[Destroying International Law by Tying the West’s Hands](https://www.commentarymagazine.com/2015/06/26/israeli-war-crimes-in-gaza-fabrication/)

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In the four days since the UN Human Rights Council published its report on last summer’s war in Gaza, commentators have pointed out numerous ways in which it is bad for [Israel](https://www.commentarymagazine.com/2015/06/22/un-gaza-war-report/), the [Palestinians](http://www.nytimes.com/2015/06/26/opinion/the-uns-gaza-report-is-flawed-and-dangerous.html?_r=2) and the [prospects of a two-state solution.](http://www.haaretz.com/opinion/.premium-1.662817) But focusing solely on the local consequences obscures the fact that this report is part of a broader campaign with much more ambitious goals: depriving the entire West of any conceivable weapon – military or nonmilitary – against terrorist organizations and thereby leaving it no choice but capitulation. And though the UN report captured all the attention, the assault on nonmilitary means was also active this week.

On the military side, the goal was already clear last week, thanks to an [interview](http://www.jpost.com/Arab-Israeli-Conflict/UN-official-Those-who-violated-human-rights-in-Gaza-should-be-prosecuted-406126) by Israel’s Channel 2 television with international law expert William Schabas, who headed the HRC’s Gaza inquiry until being forced out in February over a conflict of interests. “It would be a very unusual war if only one side had committed violations of laws of war and the other had engaged perfectly,” he declared. “That would be an unusual situation and an unusual conclusion.”

In other words, it’s virtually impossible for any country fighting terrorists to avoid committing war crimes, however hard it tries, because as currently interpreted by experts like Schabas, the laws of war are impossible for any real-life army to comply with. Thus, a country that wants to avoid international prosecution for war crimes has no choice but to avoid all wars; its only option is capitulation to the terrorists attacking it.

The report ultimately issued by Mary McGowan Davis, who took over the inquiry after Schabas resigned, achieved his goal through a neat trick: replacing the presumption of innocence – the gold standard for ordinary criminal proceedings – with a presumption of guilt. As Benjamin Wittes and Yishai Schwartz noted in their scathing [analysis](http://www.lawfareblog.com/what-make-uns-special-commission-report-gaza) for the Lawfare blog, despite admitting that Hamas routinely used civilian buildings for military purposes, the report nevertheless concluded that any attack on a civilian building is prima facie illegal absent solid proof that the building served military purposes.

But as the report itself admits in paragraph 215, in a quote attributed to “official Israeli sources,” such proof is virtually impossible to produce, because “forensic evidence that a particular site was used for military purposes is rarely available after an attack. Such evidence is usually destroyed in the attack or, if time allows, removed by the terrorist organisations who exploited the site in the first place.”

In short, it’s impossible for any country to comply with the laws of war when fighting terrorists, because it will be presumed guilty unless proven innocent, and the only evidence acceptable to prove its innocence is by definition unobtainable. And lest anyone miss the point – or labor under the delusion that this precedent won’t be applied to other countries as well – Davis underscored it in a subsequent [interview](http://www.haaretz.com/news/diplomacy-defense/.premium-1.662603) with *Haaretz*. Asked what solution international law does offer “to a situation in which regular armies of democratic countries fight against terror organizations in the heart of populated areas,” she replied scornfully, “My job is not to tell them how to wage a war.” The claim that “international law needs to develop standards that more accurately deal with military operations” is unacceptable, she asserted; the only acceptable changes are “to make protection of civilians stronger” and thereby make waging war even more impossible.

But the self-appointed interpreters of international law are targeting nonmilitary tools against terrorism no less vigorously, as another development this week made clear. Responding to a bill approved by Israel’s cabinet last week to allow jailed terrorists on hunger strike to be force-fed, the UN’s under-secretary-general for political affairs [declared](http://www.jpost.com/Israel-News/Politics-And-Diplomacy/UN-official-warns-Israel-against-force-feeding-of-prisoners-407085) that such legislation would be “a contravention of international standards.” The Israel Medical Association’s ethics chairman similarly [declared](http://www.haaretz.com/news/israel/.premium-1.662496) the bill a violation of international law, saying force-feeding has been defined as a form of torture.

Yet letting hunger-striking prisoners die in detention is equally unacceptable to the self-appointed experts. So what solution does that leave? MK Michal Rozin of the left-wing Meretz party put it perfectly: “Instead of force-feeding them, which humiliates them and puts their lives at risk, we must address their demands.” After all, if you can neither force-feed them nor let them die, capitulation is the only option left.

Thus the bottom line is the same as that emerging from the UN’s Gaza inquiry: International law leaves democracies no options in the face of determined terrorists except capitulation. You can’t fight them, because then you’re guilty of war crimes. But you also can’t arrest and jail them, because they can simply start a hunger strike, which entitles them to a get-out-of-jail-free card.

The result, as Prof. Amichai Cohen perceptively [noted](http://www.en.idi.org.il/media/4099842/Operation_Protective_Edge_report.pdf) in a report submitted to Davis’ commission, is that these self-appointed experts are destroying the very idea of international law with their own two hands. Because why should Israel – or any other country – make an effort to comply with international law “if the international system itself does not recognize [the effort’s] efficiency?”