they become a source of legitimacy for the organization. Moreover, the report shows that the EU's response should be understood in a broader framework, in which it legitimizes Hamas as an organization fighting a legitimate struggle for the Palestinian people, without condemning its methods and practices of terrorism. This report will counter this underlying assumption and urges the EU to acknowledge the responsibility Hamas has in creating the humanitarian crisis in the Gaza Strip. The main argument is that the rule of a terrorist organization over the Gaza Strip is problematic, both for the local population and for Israel. Therefore, it proposes that the EU should problematize the rule of Hamas, and implement measures that will either put pressure on Hamas to abandon its terrorist identity, or that will lead to the complete removal of Hamas from control over the Gaza Strip.

1. Introduction



1.1 Context and Framework

In July 2017, the European Court of Justice (ECJ) ruled that Hamas was rightly put on the list of terror organizations between July 2011 and July 2014.¹ This judgment was a response to the appeal of the European Council against a decision by the General Court, which had ruled that Hamas should not have been on the list during that time.² Even though the Advocate General had provided an advisory opinion stating the ECJ should take the same position as the General Court, the ECJ eventually decided in favor of the European Council.³ While these deliberations were taking place, there was another case pending concerning Hamas' request to be removed from the list from March 26, 2015.⁴ This report will analyze the practical implications of the listing of Hamas as a terror organization and present it in perspective to the broader European policy towards the Gaza Strip.



1.2 Hamas on the EU Terrorist List

In the aftermath of the 9/11 terrorist attacks, the European Union decided that it should create a terrorist list.⁵ In 2001, the EU decided to add the military wing of Hamas to this newly created list based on decisions made by both the UK and the US governments in this regard.⁶ Two years later, it was resolved that the entire Hamas organization should be listed and has been ever since.⁷

1 Judgment of 26 July 2017, Council of the European Union versus Hamas, Case C-79/15, ECLI:EU:C:2017:584, paragraph 1. <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1501573981335&uri=CELEX:62015CJ0079>

2 Ibid

3 Opinion of Advocate General Sharpston delivered on 22 September 2016. Council of the European Union versus Hamas, Case C-79/15 P, ECLI:EU:C:2016:722, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1501573981335&uri=CELEX:62015CC0079>

4 Action brought on 2 June 2015, Hamas v Council, Case T-289/15, 2015/C 245/52, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62015TN0289>

5 EU, 'Restrictive measures to combat terrorism: Summary of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism', <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISUM:l24402>

6 Judgement of 26 July 2017, Council of the European Union versus Hamas, Case C-79/15, ECLI:EU:C:2017:584, paragraph 9, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1501573981335&uri=CELEX:62015CJ0079>

7 EU, Council Decision (CFSP) 2017/154 of 27 January 2017: updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, and repealing Decision (CFSP) 2016/1136. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D0154&from=EN>

The addition of Hamas to the terrorist list seems to indicate a clear understanding in Europe that Hamas is a terrorist organization. As evidenced by the European Council defending the placement of Hamas on the terrorist list in the General Court, where they refer to the organization as a ‘a group involved in terrorist acts which from 1988 onwards carried out, and acknowledged responsibility for, regular attacks against Israeli targets, including kidnapping, stabbing and shooting attacks against civilians, and suicide bomb attacks on public transport and in public places.’⁸ Moreover, the Council also referred to Hamas’ ongoing rocket attacks into southern Israel and the kidnapping of the IDF soldier Gilad Shalit.⁹

2. Practical Implications of Hamas being on the EU Terrorist List



2.1 Financial Dimension

The adding of a group or an individual to the EU terrorist list primarily has financial ramifications. Placement on this list allows the European Community to freeze funds and other financial assets or economic resources.¹⁰ Moreover, it also allocates a duty on the European Community to prevent access to ‘funds, financial assets or economic resources or financial or other related services’ to the organization, ‘directly or indirectly’.¹¹ The reasoning behind the limiting of financial resources for terrorist organizations is that ‘the lifeblood of terrorist organizations’ is this money.¹² It is also believed that following the trail of finances could uncover broader networks affiliated to these organizations.¹³

However, it is hard to say to what extent this financial tactic has been successful, as no public data is available that shows how much money has been frozen by the EU. This

8 Judgment of the General Court (Second Chamber) on 17 December 2014, *Hamas versus Council of the European Union*, Case T-400/10, ECLI:EU:T:2014:1095, paragraph 94, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62010TJ0400>

9 Ibid

10 EU, Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism, article 2 and 3, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001E0931>

11 Ibid

12 Peter R. Neumann, “Don’t follow the Money: The Problem with the War on Terrorist Financing”, *Foreign Affairs*, vol. 96, no. 4, 2017, pp 93,

<http://journals.sagepub.com.proxy-ub.rug.nl/doi/pdf/10.1177/1367549408091845>

13 Michael Levi, “Combating the Financing of Terrorism: A history and Assessment of the Control of ‘Threat Finance’”, *British Journal of Criminology*, vol. 50, no.4, 2010, pg 662

makes it hard for outsiders to evaluate the efficiency and necessity of the terrorist list. In general, the tactic of freezing funds has been criticized for its ineffectiveness in cutting the supply of money to terrorist organizations on a worldwide scale.¹⁴ This criticism stems from the claim that on most occasions only a small amount of funds are detected, since terrorist organizations have diverse methods of receiving money.¹⁵ Nevertheless, the moral principle of preventing financial support of terrorist groups on European soil is laudable and at the very least, makes it harder for Hamas to publicly receive funding. Nevertheless, more transparency on the EU level is still necessary to ascertain whether this goal is actually being achieved.

Ironically, the EU itself has indirectly provided funds to Hamas by providing aid to Palestinians via NGOs. This systematic problem has been severely underestimated by the EU. In fact, according to one senior EU official in the region, NGOs function well and there are plenty of effective oversight measures in place to ensure that aid reaches the population, but is impossible to control the behavior of individuals. The official stated that the claim that the EU is 'systematically financing terrorists' is 'completely bullocks' and called it 'an obsession of Israel's right-wing'.¹⁶ However, this conviction denies the inherent problem of providing money to a region controlled by a terrorist organization. Even more specifically, the effective control of Hamas in the Gaza Strip influences aid provision in two ways: firstly, the dependence of NGOs on the governing entity of a country puts Hamas in a position where it can pressure these organizations to conform to its will.¹⁷ This can be seen in the fact that Hamas does not allow the curriculum in UNRWA schools to be changed.¹⁸ Other examples are the practice of stealing aid, applying pressure for the appointment of Hamas officials to aid organizations,¹⁹ and restrictions imposed on NGOs operating in the Gaza Strip.²⁰ Secondly, and closely connected to the first phenomenon, is the close association between NGOs and Hamas which is often apparent. For example, UNRWA has awarded important positions to two

14 Neumann, Don't follow the Money, 97

15 ibid

16 Interview with a senior EU official in the region, who wished to remain anonymous.

17 The Freedom House, 'the Gaza Strip', Freedom in the World: 2016, Freedomhouse.org, <https://freedomhouse.org/report/freedom-world/2016/gaza-strip>

18 The Meir Amit Intelligence and Information Centre, 'Hamas Strongly Attacks UNRWA for Its Intention to Introduce Changes in the Curriculum of Its Elementary Schools', terrorism-info.org.il, 2 April 2017, <http://www.terrorism-info.org.il/en/21187/> or Elhanan Miller, 'Hamas Bashes UNRWA's Human Rights Curriculum', TheTimesofIsrael.com, 18 February 2014,

<https://www.timesofisrael.com/hamas-bashes-unrwas-human-rights-curriculum/>

19 Hani Almadhoun, 'Not For Profit: How Hamas Sabotages the Gaza Charities', Huffingtonpost.com, http://www.huffingtonpost.com/hani-almadhoun/not-for-profit-how-hamas_b_518386.html and Aljazeera, 'UN says Hamas seized Gaza aid', Aljazeera.com, 5 February 2009, <http://www.aljazeera.com/news/middleeast/2009/02/20092416031770359.html>

20 Barak Ravid, 'EU Envoys: Gaza's Fortunes Will Improve if Hamas Forgoes Violence', Haaretz.com, 11 March 2014, <http://www.haaretz.com/israel-news/.premium-1.579176>

top leaders of Hamas, namely Suhail Al-Hindi and Al-Jamassi Muhammed. In other words, the allocation of the €82 million donated by the EU to UNRWA this coming year will certainly be influenced by members of an organization the EU itself has deemed to be a terrorist organization.²¹ Similarly, Hamas has successfully exerted influence in UNDP, World Vision and Islamic Relief Web, all of which have received support from the EU.²²

It could be argued that this poses no serious threat, as the dominant presence of Hamas in society means it is also involved in social activities and does not necessarily mean that the EU is funding terrorist activities. However, the situation is extremely problematic since aid can easily be diverted from alleviating the humanitarian needs of the population to the terrorist branch of Hamas, as can be seen in the case of the UNDP, where a maritime jetty was built for Hamas “using UNDP resources”.²³ In addition, there is the danger that aid becomes intertwined with the radical Islamic and anti-Semitic ideology of Hamas, which is the foundation of Hamas' identity as a terrorist organization.²⁴ For example, highly anti-Semitic content was found on the personal Facebook page of by the PR director of an EU-funded hospital.²⁵ As if linking medical care and the provision of food with hate for Jews is not bad enough, one can only imagine the detrimental effects this has on education. This is not a purely hypothetical situation, as can be seen in the fact that Hamas leader Al-Hindi has been the leader of UNRWA schools for years, or in the earlier mentioned example of Hamas refusing to introduce new school curriculum.²⁶ Underestimating the connection between Hamas' social work and its ideology of hate is a mistake that the Israeli government has made themselves when they supported Hamas in its earlier years as a

21 European External Action Service, ‘Press Release: EU and UNRWA sign new landmark agreement and reaffirm joint commitment to support Palestine refugees’, eeas.europa.eu, 7 June 2017,

https://eeas.europa.eu/headquarters/headquarters-homepage/27632/eu-and-unrwa-sign-new-landmark-agreement-and-reaffirm-joint-commitment-support-palestine_en

22 Reuters, ‘Israel sentences Palestinian U.N. worker for aiding Hamas in plea deal’, [Reuters.com](http://www.reuters.com), 4 January, 2017,

<http://www.reuters.com/article/us-israel-palestinians-gaza-idUSKBN14O26Z> and NGO Monitor, ‘Islamic Relief Worldwide (IRW)’, [Nga-monitor.org](http://www.ngo-monitor.org), 5 September 2017, http://www.ngo-monitor.org/ngos/islamic_relief_worldwide_irw_/ and NGO Monitor, ‘World Vision’, [Nga-monitor.org](http://www.ngo-monitor.org), 22 September 2016, http://www.ngo-monitor.org/ngos/world_vision_international/

23 Reuters, ‘Israel sentences Palestinian U.N. worker for aiding Hamas in plea deal’, [Reuters.com](http://www.reuters.com), 4 January, 2017,

<http://www.reuters.com/article/us-israel-palestinians-gaza-idUSKBN14O26Z>

24 Matthew Levitt, and Washington Institute for Near East Policy. *Hamas : Politics, Charity, and Terrorism in the Service of Jihad*. New Haven : Yale University Press, 2006, 19. He explains that the Dutch AIVD has scrutinized this link between social works and terrorist aims.

25 Sue Surkes, “Top employee at EU-, UN-funded Gaza hospital quotes ‘Protocols of Zion’”, [Timesofisrael.com](http://www.timesofisrael.com), 14 February 2017, ‘<http://www.timesofisrael.com/top-employee-at-eu-un-funded-gaza-hospital-quotes-protocols-of-zion/>

26 TOI staff and AP, “UNRWA’s Gaza union head, accused of Hamas ties, no longer employed by agency”, [Timesofisrael.com](http://www.timesofisrael.com), 23 April 2017, <http://www.timesofisrael.com/un-agency-no-longer-employing-gaza-staffer-accused-of-hamas-ties/>

social movement.²⁷ This is a mistake they are not willing to make again and the EU should also be careful not to fall into the same trap.

Overall, the listing of Hamas as a terrorist organization and its financial strategy is good practice, morally and theoretically. However, the practical efficacy is limited because of the multiplicity of ways that Hamas can arrange funding. Moreover, the EU needs to realize and acknowledge that the effective control of Hamas in the Gaza Strip problematizes the provision of aid and that this will remain a problem that is not ‘completely bullocks’. Even though aid should continue to be provided, there should be greater scrutiny and control of the NGOs that the EU is supporting. Moreover, the EU should condemn involvement of Hamas in ‘neutral’ NGOs, and the appropriation of NGO funds. Even though the effects of this pressure might be limited, it will at least acknowledge the responsibility the EU has in preventing the anti-humanitarian aims of Hamas.

2.2 Political Dimension

This next section will move beyond the direct legal implications of the recognition of Hamas on the EU's list of terrorist organizations and will show how this listing influenced the broader attitude of the EU towards the conflict between Hamas and Israel. To analyse this approach, the European attitude towards the Gaza blockade and the Gaza wars will be examined.

2.2.1 Gaza Blockade

As previously argued, the provision of aid to Gaza is necessary but remains problematic due to Hamas’ effective control over the area. According to the Israeli government, this does not only apply to humanitarian aid, but also to the free movement of goods and persons in and out the Gaza Strip in general. Consequently, the border controls between Gaza and Israel were tightened in 2007.²⁸ Two years later, a naval blockade was implemented as well.²⁹

The EU has been highly critical of this blockade, and it has argued that it is creating a humanitarian crisis with ‘devastating humanitarian and economic impact’ and that it is leading to ‘economic and social despair among Palestinians’.^{30, 31} In the past, some

27 The Reut Institute, “Hamas”, reut-institute.org, 10 October 2005, <http://reut-institute.org/Publication.aspx?PublicationId=371>

28 Jews Down Under, ‘UN’s Confusion on the Legality of Israel’s Blockade of Gaza’, [jewsdownunder.com](https://jewsdownunder.com/2015/07/16/uns-confusion-on-the-legality-of-israels-blockade-of-gaza/), 16 July 2015, <https://jewsdownunder.com/2015/07/16/uns-confusion-on-the-legality-of-israels-blockade-of-gaza/>

29 Ibid

30 European Commission, ‘European Civil Protection and Humanitarian Aid Operations: Palestine’, [ec.europa.eu](http://ec.europa.eu/echo/where/middle-east-north-africa/palestine_en), 10 May 2017, http://ec.europa.eu/echo/where/middle-east-north-africa/palestine_en

politicians have made a comparison between the Gaza Strip and a ghetto³² or ‘an open air prison’,³³ which has led the EU to continuously call for the lifting of the blockade. To illustrate this point, the European Commissioner for Aid and Civil Protection called for the ‘immediate, sustained and unconditional opening’ of the Gaza Strip,³⁴ reasoning that open borders would provide a better chance for Gaza to develop.³⁵ For example, more construction materials should be allowed to enter in order to rebuild civilian infrastructure.³⁶ However, despite awareness of ‘legitimate security concerns’ about open borders, the EU fails to provide specific measures to address them.³⁷

Failing to address these security concerns naively assumes that Hamas will use the free movement of goods and persons for positive goals. However, there are many indications that it will be used for negative efforts. For example, Dennis Ross, a former American diplomat, successfully pleaded for Israel to allow more construction materials into the Gaza Strip, reasoning that it would be used to build schools, hospitals, and other basic civilian infrastructure. In hindsight, he admitted he had been wrong, and that Hamas had instead used these construction materials to improve its militant infrastructure.³⁸ Similarly, EU officials have voiced concerns in the past that their donated construction material had been confiscated by Hamas.³⁹ It must be noted that military infrastructure, such as tunnels, are often built under existing civilian areas. This

31 European Commission, ‘International Cooperation and Development: The blockade in Gaza – 10 years on’, ec.europa.eu, 13 June 2016, https://ec.europa.eu/europeaid/news-and-events/blockade-gaza-10-years_en

32 Charles Tannock, ‘EU officials condemn Israeli action Gaza’, charlestannock.com, 11 October 2007. <http://www.charlestannock.com/pressarticle.asp?ID=1660>

33 Interview with a senior EU official in the region, who wished to remain anonymous.

34 European Commission, ‘Press Release: Commissioner Kristalina Georgieva calls for the immediate, sustained and unconditional opening of Gaza Strip crossings’, ec.europa.eu, 17 May 2011. http://europa.eu/rapid/press-release_IP-11-583_en.htm?locale=en

35 Ibid

36 Council of the European Union, ‘Statement by Catherine Ashton, High Representative of the European Union for Foreign Affairs and Security Policy/European Commission Vice-President on announcement by Israel on Gaza blockade’, consilium.europa.eu, 5 July 2010. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/115675.pdf

37 European Union External Action Service, ‘European Union Heads of Mission visit Gaza’, eeas.europa.eu, 8 November 2016. https://eeas.europa.eu/delegations/israel/14324/european-union-heads-of-mission-visit-gaza_en & Interview with a senior EU official in the region, who wished to remain anonymous.

38 Stephen M. Flatow, ‘Humanitarian ‘Aid’ to Gaza Hides Hamas Terror Supplies’, *algemeiner.com*, 13 April 2017, <https://www.algemeiner.com/2017/04/13/humanitarian-aid-to-gaza-hides-hamas-terror-supplies/>

39 Dave Bender, ‘EU Officials Warn: Hamas Siphoning Off Reconstruction Funds to Rearm, Despite Aid Projects’, *algemeiner.com*, 17 November 2014, <https://www.algemeiner.com/2014/11/17/eu-officials-warn-hamas-siphoning-off-reconstruction-funds-to-rearm-despite-aid-projects/>

increases the risk that these areas will become collateral damage in a clash with Israel, thereby Hamas puts its own civilians at mortal risk.⁴⁰

Similarly, the assumption that all goods shipped to the Gaza Strip is a humanitarian effort is also a consistent argument in the EU, whilst ignoring that the area is under the effective control of a terrorist organization. This can be seen in the sharp criticism Israel received after the Gaza Flotilla raid, which showed the EU does not understand the necessity of inspecting products that enter the Gaza Strip.⁴¹ This is especially true when these shipments, as in the case of the Gaza Flotilla raid, are accompanied by 'passengers who have previously expressed their desire to die as Martyrs.'⁴² This mindset is shared by the director of the European Council of Foreign Affairs (the largest and most prestigious European think tank on foreign affairs) concerning the Middle East, who argues for the setting up of an independent port instead of demilitarization of the Gaza Strip.⁴³ This misconception is quite perplexing, as the EU itself has recognized the necessity to prevent the supply of weapons to terrorist organizations in its fight against terrorism.⁴⁴ This is precisely what Israel is doing through its successful naval blockade of Hamas, which can be considered successful based on the large amount of weapons and materials to build rockets that have been intercepted by Israeli security personnel.⁴⁵

Moreover, internal EU policy has recognized the necessity to carefully supervise border crossings, as there is a chance that terrorists will enter.⁴⁶ In Israel, the situation is even more precarious, since the land adjacent to its borders is actually governed by a terrorist organization. In the past, there have been several incidents where 'ordinary civilians' have tried to cross the border into Israel with the hope of carrying out a terrorist attack. One such occurrence took place with people traveling from the Gaza Strip into Israel for medical purposes.⁴⁷ Hence, any position that calls on Israel to

40 Shai Ben-Ari, 'IDF reveals images of residential buildings built atop Hamas tunnels', i24news.tv, 10 August 2017, <https://www.i24news.tv/en/news/israel/diplomacy-defense/152575-170810-idf-reveals-images-of-residential-buildings-built-atop-hamas-tunnels>

41 Robert S. Wistrich, *Anti-Judaism, Antisemitism, and Delegitimizing Israel*. Lincoln, Nebraska : University of Nebraska Press, 2016, 111

42 *ibid*

43 Daniel Levy, 'Commentary: Demilitarising Gaza is not a solution, it's a trap', ecf.eu, 15 August 2014, http://www.ecfr.eu/article/commentary_demilitarising_gaza_is_not_a_solution_its_a_trap

44 Council Common Position of 27 December 2001 on combating terrorism, 2001/930/CFSP, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32001E0930>

45 Judah Ari Gross, 'Israel foiled 1,226 smuggling attempts at Gaza crossing last year', TimesofIsrael.com, 15 January 2017, <http://www.timesofisrael.com/israel-foiled-1226-smuggling-attempts-at-gaza-crossing-last-year/>

46 Council, 2001/930/CFSP

47 Yonah Jeremy Bob, 'Israel indicts Gazan for Smuggling Hamas Explosives in Medical Supplies', jpost.com, 18 May 2017, <http://www.jpost.com/Arab-Israeli-Conflict/Gaza-woman-indicted-for-smuggling-Hamas-explosives-in-medical-supplies-492110>

completely lift the restrictions of movement and access to the Gaza Strip underestimates the real security threat Israel is facing. What is even more interesting is that such measures would certainly never be applied in Europe itself.

Nevertheless, it could still be argued that even though the rule of a terrorist organization is problematic, the local population should not have to endure 'collective punishment'.⁴⁸ However, this is not what the Israeli government is implementing. Not only is this morally unacceptable from Israel's perspective, it is in Israel's interest to improve the humanitarian situation to prevent further radicalization. For this reason, humanitarian supplies are shipped daily to the Gaza Strip including enormous amounts of construction materials.⁴⁹ In 2016, 500 trucks of humanitarian supplies entered Gaza *every day* without effective inspection measures.⁵⁰ Additionally, Gazan residents were allowed to enter Israel for medical treatment, even family members of Hamas.⁵¹ The most telling example is that the daughter, granddaughter and mother-in-law of Hamas leader Haniyeh received treatment in Israeli hospitals.⁵²

Furthermore, Israel is also trying to solve the water crisis in the Gaza Strip by supplying 10 million cubic meters of water a year.⁵³ With an estimated population of 1.8 million people, this amounts to at least 15 litres of water per person per day. This is double the bare minimum required for human consumption, and exactly the amount that is needed in emergency situations, according to WHO standards.⁵⁴ Moreover, Israel has offered to double this amount.⁵⁵ Also in this regard, there is evidence that Hamas has confiscated water bottles and has been selling them to the population instead of freely distributing them. According to an Imam in Gaza, Hamas has been selling big bottles of water to the thirsty population for 20 shekels and smaller ones for 10 shekels per

48 European Parliament resolution of 15 January 2009 on the situation in the Gaza Strip, 2010/C 46 E/14, section C, <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1503573181393&uri=CELEX:52009IP0025>

49 Israeli Ministry of Foreign Affairs, 'Reconstruction in Gaza', mfa.gov.il, 23 March 2017. <http://mfa.gov.il/MFA/ForeignPolicy/Peace/Humanitarian/Pages/Reconstruction-in-Gaza.aspx>

50 Gross, Israel foiled 1226 smuggling attempts, <http://www.timesofisrael.com/israel-foiled-1226-smuggling-attempts-at-gaza-crossing-last-year/>

51 Jewish Virtual Library, 'Israeli Humanitarian Operations: Aid to the Gaza Strip (June 2010 –Present)', [jewishvirtuallibrary.org](http://www.jewishvirtuallibrary.org/israeli-humanitarian-aid-to-the-gaza-strip), <http://www.jewishvirtuallibrary.org/israeli-humanitarian-aid-to-the-gaza-strip>

52 Toi Staff, 'Hamas chief's sister treated in Israeli hospital', [timesofisrael.com](http://www.timesofisrael.com/hamas-spokesmans-sister-treated-in-israeli-hospital/), 3 November 2014, <http://www.timesofisrael.com/hamas-spokesmans-sister-treated-in-israeli-hospital/>

53 Israeli Ministry of Foreign Affairs, 'Reconstruction in Gaza', mfa.gov.il, 23 March 2017. <http://mfa.gov.il/MFA/ForeignPolicy/Peace/Humanitarian/Pages/Reconstruction-in-Gaza.aspx>

54 World Health Organization, 'What is the Minimum Quantity of Water needed', [who.int](http://www.who.int), http://www.who.int/water_sanitation_health/emergencies/qa/emergencies_qa5/en/

55 I24NEWS, 'Israel estimates 96% of water in Gaza undrinkable, warns of worsening crisis', [i24news.tv](https://www.i24news.tv/en/news/israel/142275-170409-israel-estimates-96-of-water-in-gaza-undrinkable-warns-of-worsening-crisis), 4 September 2017, <https://www.i24news.tv/en/news/israel/142275-170409-israel-estimates-96-of-water-in-gaza-undrinkable-warns-of-worsening-crisis>

bottle.⁵⁶ Israel has also supported the construction of water desalination systems⁵⁷ and has urged the international community to support these kinds of projects.⁵⁸

Israel has also been falsely criticized for instigating an energy crisis in the Gaza Strip. Israel is the main supplier of energy, meeting half of the population's daily demand for electricity at 225 mW, which and is paid for by the Palestinian Authority (PA). About 30 mW is supposed to be supplied by Egypt but these power lines are often inoperative.⁵⁹ Gaza also has its own power plant, with an optimal capacity of 140 mW,⁶⁰ but currently produces only half its capacity due to damages sustained during the last conflict with Israel, and its dependency on fuel.⁶¹ Israel reduced the electricity supply to 125mW at the request of the PA who was attempting to regain power over Gaza from Hamas. The PA refused to pay altogether but subsequently agreed to pay for 75mW, which would allow for 3hrs of electricity per day.⁶² However, Israeli Energy Minister Yuval Steinitz insisted on maintaining the energy level at 125 mW in order to avoid a humanitarian crisis.⁶³ At the same time, Israel is also cooperating with the Quartet to build a gas pipeline into the Gaza Strip.⁶⁴

Responsibility for the energy crisis cannot be placed on the shoulders of Israel since Hamas should be held accountable to use its resources for the welfare of the population. For example, the reluctance of Israel to supply fuel to Hamas should be understood in the light of evidence that Hamas has used fuel for terrorist purposes. The EU itself decided to cut fuel supplies to Hamas once they discovered it was being used for military purposes instead of benefitting the population.⁶⁵ Moreover, Hamas could easily pay the electricity bill but refuses to do so, insisting that the PA should pay

56 Mudar Zahran, , 'Gazans Speak Out: Hamas War Crimes', embassies.gov.il/Zagreb, 29 September 2014, <http://embassies.gov.il/zagreb/NewsAndEvents/Pages/Gazans-Speak-Out---Hamas-War-Crimes-.aspx>

57 Israeli Ministry of Foreign Affairs, 'Reconstruction in Gaza', mfa.gov.il, 23 March 2017.

<http://mfa.gov.il/MFA/ForeignPolicy/Peace/Humanitarian/Pages/Reconstruction-in-Gaza.aspx>

58 I24NEWS, 'Israel estimates 96% of water in Gaza undrinkable, warns of worsening crisis', i24news.tv, 4 September 2017, <https://www.i24news.tv/en/news/israel/142275-170409-israel-estimates-96-of-water-in-gaza-undrinkable-warns-of-worsening-crisis>

59 GISHA, 'The Gaza Electricity Crisis-FAQ's', Gisha.org, 19 June 2017, <http://gisha.org/en-blog/2017/06/19/the-gaza-electricity-crisis-faqs/>

60 GISHA, 'The Gaza Power Plant', Gisha.org, <http://gisha.org/gazzamap/395>

61 GISHA, 'The Gaza Electricity Crisis-FAQ's', Gisha.org, 19 June 2017, <http://gisha.org/en-blog/2017/06/19/the-gaza-electricity-crisis-faqs/>

62 Tovah Lazaroff, 'Israel reduces Gaza electricity after PA refuses to pay', Jpost.com, 25 May 2017, <http://www.jpost.com/Middle-East/Israel-reduces-Gaza-electricity-after-PA-refuses-to-pay-493927>

63 Tovah Lazaroff, 'Israeli Minister halts Gaza's energy reduction', Jpost.com, 1 June 2017, <http://www.jpost.com/Arab-Israeli-Conflict/Israeli-Minister-halts-Gaza-electricity-reduction-494576>

64 Avi Issacheroff and Toi Staff, 'Israel, PA to move ahead with Gaza gas pipeline', timesofisrael.com, 15 September 2016, <http://www.timesofisrael.com/israel-pa-to-move-ahead-with-gaza-gas-pipeline/>

65 Lucia Kubusova, 'EU moves to avoid indirect cash to Hamas', euobserver.com, 21 August 2007, <https://euobserver.com/foreign/24612>

the entire bill, preferring to spend the money on rockets and weapons or to line their own pockets.⁶⁶ It should also be understood that Israel finds itself at an impasse with both the PA and Hamas maneuvering at the expense of the Gazan population. No matter how it responds Israel will be blamed by either one of the two factions. For example, if Israel refused the request of the PA to cut power supplies, it would undermine the PA's sovereignty. On the other hand, granting the request fuels the accusation that Israel is causing the humanitarian crisis. To explain this difficult position, Netanyahu has rightly argued that it is an internal Palestinian matter.⁶⁷ Nevertheless, Israel has recognized the humanitarian problems this might cause and has warned the PA that if they do not find a solution with Hamas, it will supply the electricity anyway and deduct the cost of the utility from taxes owed to the PA that Israel collects on their behalf.⁶⁸

Overall this shows that there should be a deeper understanding in the EU that the real problem with the Gaza Strip is the fact that a terrorist organization controls the area, and that this is the cause of the humanitarian crisis. The heart of the problem is the identity of Hamas as a terrorist organization in which each goal, including the welfare of Gazans, is subordinate to its ultimate goal - the destruction of Israel. This can be seen in the fact that Israel has offered humanitarian assistance in exchange for peace. For example, Defence Minister Avigdor Lieberman offered major development aid, including a seaport and airport, in exchange for 'the giving up of rockets and attack tunnels'.⁶⁹ To which senior Hamas official Mahmoud Zahar replied, "if we wanted to turn the Gaza Strip into Singapore, we could have achieved that with our own hands."⁷⁰

Since Hamas' care for the population is subordinate to its terrorist aims it continues to exert its power through blackmailing Israel, and the rest of the international community, with the humanitarian needs of the Gaza Strip; the energy crisis is a good example. This situation can be compared with a hostage crisis, in which Hamas has, in essence, kidnapped the population. This was implicitly acknowledged by an EU official, who supported the cuts made by Abbas, saying, 'What other choice does Abbas

66 Avi Issacheroff, 'Hamas could easily solve Gaza's electricity crisis, but prefers to finance tunnels and rockets', timesofisrael.com, 14 June 2017, <http://www.timesofisrael.com/hamas-could-easily-solve-gazas-electricity-crisis-but-prefers-to-finance-tunnels-and-rockets/>

67 Stuart Winer, 'Netanyahu: Israel not seeking escalation over Gaza electricity crisis', Timesofisrael.com, 13 June 2017, <http://www.timesofisrael.com/netanyahu-israel-not-seeking-escalation-over-gaza-electricity-crisis/>

68 I24News, 'Israel prepared to unilaterally deduct Gaza electricity costs from PA taxes', i24news.tv, 14 September 2017, <http://www.i24news.tv/en/news/international/middle-east/155454-170914-israel-prepared-to-unilaterally-deduct-gaza-electricity-costs-from-pa-taxes>

69 Bassam Tawil, 'The Offer that Turns the Gaza Strip into Singapore', Gatestoneinstitute.org, 21 February 2017 <https://www.gatestoneinstitute.org/9965/gaza-strip-singapore>

70 Ibid

have?’⁷¹ If this is the case, why does the EU not ask, ‘What other choice does Israel have?’

The incapacity of Israel is exacerbated by Hamas’ control over the minds and actions of Gazans who do not, or cannot, pressure their government, even if they do realise the problem lies with their own leadership. To illustrate this point, when comedian Adel Al-Mashwaky criticized Hamas for the energy shortages via a Facebook video, he was detained.⁷² This is just an individual case of the widespread practice of arbitrary imprisonment, extrajudicial killings, and torture.⁷³ Recent protests by Gazans over the energy crisis were broken up by Hamas, which is often the case.⁷⁴ Hamas tries to counter these legitimate protests by perpetuating its ideology even further. Hence, a part of the Gaza population might be diagnosed with the Stockholm syndrome as a result of years of indoctrination through propaganda and education, in which Israel is blamed for everything and the only proposed solution is the destruction of Israel. This is exemplified by a statement from the son of one of Hamas’ founders, ‘In the mosques, Hamas told us that without shedding innocent blood for the sake of their ideology, we wouldn’t be able to build an Islamic state. They were preparing us from as young as five-years-old.’⁷⁵

It is in this light that the EU’s transfer of responsibility from Hamas to Israel should be understood. It is dangerous and legitimizes the stranglehold Hamas has over the population of the Gaza Strip, Israel and even over the European Union itself. It also legitimizes the murderous narrative that Hamas is spreading about Israel and strengthens the hold Hamas has over Israel, neglecting their own responsibility towards the population and demanding of Israel to take care of them instead. Moreover, by consolidating Hamas’ rule in this manner, the EU places itself in a position where it will have to continue to supply large amounts of money for aid, much of which will go directly to Hamas instead of truly empowering the people of the Gaza Strip. Therefore, the EU should demand of Hamas to take care of its civilians, treating them as human beings and not as hostages.

The political implication of over-emphasizing Israel’s responsibility in the Gaza Strip should also be realized. Israel receives the majority of responsibility over what happens

71 Interview with a senior EU official in the region, who wished to remain anonymous.

72 Nidal Al-Mugrabi, ‘Energy crisis leaves Gaza with barely four hours of power a day’, reuters.com, 12 January 2017, <http://www.reuters.com/article/us-palestinians-gaza-energy-idUSKBN14W1YG>

73 Amnesty, ‘Gaza: Palestinians tortured, summarily killed by Hamas forces during 2014 conflict’, amnesty.org, 27 May 2015, <https://www.amnesty.org/en/latest/news/2015/05/gaza-palestinians-tortured-summarily-killed-by-hamas-forces-during-2014-conflict/>

74 BBC, ‘Gaza electricity crisis: Hamas breaks up protest’, bbc.com, 13 January 2017, <http://www.bbc.com/news/world-middle-east-38604904>

75 Israel Today, ‘Hamas Defector: Gaza Children are Hostages of Terror’, Israeltoday.co.il, 29 July 2014, http://www.israeltoday.co.il/NewsItem/tabid/178/nid/24796/Default.aspx?article=related_stories

in Gaza, yet it cannot influence Hamas' policy towards Gazans and Israel's own population. This awkward position might explain Defense Minister Lieberman's statement earlier this year, saying that in the next war Israel might occupy the Gaza strip, if necessary.⁷⁶ If Israel is the main actor being held accountable for the population of the Gaza Strip, it is understandable why they would want to be in control of the area. However, we all understand that even though some Gazans might actually welcome a genuine occupation of Gaza, the sensitivities of the conflict do not make this a viable option.⁷⁷ Therefore, promotion of the narrative that Israel is the main responsible party for the humanitarian crisis is irresponsible and could ignite a highly volatile situation in the Gaza Strip.

In summary, the suggestion of the EU for complete and free movement of goods and people in the Gaza Strip shows that it fails to acknowledge the problems associated with a terrorist organization ruling the area, and instead transfers the blame to Israel, which legitimizes the rule of Hamas. This practice should be reversed, and the role Hamas plays should be more overtly acknowledged. Hamas should be criticized and pressured by the international community to use their resources more responsibly. Moreover, Gazans should be made aware of the responsibility of their own leadership, instead of laying the blame solely on Israel. This might even empower the residents and leave room for future political change. It is understood that if Hamas would stop their violent methods, the humanitarian situation in the Gaza Strip would improve immediately.⁷⁸ As long as Hamas is a terrorist organization, restrictions on movements and goods is not a defined objective but sadly, a necessity. The EU should strengthen its cooperation with Israel to ensure that the humanitarian needs of the population will be satisfied, instead of continuously condemning it.

2.2.2 The Gaza Wars

Since 2008, Israel has conducted three military operations to ensure a better security situation in the southern part of the country. These operations were meant to stop the ongoing rocket fire and terrorist attacks from the Gaza Strip towards the Israeli civilian population.

In 2008-2009, *Operation Cast Lead* was executed by the Israeli military in response to Hamas not abiding by a ceasefire agreement and persistently firing rockets into Israel.⁷⁹

76 Haaretz, 'Israeli Defense Minister Doesn't Rule Out Occupying Gaza Strip in Next Conflict', Haaretz.com, 25 January 2017, <http://www.haaretz.com/israel-news/1.767283>

77 Zahran, Gazans Speak Out, <http://embassies.gov.il/zagreb/NewsAndEvents/Pages/Gazans-Speak-Out---Hamas-War-Crimes-.aspx>

78 Barak Ravid, 'EU Envoys: Gaza's Fortunes Will Improve if Hamas Forgoes Violence', Haaretz.com, 11 March 2014, <http://www.haaretz.com/israel-news/.premium-1.579176>

79 Mitchell Bard, 'Myths and Facts: Chapter 24: 2008 Gaza War (Operation Cast Lead)', Jewishvirtuallibrary.org, <http://www.jewishvirtuallibrary.org/myths-and-facts-2008-gaza-war-operation-cast-lead-chapter-24>

This operation was understood by the European Council to have been a defensive war, even though demands were made on Israel to react appropriately. For example, the French Presidency of the Council claimed that the response of Israel had been disproportionate.⁸⁰ One external commissioner took a more critical stance even questioning the defensive nature of the conflict.⁸¹ However, in general, it was acknowledged as a *jus ad Bellum*.⁸² At the same time, the European Parliament endorsed the highly controversial UN Goldstone Report about the Gaza war, which accused Israel of committing war crimes, including the wilful killing of civilians.⁸³ Sadly, there were only a few individual EU countries opposed to the report that criticized Israel's conduct in the war, therefore the EU endorsed it.⁸⁴ In addition, a senior EU representative stated that the operation had taken an 'unacceptable toll' on Palestinian civilians.⁸⁵

In 2012, Israel conducted *Operation Pillar of Defence* which lasted for eight days and aimed at crippling the terrorist organization in the Gaza Strip to defend Israel's civilian population.⁸⁶ The official response of the EU was that indeed Israel has the right to defend itself, but at the same time, urged a 'proportionate response'.⁸⁷

In 2014, *Operation Protective Edge*, the third operation in the Gaza Strip, was aimed at stopping the launching of rockets by Hamas and damaging their tunnel infrastructure.⁸⁸ The European Union again reaffirmed the right of Israel to defend itself, and it called on Hamas to stop with its 'indiscriminate firing of rockets'.⁸⁹ At the same time, the EU called on Israel to respond in a proportionate manner and it 'condemned' the loss of

80 The Economist, 'Proportional to What', economist.com, 30 December 2014
<http://www.economist.com/node/12867302>

81 Euro-Mediterranean Human Rights Network, 'Active but Acquiescent: The EU's Response to the Israeli Military Offensive in the Gaza', *adalah.org*, May 2009,
https://www.adalah.org/uploads/oldfiles/features/gaza/Gaza_report_May_2009.pdf, 58

82 *Ibid*, 57-58

83 Alessio Pisano, 'The European Parliament's Resolution on the Goldstone Report', *thenewfederalist.eu*, 22 March 2010, <https://www.thenewfederalist.eu/The-European-Parliament-s-Resolution-on-the-Goldstone-Report>

84 Daniel Schwamenthal, 'Europe should follow Goldstones Lead', *acj.org*, 6 April 2011,
<https://transatlanticinstitute.org/europe-should-follow-goldstones-lead>

85 Javier Solana, 'Statement by EUHR Solana on violence in and around Gaza', *eu-un.europa.eu*, <https://eu-un.europa.eu/statement-by-euhr-solana-on-violence-in-and-around-gaza/>

86 Israel Defence Forces, '2012 Operation Pillar of Defense', *idfblog.com*, <https://www.idfblog.com/about-the-idf/history-of-the-idf/2012-operation-pillar-of-defense/>

87 European Parliament resolution on the situation in Gaza, 2012/2883(RSP),
<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+B7-2012-0523+0+DOC+XML+V0//EN&language=en>,

88 Israel Ministry of Foreign Affairs, 'Objectives and Phases of the 2014 Gaza Conflict', *mfa.gov.il*, 14 June 2015,
<http://mfa.gov.il/MFA/ForeignPolicy/IsraelGaza2014/Pages/Objectives-and-Phases-of-the-2014-Gaza-Conflict.aspx>

89 EU at the UN, 'EU Council conclusions on the Middle East Peace Process', *eu-un.europa.eu*, <http://eu-un.europa.eu/dev/eu-council-conclusions-on-the-middle-east-peace-process-11/>

civilian lives.⁹⁰ The French President call the Gaza war a ‘massacre’.⁹¹ In a similar vein, the EU endorsed the MacGowen Davis report, which claimed that Israel had committed war crimes during *Operation Protective Edge*.⁹² In this report, it was again alleged that Israel wilfully killed innocent citizens. Again, it focused on Israel's actions and downplayed Hamas’ role.⁹³ The EU finally acknowledged its failure to criticise Hamas, but the eight sitting EU-member states in the UNHRC chose to endorse the report anyway.⁹⁴

A similar trend can be observed, especially in the first and the third war. Namely, that the EU reaffirms Israel's right to defend itself, however at the same time condemns war crimes it has allegedly committed. This is supplemented by claims that Israel’s response is disproportionate. The EU High Representative Catherine Ashton compared the murder of three Jewish children by Hamas terrorists to the Palestinian children who were casualties of war, which exposed her mindset that Israel is wilfully killing civilians.⁹⁵ Also, this year the Council of Europe (an unofficial EU institution in which all EU states are members) approved a report which states that ‘incidents in which individuals who did not constitute an immediate danger to human life were killed deliberately, which constitutes a modus operandi of killing which is allegedly systematic and illegal’,⁹⁶ and called on the EU to support a formal investigation by the ICC.⁹⁷ This is something that the EU already does indirectly through the funding of NGOs that try to bring Israel to the ICC on charges of war crimes.⁹⁸

The report is problematic since it underestimates the difficulties there are in fighting terrorist groups. It is actually widely acknowledged in conflict studies that one of the core aspects of the so-called modern wars is the difficulty in distinguishing between

90 ibid

91 BBC, ‘Gaza conflict: France condemns Israel 'massacre', [bbc.com](http://www.bbc.com/news/world-europe-28637577), 4 August 2014, <http://www.bbc.com/news/world-europe-28637577>

92 Raphael Aren, ‘Vote approving UN’s Gaza war probe a case of much talk, few consequences’, [timesofisrael.com](http://www.timesofisrael.com), 3 July 2015, <http://www.timesofisrael.com/much-talk-at-human-rights-council-with-few-consequences/>

93 Itamar Sharon, ‘UNHRC backs Israel-bashing Gaza report, with full European’, [timesofisrael.com](http://www.timesofisrael.com), 3 July 2015, <http://www.timesofisrael.com/unhrc-endorses-gaza-report-with-european-support/>

94 ibid

95 Fiamma Nierenstein, ‘Israelophobia Is the New Antisemitism’, 39-47, *Anti-Judaism, Antisemitism, and Delegitimizing Israel* edited by Robert Wistrich, pp. 43.

<http://www.jstor.org.proxy-ub.rug.nl/stable/pdf/j.ctt1gr7dr0.8.pdf?refreqid=excelsior:e99cb9e033b7ace1318d7924335d0992>

96 Hezki Baruch, ‘Europe blames Israel for Gaza’s humanitarian situation’, [israelnationalnews.com](http://www.israelnationalnews.com), 25 January 2017, <http://www.israelnationalnews.com/News/News.aspx/223808>

97 ibid

98 NGO monitor, ‘European Funding for Palestinian NGO Submission to the International Criminal Court on Alleged Israeli War Crimes during 2014 Gaza Operation’, [ngo-monitor.org](http://www.ngo-monitor.org), 2 March 2016, <http://www.ngo-monitor.org/reports/european-funding-for-palestinian-ngo-submission-to-the-international-criminal-court-on-alleged-israeli-war-crimes-during-2014-gaza-operation/>

civilians and combatants,⁹⁹ and even the EU itself has estimated that 90% of casualties in modern war are civilians.¹⁰⁰ This tragic aspect can also be seen in the war the West is waging against ISIS or the previous war against Gaddafi.¹⁰¹ In this light, it should be understood that the death of civilians, as regretful as it is, does not always amount to war crimes. According to Louis Moreno-Ocampo: 'International humanitarian law and the Rome Statute permit belligerents to carry out proportionate attacks against military objectives, even when it is known that some civilian deaths or injuries will occur. A crime occurs if there is an intentional attack directed against civilians (principle of distinction) (Article 8(2)(b)(i)) or an attack is launched on a military objective in the knowledge that the incidental civilian injuries would be clearly excessive in relation to the anticipated military advantage (principle of proportionality) (Article 8(2)(b)(iv)).'¹⁰²

This is still problematic because it does not acknowledge Israel's policy to prevent civilian casualties. The International High Military group has concluded that 'During *Operation Protective Edge* last summer, in the air, on the ground and at sea, Israel not only met a reasonable international standard of observance of the laws of armed conflict but in many cases significantly exceeded that standard.'¹⁰³ Specific measures to prevent civilian casualties were 'phone calls, SMS messages, leaflet drops, radio broadcasts, communication via Gaza-based UN staff and the detonation of harmless warning explosive charges, known as "knock on the roof". Where possible, the IDF also sought to give guidance on safe areas and safe routes.'¹⁰⁴ Therefore, it is false to imply that Israel is wilfully killing Palestinian citizens, something Goldstone himself later acknowledged, saying that the report would have looked different 'if I had known then what I know now'.¹⁰⁵

99 Mary Kaldor, 'In Defense of New Wars', *Stability*, vol. 2, num.1, 2013, pp. 11, <https://www.stabilityjournal.org/article/10.5334/sta.at/>

100 Consilium, 'European Security Strategy: A Secure Europe in a Better World', consilium.europa.eu, 12 December 2003, pp.2, <https://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>

101 Seumas Milne, 'If the Libyan war was about saving lives, it was a catastrophic failure', guardian.com, 26 Oktober 2011, <https://www.theguardian.com/commentisfree/2011/oct/26/libya-war-saving-lives-catastrophic-failure> and Observer Editorial, 'The Observer view on civilian casualties in the battle against Isis', guardian.com, 18 June 2017, <https://www.theguardian.com/commentisfree/2017/jun/17/observer-view-coalition-airstrikes-isis-civilian-casualties-syria-iraq-donald-trump>

102 Shoshana Brian, 'The Doctrine of Proportionality', gatestoneinstitute.org, 20 July 2014, <https://www.gatestoneinstitute.org/4462/proportionality-doctrine>

103 Tovah Lazeroff, 'Ex-Generals, Diplomats Absolve Israel of Gaza War Crimes', jpost.com, 13 June 2015, <http://www.jpost.com/Israel-News/Ex-generals-diplomats-absolve-Israel-of-Gaza-war-crimes-405888>

104 High Level International Military Group, 'Letter to Judge Mary McGowan Davis on the Gaza Conflict in 2014', blog.unwatch.org, 31 May 2015, pp.5, <http://blog.unwatch.org/wp-content/uploads/HLIMG-report-cover-letter-to-Judge-Mary-McGowan-Davis-UNHRC-31-May-2015.pdf>

105 David Horowitz, 'Comment: Goldstone the Belated Penitent', jpost.com, 2 April 2011, <http://www.jpost.com/Diplomacy-and-Politics/Comment-Goldstone-the-belated-penitent>

During the 2014 Israel-Hamas armed conflict, casualty reports circulated with inflated numbers of civilian deaths. However, even figures from the Gaza Ministry of Health show that a disproportionately large percentage were men of fighting age.¹⁰⁶ One cannot exclude the possibility of mistakes or individuals who might not comply with guidelines and all cases of civilian deaths must be addressed by the Israeli government and the IDF.¹⁰⁷ However, Hamas deliberately used civilians as human shields to maximize civilian casualties, which harvests sympathy from the international community who subsequently blame Israel.¹⁰⁸ This practise was confirmed by the EU in an official statement: "The EU strongly condemns calls on the civilian population of Gaza to provide themselves as human shields." Hamas also placed bombs in schools which were funded by UNRWA.¹⁰⁹ The High International Military Group found that 'Hamas launched attacks against Israel from the heart of its own civilian communities in the Gaza Strip and positioned its munitions and military forces there, including in schools, hospitals and mosques.'¹¹⁰ While the Israeli military tried to warn Gazan residents of eminent attacks, Hamas did not want or allow them to leave. Hamas representative Fathi Hamad said, 'For the Palestinian people, death became an industry, at which woman excel and so do all people on the land: the elderly excel, the Jihad fighters excel and the children excel. Accordingly [Palestinians] created a human shield of women, children, the elderly and the jihad fighters against the Zionist bombing machine, as if they were saying to the Zionist enemy: we desire death as you desire life.'¹¹¹ This is not just rhetoric, as a medic in the Gaza Strip explained 'Sometimes they (Israel) call several times to make sure everyone has been evacuated. Hamas' strict policy, though, was not to allow us to evacuate. Many people got killed, locked inside their homes by Hamas militants.'¹¹² Once again, it shows that care for its civilians comes second to Hamas' ultimate goal of destroying Israel, emphasizing the terrorist nature of Hamas.

106 Lenny Ben David, 'Gazan Casualties: How Many and Who They Were', jcpa.org, <http://jcpa.org/casualties-gaza-war/>

107 Israel Defense Forces, 'IDF Conducts Fact-Finding Assessment following Operation Protective Edge', idfblog.com, 12 September 2014, <https://www.idfblog.com/2014/09/12/idf-conducts-fact-finding-assessment-following-operation-protective-edge/>

108 JPost.com Staff, 'EU calls for Disarmament of Terrorist Groups in Gaza', jpost.com, 22 July 2014, <http://www.jpost.com/Breaking-News/EU-calls-for-disarmament-of-terrorist-groups-in-Gaza-368501>

109 Manfred Gerstenfeld 'Israel and the Jews as Prisms for Understanding Europe Today', 106-118, *Anti-Judaism, Antisemitism, and Delegitimizing Israel* edited by Robert Wistrich, University of Nebraska Press, 2016, pp 110

110 Lazaroff, Ex-Generals, Diplomats absolve Israel, <http://www.jpost.com/Israel-News/Ex-generals-diplomats-absolve-Israel-of-Gaza-war-crimes-405888>

111 Israel Defence Forces, 'Cover Me: Hamas' Human Shield Tactics', idfblog.com, 27 February 2012, <https://www.idfblog.com/hamas/2012/02/27/cover-hamas-illegitimate-human-shield/>

112 Mudar Zahran, , 'Gazans Speak Out: Hamas War Crimes', embassies.gov.il/Zagreb, 29 September 2014, <http://embassies.gov.il/zagreb/NewsAndEvents/Pages/Gazans-Speak-Out---Hamas-War-Crimes-.aspx>

For this reason, the European Union should oppose claims saying that Israel deliberately committed war crimes, especially since this narrative has spilled over into European public opinion and has led to severe anti-Semitism. For example, Wistrich comments that *Operation Protective Edge* has led to ‘a fierce flood of vitriol against Israel and its Jewish supporters’.¹¹³ He adds that ‘the demonization of Tsahal (Israel Defense Forces) as an army of child murderers was general rampant along with nauseous slogans about Israel as a “terrorist state” inflicting “genocide” on totally “innocent” Palestinians.’¹¹⁴ The EC conducted a survey in which the majority of the respondents said that Israel constituted the biggest threat to world peace¹¹⁵ and these sentiments have led to persecution. For example, in the Netherlands the police needed to protect a synagogue and even some individual Jewish homes,¹¹⁶ leading the Chief Dutch Rabbi to urge people to move to Israel.¹¹⁷ Similar incidents of anti-Semitism have occurred all over Europe.¹¹⁸

Allegations of Israel committing war crimes has been used as a source by Hamas to consolidate its legitimacy. For example, Joas Wagemakers has identified that Hamas has used the idea of ‘revenge’ as the main theme to legitimize its armed struggle.¹¹⁹ According to him, Hamas points out Israeli military action to invoke anger, and it then channels this anger into armed struggle and rejection of diplomatic efforts.¹²⁰ He found that ‘one of the most frequently used slogans was that Israel only understands the language of force.’¹²¹ Hence, one should be very careful in accusing Israel of intentionally committing war crimes, as this plays directly into the narrative that Hamas is trying to consolidate.

In summary, in reaction to the Gaza wars the EU again, similar to the naval blockade, transfers responsibility for Gazan civilians from Hamas to Israel. This propagates the idea that all Palestinians are victims of Israel, a status which actually disempowers them. This attitude legitimizes Hamas and disguises its identity as a terrorist organization. The EU should scrutinize reports by the UN and human rights organizations more thoroughly, and steer away from false accusations that Israel is

113 Robert S Wistrich, ‘Gaza, Hamas, and the “New” Antisemitism’, 292-302, *Anti-Judaism, Antisemitism, and Delegitimizing Israel* edited by Robert Wistrich, University of Nebraska Press, 2016, pp. 299

114 *ibid*

115 Rory Miller, ‘Troubled Neighbours: The EU and Israel’, *Israel Affairs*, vol.12, no.4, 2016, <http://dx.doi.org/10.1080/13537120600889894>, pp 654

116 Gerstenfeld, *Israel and the Jews as Prism*, 109

117 *ibid*

118 Jon Henley, ‘Antisemitism on rise across Europe ‘in worst times since the Nazis’, *guardian.com*, 7 August 2014, <https://www.theguardian.com/society/2014/aug/07/antisemitism-rise-europe-worst-since-nazis>

119 Joas Wagemakers, ‘Legitimizing Pragmatism: Hamas’ Framing Efforts From Militancy to Moderation and Back?’, *Terrorism and Political Violence*, vol.22, no.3, 357-377, DOI: 10.1080/09546551003765942, pp.362

120 *ibid*

121 *ibid*

deliberately killing civilians. Moreover, it should also stop funding to NGOs that attempt to unjustly indict Israel for war crimes. The EU should acknowledge that the terrorist practices of Hamas are not only against Israeli civilians but extend to Gazan citizens since Hamas values no life in its struggle against Israel.

3. Hamas as the ‘legitimate’ representative for the Palestinian People

As discussed in the previous section, there is a systematic denial of Hamas’ role in causing the humanitarian crisis in the Gaza Strip and much of the responsibility is transferred to Israel. This transfer of responsibility might be explained by the accepted narrative that Hamas is the ‘legitimate’ representative for the struggle of the Palestinian people, even though its methods are not legitimate, in fact, they are terrorist. In essence, the EU has repeatedly claimed that Israel's conduct is terrorist, and that the aims of Hamas are not. This section will first show how the EU turns a blind eye to the victimization of the Palestinian people by Hamas and, by seeing through the lenses of victimization by Israel, every measure that Israel takes against Hamas is distorted. This underlying perspective is dangerous - not only for the security of Israel but for the entire peace process.

Regardless of the means Hamas resorts to, there seems to be sympathy in the EU for what they think is the overall cause of the movement. This is closely linked to the view that Israel is occupying or taking Palestine land. This rhetoric of ‘occupied territories’ propagates the narrative of a legitimate Palestinian resistance. For example, the EU implicitly identified the ‘occupation’ as the root cause for the violence in Gaza when it stated that “The situation in the Gaza Strip cannot and must not be seen separately from the broader challenges and developments on the ground that continue to make the prospect of the two state solution increasingly difficult to attain.”¹²²

The idea of a legitimate resistance may have been influenced by the general sentiment in Europe. This sentiment becomes most clear in statements of the largest European think-tank on Foreign Affairs, the European Council of Foreign Affairs. They stated that “while in no way justifying these (terrorist) phenomena, it is Israeli practices in the Palestinian territories that feed the cycle of instability and violence – not the other way around.”¹²³ The head of the Middle East section of this think-tank also said with regard to Hamas “... and there is the bigger picture. Palestinians remain stateless, denied basic

122 Council of the European Union, ‘Press Release Foreign Affairs’, [consilium.europa.eu](https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/144316.pdf), 15 August 2014, https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/144316.pdf, 9

123 Hugh Lovatt, ‘EU Differentiation FAQ’, [ecfr.eu](http://www.ecfr.eu), 31 October 2016, http://www.ecfr.eu/article/eu_differentiation_faq#q8

rights and under occupation in the West Bank and East Jerusalem and in many respects Gaza too.”¹²⁴ He also stated that “Demilitarisation looks set to become the latest mantra of obfuscation and an evasion of the steps necessary to resolve the underlying Israeli-Palestinian conflict, of which the Gaza war is but one symptom.”¹²⁵ This states in a more diplomatic manner what a British politician recently tweeted, “The big question is—if I lived in #Gaza would I fire a rocket?—probably yes.”¹²⁶

This idea of a resistance movement allows Hamas to garner support on the European continent. For example, several EU member states have allowed the Palestinians in Europe to hold Conferences, which have been closely linked to Hamas.¹²⁷ The last meeting was in Rotterdam, and at the same time a pro-Israel Christian group was prevented from conducting a silent march.¹²⁸ This seems very odd, especially when one considers that a Dutch journalist found that at least 11 of the speakers at the conference had concrete ties with Hamas or the Muslim Brotherhood.¹²⁹ Moreover, anti-Israel protests in response to *Operation Protective Edge* were allowed in several European cities, where chants like ‘death to Jews’ were shouted while Hamas flags were waved.¹³⁰ This is a direct result of the EU’s failure to take a clear stand against the support of terrorist organizations. Waving a flag or being a member of a terrorist organization might be legal, but actively garnering support for a terrorist organization is not.¹³¹

What might add to the legitimacy of Hamas in European eyes is the fact that in 2006 was democratically elected by the population of the Gaza Strip. This coincides with the erroneous belief that Hamas has become more moderate since it has been in

124 Daniel Levy, ‘Israel: Living by the Sword’, ecf.eu, 16 November 2012, http://www.ecfr.eu/article/commentary_Israel_Living_by_the_sword

125 Daniel Levy, ‘Demilitarising Gaza is not a solution, it’s a trap’, ecf.eu, 15 August 2014, http://www.ecfr.eu/article/commentary_demilitarising_gaza_is_not_a_solution_its_a_trap

126 Lesley Klaff, ‘Holocaust Inversion in British Politics: The Case of David Ward’, 189-200, *Anti-Judaism, Antisemitism, and Delegitimizing Israel* edited by Robert Wistrich, University of Nebraska Press, 2016, pp. 195

127 Carel Brendel, ‘Europese Hamas leiding in eerste gelid tijdens Rotterdamse conferentie’, carelbrendel.nl, 25 April 2017, <http://www.carelbrendel.nl/2017/04/25/europese-hamas-leiding-in-eerste-gelid-tijdens-rotterdamse-conferentie/>

128 Theo Koele, ‘Geen toestemming voor protest tegen Palestijnse manifestatie in Rotterdam’, volkskrant.nl, 14 April 2017, <https://www.volkskrant.nl/binnenland/geen-toestemming-voor-protest-tegen-palestijnse-manifestatie-in-rotterdam~a4487223/>

129 Carel Brendel, ‘Europese Hamas leiding in eerste gelid tijdens Rotterdamse conferentie’, carelbrendel.nl, 25 April 2017, <http://www.carelbrendel.nl/2017/04/25/europese-hamas-leiding-in-eerste-gelid-tijdens-rotterdamse-conferentie/>

130 Fiamma Nierenstein, ‘Israelophobia Is the New Antisemitism’, 39-47, *Anti-Judaism, Antisemitism, and Delegitimizing Israel* edited by Robert Wistrich, pp. 42.

131 Personal Contact with Europe direct, who submitted my question to the Europeans Commission Sanctions Policy Division.

government.¹³² A senior EU official in the region called Hamas a relatively moderate, national liberation movement.¹³³ Sympathy for Hamas can also be explained by propagation of the idea that Hamas will be satisfied and the situation would improve when Israel addresses legitimate Palestinians grievances, such as removing the blockade and giving up the West Bank and the Gaza Strip. We have already addressed the erroneous nature of this narrative, which exculpates the terrorist nature of Hamas and becomes ‘the forgivable hyperbole of an oppressed resistance movement.’¹³⁴

The problem with this idea is that it presumes a simplistic relationship between grievances and terrorism without taking into account the factor of religious ideology. It needs to be understood that Hamas was founded on extreme Muslim theology that does not allow for the existence of a Jewish State, as stated in their own Charter.¹³⁵ It is essential that the EU acknowledges that this idea is the real ‘lifeblood’ of Hamas. It is not an idea born out of the supposed post-1967 grievances, but a prevalent and persistent idea that has prevailed since the establishment of the Jewish state, and is all too easily often forgotten.¹³⁶ It is this extreme Muslim theology that has paradoxically led Israel to defend itself in the 1967 war and led to its military conquest of the West Bank and the Gaza Strip. Professors Sela and Mishal, in their book *The Palestinian Hamas*, stated that the idea of Jihad is “the ultimate source of legitimacy” for Hamas.¹³⁷ Therefore, the idea of countering Hamas’ violent extremism through addressing ‘grievances’ is naive and far too simplistic.

In this regard, it needs to be understood that Israel has tried to address grievances in the past through repeated efforts to reach a settlement, and according to Freilich, “Palestinians have proven averse to even the most far-reaching peace proposal,”¹³⁸ especially Palestinian leaders. In 2005, Israel unilaterally withdrew from the Gaza Strip and in doing so had to undertake the difficult task of relocating 8,500 of settlers.¹³⁹ Even though the implementation might be criticized, it should be noted that this could have been a turning point for the Palestinians and the start of addressing their grievances. At that time, it was also recognized as an opportunity for Palestinians by

132 ibid

133 Interview with a senior EU official in the region, who wished to remain anonymous.

134 Hugo Slim, ‘NGOs in Gaza: humanitarianism vs politics’, *opendemocracy.net*, 30 January 2009, <https://www.opendemocracy.net/article/ngos-in-gaza-between-humanitarianism-and-politics>

135 ACPR, ‘The Charter of Hamas’, *acpr.org.il*, <http://www.acpr.org.il/resources/hamascharter.html>

136 Charles David Freilich, ‘Israel’s counter-terrorism policy: How effective?’ *Terrorism & Political Violence*, vol. 29, no.2, 2017, 359-376. doi:<http://dx.doi.org.proxy-ub.rug.nl/10.1080/09546553.2015.1044602>, pp. 360

137 Shaul Mishal and Avraham Sela. *The Palestinian Hamas : Vision, Violence, and Coexistence*. New York : Columbia University Press, 2000, 167.

138 Freilich, Israel’s counter terrorism policy, 367

139 Jeffrey Goldberg, ‘Why Would Israel Give Up Territory, After Gaza?’, *theatlantic.com*, 13 September 2011, <https://www.theatlantic.com/international/archive/2011/09/why-would-israel-give-up-territory-after-gaza/244995/>

European Leaders and it filled them with hope for the future.¹⁴⁰ For example, Tony Blair said to Sharon: 'I greatly admire the courage with which you have developed and implemented this policy. I believe you are right to see disengagement as an opportunity to pursue a better future for Israelis and Palestinians. I look forward to working with you to help achieve this and to continue working together towards a just and lasting peace, free from the scourge of terrorism.'¹⁴¹

However, instead of rewarding the step of faith by Israel Hamas decided to change the dynamics of the conflict. Instead of using this *quid pro quo* strategy, it reacted negatively and the trust among Israelis deteriorated.¹⁴² Before Hamas came into power, civilian structures had already been destroyed, for example, the high-tech greenhouses which were left behind by the settlers.¹⁴³ Similarly, Hamas decided not to invest in building civilian, political and social infrastructure to help pave the path for a Palestinian state and prove its goodwill. Instead, Hamas invested in military infrastructure, to fire thousands of rockets at Israeli civilians and to repress its own citizens instead of addressing aggravating grievances. Hamas had to solve its internal identity dilemma of advancing 'national political interest' or 'Islamic dogma', and the latter prevailed.¹⁴⁴ This shows exactly why support for Hamas' resistance movement is dangerous, as it mistakenly presumes that Hamas cares more about creating a Palestinian state than it does about annihilating Israel. This brings to mind the words of a Gazan school teacher, "When Hamas starts caring for our children we will start caring for Hamas. Hamas has one policy, to attack Israel; so Israel attacks back, and gets us killed and Hamas then gets more money from Arabs and Erdogan."¹⁴⁵

More 'moderate' opinions may exist and the whole population of Gaza may not believe in the destruction of Israel. This offers hope that it may be still possible to create circumstances in which terrorism might thrive less amongst individual Palestinians, especially as Gazans are becoming more and more disillusioned with Hamas.¹⁴⁶ However, these circumstances will be hard to create before Hamas' core identity changes and it stops spreading its highly toxic rhetoric.

140 Rory Miller, 'Troubled Neighbours: The EU and Israel', *Israel Affairs*, vol.12, no.4, 2012, 642-664, DOI: 10.1080/13537120600889894, 650.

141 *ibid*

142 Goldberg, Why would Israel give up Territory, <https://www.theatlantic.com/international/archive/2011/09/why-would-israel-give-up-territory-after-gaza/244995/>

143 Maayana Miskin, Gaza Arabs Get Second Chance on Greenhouses, *israelnationalnews.com*, 8 September 2010, <http://www.israelnationalnews.com/News/News.aspx/139012>

144 Shaul Mishal and Avraham Sela. *The Palestinian Hamas: Vision, Violence, and Coexistence*. New York: Columbia University Press, 2000, 47.

145 Mudar Zahran, , 'Gazans Speak Out: Hamas War Crimes', embassies.gov.il/Zagreb, 29 September 2014, <http://embassies.gov.il/zagreb/NewsAndEvents/Pages/Gazans-Speak-Out---Hamas-War-Crimes-.aspx>

146 Mudar Zahran, , 'Gazans Speak Out: Hamas War Crimes', embassies.gov.il/Zagreb, 29 September 2014, <http://embassies.gov.il/zagreb/NewsAndEvents/Pages/Gazans-Speak-Out---Hamas-War-Crimes-.aspx>

Some have argued that over the years Hamas has become more moderate, convinced by new political realities that Israel is here to stay and the situation in the Gaza Strip is deteriorating.¹⁴⁷ Similarly, the website of the EU Council of Foreign Affairs points out that this moderation can be found in a new political document.¹⁴⁸ For example, statements by Hamas say that they might be willing to acknowledge the 1967 borders and that the fight is against Zionism and not against all Jewish people.¹⁴⁹ Even though the moderation of Hamas would be welcomed, it is bad judgment to assume that this is the truth. Especially when one considers that the Hamas Charter has not been abandoned, and the new document reinstates the purpose of Hamas to claim the whole of Israel as its own territory and does not dismiss violent methods.¹⁵⁰ Therefore, before any real progress can be made Hamas must dismiss its anti-Israel ideology and forgo all of its violent methods. This is a step that Israel already has promised to reward with major development assistance, which is a process the EU should be willing to support.

4. Conclusion: Hope for Gaza, Hope for the Future

Although the placement of Hamas on the list of terror organizations seems to indicate that the EU sides with Israel and de-legitimizes Hamas, in practice the EU has been highly critical of Israel's policies towards Hamas and the Gaza Strip. This report has shown that European policy towards the Gaza blockade and wars overlooks the terrorist nature of Hamas and its responsibility for the humanitarian crisis in the Gaza Strip. Instead of addressing the terrible consequences the Gazan population suffers under a terrorist regime, it has instead transferred full responsibility to Israel, thereby perpetuating the false narrative that Hamas legitimately represents the struggle of the Palestinian people. Moreover, it ignores the fact that Hamas' ultimate goal is the destruction of Israel at the expense of the welfare of Palestinians.

This report urges the EU to review its policy towards Hamas, namely to delegitimizing the rule of a terrorist organization over the Gaza Strip. In the short term, the EU can exercise greater control over humanitarian aid making sure it gets to the needy. The EU also needs to demand that Hamas places the welfare of the Palestinian people above their terrorist ideology and aims, instead of transferring its obligations to Israel. In the long term, the EU

147 Hugh Lovatt, 'Time to bring Hamas in from the cold', ecf.eu, 5 May 2017, http://www.ecfr.eu/article/commentary_time_to_bring_hamas_in_from_the_7283

148 ibid

149 ibid

150 Jewish Virtual Library, 'Hamas: General Principles and Policies (Annotated)', [jewishvirtuallibrary.org](http://www.jewishvirtuallibrary.org/hamas-general-principles-and-policies-annotated), <http://www.jewishvirtuallibrary.org/hamas-general-principles-and-policies-annotated>

should pressure Hamas to forgo its terrorist objectives and to disarm, in order to avoid the possibility of a military solution in the Gaza Strip.

5. Recommendations:



5.1 Short Term

- Condemn and limit Hamas' direct and indirect control over humanitarian aid.
- Install more accountability measures.
- Publicly condemn instances where Hamas appropriates aid material for terrorist purposes (e.g. construction material, electricity, fuel).
- Retract claims where Israel is deemed responsible for the humanitarian crisis, and point to Hamas as the region's effective government to create pressure for change.
- Cooperate with Israel to ensure humanitarian aid reaches the population at large.



5.2 Long-Term

5.2.1 Secret Talks with Hamas

- Talks must be indirect, with a mediator, to prevent the legitimization of Hamas as long as it is a terrorist organization.
- Coordination with Israel and Egypt.
- Intelligence gathering of hardliners and possible pragmatists in the movement.
- Clarify that Hamas will have to publicly forgo all terrorist identity and weapons in exchange for development aid. The disarmament, demobilisation, reintegration program would be overseen by an independent commission.
- There can be amnesty for Hamas individuals as long as they publicly distance themselves from terrorist activities and rhetoric. This would also clear the way for them to sit in a new government.
- Establish an interim government with Hamas and Fatah under an EU-mandate. Egypt will bear responsibility for the enforcement of security through the presence

of their troops, financed by the international community. Moreover, oversight should be provided by an EU peacekeeping mission.

- Five years of civil, social and political infrastructure building, as a combined effort of the international community, the interim Palestinian government and Israel.
- Support for grass-roots projects that oppose radicalization.
- After five years, ensure new elections in the Gaza Strip and the West Bank.
- It must be emphasized that if Hamas refuses to forgo its terrorist ideology and methods (which is highly probable because its fundamental identity is built upon Jihad and the idea that Israel has to be completely destroyed), a military solution will be a legitimate option.

5.2.2 Military Solution

- Pressure Egypt to support the ousting of Hamas; perhaps even make this conditional for European aid to Egypt.
- Initiate a military operation to oust Hamas, with the help of Egypt.
- Establish an interim government with the Palestinian Authority under an EU-mandate. Egypt should become responsible for the enforcement of security through presence of their troops, financed by the international community. Moreover, oversight should be provided by an EU peacekeeping mission.
- Five years of civil, social and political infrastructure building, as a combined effort of the international community, PA and Israel.
- Implement a disarmament, demobilization and reintegration (DDR) program.
- Support grass-roots projects that opposes radicalization.
- After five years, ensure new elections in the Gaza Strip and the West Bank.



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