The U.N.’s Gaza Report Is Flawed and Dangerous

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As a British officer who had more than his share of fighting in Afghanistan, Iraq and the Balkans, it pains me greatly to see words and actions from the United Nations that can only provoke further violence and loss of life. The United Nations Human Rights Council [report](http://www.ohchr.org/EN/HRBodies/HRC/CoIGazaConflict/Pages/ReportCoIGaza.aspx#report) on last summer’s conflict in Gaza, prepared by Judge Mary McGowan Davis, and published on Monday, will do just that.

The report starts by attributing responsibility for the conflict to Israel’s “protracted occupation of the West Bank and the Gaza Strip,” as well as the blockade of Gaza. Israel withdrew from Gaza 10 years ago. In 2007 it imposed a selective blockade only in response to attacks by Hamas and the import of munitions and military matériel from Iran. The conflict last summer, which began with a dramatic escalation in rocket attacks targeting Israeli civilians, was a continuation of Hamas’s war of aggression.

In an unusual concession, the report suggests that Hamas may have been guilty of war crimes, but it still legitimizes Hamas’s rocket and tunnel attacks and even sympathizes with the geographical challenges in launching rockets at Israeli civilians: “Gaza’s small size and its population density make it particularly difficult for armed groups always to comply” with the requirement not to launch attacks from civilian areas.

There is no such sympathy for Israel. Judge Davis accuses the Israel Defense Forces of “serious violations of international humanitarian law and international human rights law.” Yet no evidence is put forward to substantiate these accusations. It is as though the drafters of the report believe that any civilian death in war must be illegal.

Referring to cases in which Israeli attacks killed civilians in residential areas, Judge Davis says that in the absence of contrary information available to her commission, there are strong indications that the attacks were disproportionate, and therefore war crimes. But all we get is speculation and the presumption of guilt.

The report is characterized by a lack of understanding of warfare. That is hardly surprising. Judge Davis admitted, when I [testified](http://richard-kemp.com/submission-to-the-united-nations-independent-commission-of-inquiry-on-the-2014-gaza-conflict/) before her in February, that the commission, though investigating a war, had no military expertise. Perhaps that is why no attempt has been made to judge Israeli military operations against the practices of other armies. Without such international benchmarks, the report’s findings are meaningless.

The commission could have listened to Gen. Martin E. Dempsey, chairman of the United States Joint Chiefs of Staff, who said last November that the I.D.F. had taken extraordinary measures to try to limit civilian casualties. Or to a group of 11 senior military officers from seven nations, including the United States, Germany, Spain and Australia, who also investigated the Gaza conflict recently. I was a member of that group, and our [report](http://blog.unwatch.org/wp-content/uploads/HLIMG-report-cover-letter-to-Judge-Mary-McGowan-Davis-UNHRC-31-May-2015.pdf), made available to Judge Davis, said: “None of us is aware of any army that takes such extensive measures as did the I.D.F. last summer to protect the lives of the civilian population.”

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The report acknowledges that Israel took steps to warn of imminent attacks but suggests more should have been done to minimize civilian casualties. Yet it offers no opinion about what additional measures Israel could have taken. It even criticizes Israel for using harmless explosive devices — the “knock on the roof” — as a final warning to evacuate targeted buildings, suggesting that it created confusion. No other country uses roof-knocks, a munition developed by Israel as part of a series of I.D.F. warning procedures, including text messages, phone calls and leaflet drops, that are known to have saved many Palestinian lives.

Judge Davis suggests that the I.D.F.’s use of air, tank and artillery fire in populated areas may constitute a war crime and recommends further international legal restrictions on their use. Yet these same systems were used extensively by American and British forces in similar circumstances in Iraq and Afghanistan. They are often vital in saving the lives of our own soldiers, and their curtailment would jeopardize military effectiveness while handing an advantage to our enemies.

The I.D.F. is not perfect. In the heat of battle and under stress its commanders and soldiers undoubtedly made mistakes. Weapons malfunctioned, intelligence was sometimes wrong and, as with all armies, it has some bad soldiers. Unnecessary deaths resulted, and these should be investigated and the individuals brought to trial if criminal culpability is suspected.

The reason so many civilians died in Gaza last summer was not Israeli tactics or policy. It was Hamas’s strategy. Hamas deliberately positioned its fighters and munitions in civilian areas, knowing that Israel would have no choice but to attack them and that civilian casualties would result. Unable to inflict existential harm on Israel by military means, Hamas sought to cause large numbers of casualties among its own people in order to bring international condemnation and unbearable diplomatic pressure against Israel.

Judge Davis’s report is rife with contradictions. She acknowledges that Israeli military precautions saved lives, yet without foundation accuses “decision makers at the highest levels of the government of Israel” of a policy of deliberately killing civilians. Incredibly, she “regrets” that her commission was unable to verify the use of civilian buildings by “Palestinian armed groups,” yet elsewhere acknowledges Hamas’s widespread use of protected locations, including United Nations schools.

Most worrying, Judge Davis claims to be “fully aware of the need for Israel to address its security concerns” while demanding that it “lift, immediately and unconditionally, the blockade on Gaza.” Along with the report’s endorsement of Hamas’s anti-Israel narrative, this dangerous recommendation would undoubtedly lead to further bloodshed in both Israel and Gaza.