



U.S. Military Aid to Israel

Policy Implications & Options

By Josh Ruebner

National Advocacy Director

US Campaign to **End** the Israeli Occupation



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Printed March 2012

ABOUT THE US CAMPAIGN TO END THE ISRAELI OCCUPATION

The US Campaign to End the Israeli Occupation is a national coalition of nearly 400 organizations working to change U.S. policy toward Israel/Palestine to support human rights, international law, and equality. For additional information, please visit or contact us:

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ACKNOWLEDGEMENTS

The author would like to acknowledge a profound debt of gratitude to two interns—Ramah Kudaimi and Amanda McQuade—who provided immeasurably helpful, thorough, and thoughtful research and writing support for this policy paper.

He would also like to thank authors Phyllis Bennis and Nadia Hijab for their invaluable edits and suggestions; intern Robert Fitzpatrick for assistance with image selection and graph making; and Joshua Hough for his layout and graphic design expertise.

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On the cover: (top) A U.S.-made Israeli air force F-15I is refueled over Tel Aviv in May, 2011. Photo by Israel Defense Forces. (bottom) A Palestinian Bedouin woman stands in front of her family's house, just demolished by the Israeli Civil Administration, in Umm al-Khayr, in the South Hebron Hills of the West Bank, in October 2008. The village was established by Palestinian refugees during the creation of the State of Israel in 1948. Photo: Christian Peacemaker Teams.

CONTENTS

Executive Summary	p. 5
Part 1: How Much Is Military Aid to Israel?	p. 6
U.S. Aid to Israel (1949-2008)	
Military Aid to Israel (2009-2018)	
Part 2: What Is the Impact of Military Aid to Israel?	p. 10
Civilian Fatalities	
Case Study #1: Tear Gas	
Case Study #2: House Demolitions	
Case Study #3: White Phosphorus	
Additional Human Rights Violations	
Part 3: Is U.S. Military Aid to Israel Legal?	p. 18
U.S. Restrictions on Military Aid	
Prior U.S. Sanctions against Countries Violating these Laws	
Prior U.S. Conditioning, Withholding, and Sanctioning of Aid to Israel	
Part 4: Is Military Aid to Israel the Right Policy for the United States?	p. 26
Utilizing Military Aid to Israel to Achieve U.S. Foreign Policy Objectives	
Expanding Earmarks for Israel in a Time of Economic Crisis	
Diminishing Strategic Rationale for U.S. Military Aid to Israel	
Does Israel Even Need or Want U.S. Military Aid?	
Part 5: What Are U.S. Policy Options Regarding Military Aid to Israel?	p. 32
Policy Option #1: Restrict the Use of U.S. Weapons to Israel's Sovereign Territory	
Policy Option #2: Investigate Prior Violations of the AECA Before More Money Is Appropriated	
Policy Option #3: Use U.S. Military Aid to Israel to Promote a Freeze on Israeli Settlements	
Policy Option #4: Use U.S. Military Aid to Promote the Lifting of Israel's Illegal Blockade of Gaza	

EXECUTIVE SUMMARY

From 1949 to 2008, the U.S. government provided Israel more than \$103.6 billion of total official aid, making it the largest recipient of U.S. foreign assistance in the post-World War II era. In 2007, the two countries signed a Memorandum of Understanding providing for \$30 billion of U.S. military aid from 2009 to 2018.

Between FY2000 and 2009, the United States gave Israel \$24.1 billion of military aid. With this taxpayer money, the United States licensed, paid for and delivered more than 670 million weapons and related equipment to Israel, including almost 500 categories of weapons. During roughly the same period (September 29, 2000, to December 31, 2009), Israel killed at least 2,969 unarmed Palestinians in the West Bank, East Jerusalem and Gaza Strip. Often Israel killed these Palestinians with many of the types of weapons provided with U.S. military aid.

This paper presents case studies of how U.S.-supplied tear gas, bulldozers and white phosphorus were used by Israel to commit human rights abuses of Palestinians. Israel also employed U.S. weapons to commit additional human rights abuses of Palestinians, including, but not limited to, the injuring of tens of thousands of Palestinian civilians since 2000, the deliberate destruction of Palestinian civilian infrastructure, the denial of Palestinians' right to freedom of movement, and the construction of Israeli settlements on expropriated Palestinian land.

Strong evidence exists showing that Israel's misuse of U.S. weapons to commit human rights abuses of Palestinians in furtherance of its 44-year military occupation of the West Bank, East Jerusalem and Gaza Strip vio-

lates U.S. laws, including the Foreign Assistance Act and Arms Export Control Act. In the past, numerous countries, including Israel, have had U.S. foreign assistance programs withheld, conditioned, or cut off for violating these laws. Despite the State Department investigating or being asked to investigate by Congress Israel's potential violations of these laws at least five times since 2000, it has not once publicly informed Congress that a violation of these laws occurred. Israel should not be held to a different standard than other countries, and this situation should be addressed without fail.

Despite the State Department investigating or being asked to investigate by Congress Israel's potential violations of these laws at least five times since 2000, it has not once publicly informed Congress that a violation of these laws occurred.

In addition to these legal implications, ever-expanding amounts of military aid to Israel function as a disincentive for Israel to take seriously U.S. foreign policy objectives. They also crowd out other budgetary priorities for unmet domestic needs in a time of economic cri-

sis, have a diminishing strategic rationale, and are being challenged by more Israelis who worry about the strategic, economic, and political ramifications of relying on U.S. military aid.

As a step toward ending U.S. military aid to Israel, this paper concludes with specific policy recommendations for Congress and the President to condition U.S. military aid to Israel to achieve stated U.S. policy goals of freezing settlement growth, easing the blockade of the Gaza Strip, ending the human rights abuses associated with Israel's military occupation of the Palestinian West Bank, East Jerusalem and Gaza Strip, and establishing a just and lasting Israeli-Palestinian peace.

Part 1

How Much Is Military Aid to Israel?

U.S. AID TO ISRAEL (1949-2008)

In 1949, the United States provided Israel with its first form of U.S. foreign aid: a \$100 million Export-Import Bank Loan. This loan to Israel marked the beginning of an evolutionary process that resulted in Israel becoming the largest recipient of total U.S. foreign assistance in the post-World War II era. From 1949 to 2008, the United States provided Israel with more than \$103.6 billion of total foreign assistance, composed primarily of military aid—\$56.0 billion—and economic aid—\$30.9 billion.¹

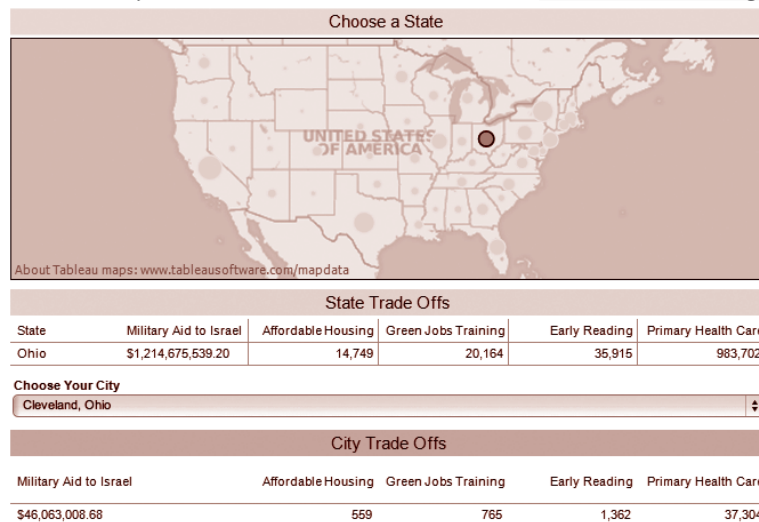
When the United States began providing Israel with foreign assistance, nothing about the relationship preordained Israel to become the largest cumulative recipient of U.S. taxpayer-funded weapons. In fact, the opposite is true. In 1948, President Harry Truman placed an arms embargo on Israel and its Arab neighbors and in 1950, the United States joined Great Britain and France in the Tripartite Declaration opposing an Israeli-Arab arms race. As a result, from 1949 to 1965, more than 95 percent of U.S. foreign aid to Israel consisted of economic development assistance and food aid.

Not until 1959, under the Eisenhower Administration, did the United States begin a small-scale \$400,000 military loan program to Israel. It was only during the Johnson and

Kennedy Administrations that this military loan program started to fund the purchase of advanced U.S. weaponry. Military grants, or Foreign Military Financing (FMF), which epitomize today’s U.S.-Israel bilateral assistance program, only began during the Nixon Administration, within the context of a burgeoning Cold War collaboration, when Congress appropriated \$1.5 billion of U.S. weapons to Israel in 1974 to replenish weapons Israel used in the 1973 Arab-Israeli war. All military loans to Israel were ended in 1985 under the Reagan Administration, and replaced exclusively with military grants during a period of economic crisis in Israel.²

A mixture of military and economic aid grants charac-

Example of budgetary trade-offs of military aid to Israel for Ohio and Cleveland, available at www.aidtoisrael.org.



¹ Statistics derived from Jeremy Sharp, Specialist in Middle Eastern Affairs, “U.S. Foreign Aid to Israel,” Congressional Research Service, September 16, 2010, Table A-1. Recent U.S. Aid to Israel, p. 24, available at: <http://www.fas.org/sgp/crs/mideast/RL33222.pdf>

² This history of U.S. aid to Israel is adapted from Sharp, *ibid*, pp. 21-23.



Israeli air force refuels U.S.-made F-15 fighter jet over Tel Aviv. Photo: Israel Defense Forces.

terized U.S. foreign assistance to Israel until 2008. In July 1996, Israeli Prime Minister Benjamin Netanyahu addressed Congress and initiated a process to phase out U.S. economic aid to Israel while simultaneously increasing military aid during a 10-year Memorandum of Understanding covering FY1999-2008. Arguing that Israel no longer needed economic aid, Netanyahu praised the United States for giving Israel, “apart from political and military support, munificent and magnificent assistance in the economic sphere. With America’s help, Israel has grown to be a powerful, modern state. I believe that we can now say that Israel has reached childhood’s end, that it has matured enough to begin approaching a state of self-reliance.”³ Despite some Clinton Administration and Capitol Hill officials “questioning why the

United States should increase its military assistance to Israel at a time when the Israeli Government is supposed to be committed to peace negotiations with its neighbors,”⁴ and therefore subsequently in less need of arms for warfare, the proposal was implemented nevertheless. Whereas at the beginning of this 10-year period, the United States provided Israel with \$1.8 billion in military grants and \$1.2 billion in economic aid, by the end of the period military grants had increased to \$2.38 billion while economic aid was eliminated.

MILITARY AID TO ISRAEL (2009-2018)

In August 2007, the United States and Israel signed a 10-year Memorandum of Understanding (MOU) to set the parameters for U.S. military aid to Israel from

³ “Speech by Prime Minister Benjamin Netanyahu to a Joint Session of the United States Congress,” Washington, D.C., July 10, 1996, Israel Ministry of Foreign Affairs, available at: http://www.mfa.gov.il/MFA/MFAArchive/1990_1999/1996/7/PM%20Netanyahu-%20Speech%20to%20US%20Congress-%20July%2010-%201996

⁴ Philip Shenon, “Israel Sketches Out an Overall Drop in U.S. Aid Over 10 Years,” *New York Times*, January 29, 1998, available at: <http://www.nytimes.com/1998/01/29/world/israel-sketches-out-an-overall-drop-in-us-aid-over-10-years.html>

FY2009-2018. The Bush Administration's MOU outlined a total of \$30 billion of U.S. military aid to Israel during this period, an approximate 25 percent annual average increase over the previous level. The MOU called for incremental increases from the previous baseline of U.S. military aid to Israel of \$150 million in FY2009, \$225 million in FY2010 and FY2011, \$75 million in FY2012, and \$25 million in FY2013 to plateau at \$3.1 billion annually until the expiration of the MOU. The MOU also continued to carve out an exemption for Israel that, pending Congressional approval, would allow it to spend up to 26.3 percent of its military aid on its own

domestic weapons industry (all other recipients of U.S. military aid must spend all of the aid money on weapons and material from U.S. corporations).⁵

However, the failure of the super committee to produce a deficit-reduction plan in 2011 could trigger automatic across-the-board budget cuts beginning in FY2013 that would affect...military aid to Israel as envisioned in the MOU. As a result of the anticipated cuts, Israel is expected to lose \$250 million per year from its anticipated military aid package from FY2013-2018.

In each of their budget requests to Congress between 2009 and 2012, both Presidents Bush and Obama asked for increases in U.S. military aid to Israel as stipulated in the MOU. Congress obliged and earmarked \$2.55 billion (FY2009), \$2.775 billion (FY2010), \$3 billion (FY2011), and \$3.075 billion (FY2012) in military aid to Israel. President Obama's FY2013 budget request includes \$3.1

billion in military aid to Israel. However, the failure of

MAJOR MILESTONES IN U.S. AID TO ISRAEL

1949: United States provides first aid to Israel with \$100 million Export-Import Bank loan

1959: United States provides Israel with first military aid loan of \$400,000

1962: Israel obtains first advanced weapons system from United States (Hawk anti-aircraft missiles) with \$13.2 million military aid loan

1974: United States gives Israel nearly \$2.5 billion in military aid loans and, for the first time, military aid grants to replenish weapons used in the 1973 Israeli-Arab war

1979: United States gives Israel \$4 billion in military aid loans and grants as part of the Israeli-Egyptian peace treaty

1985: United States phases out all economic and military aid loans, in favor of \$3.35 billion of military and economic aid grants

1999: United States and Israel begin an agreed-upon ten year process to incrementally decrease and eventually eliminate economic aid grants while incrementally increasing military aid grants

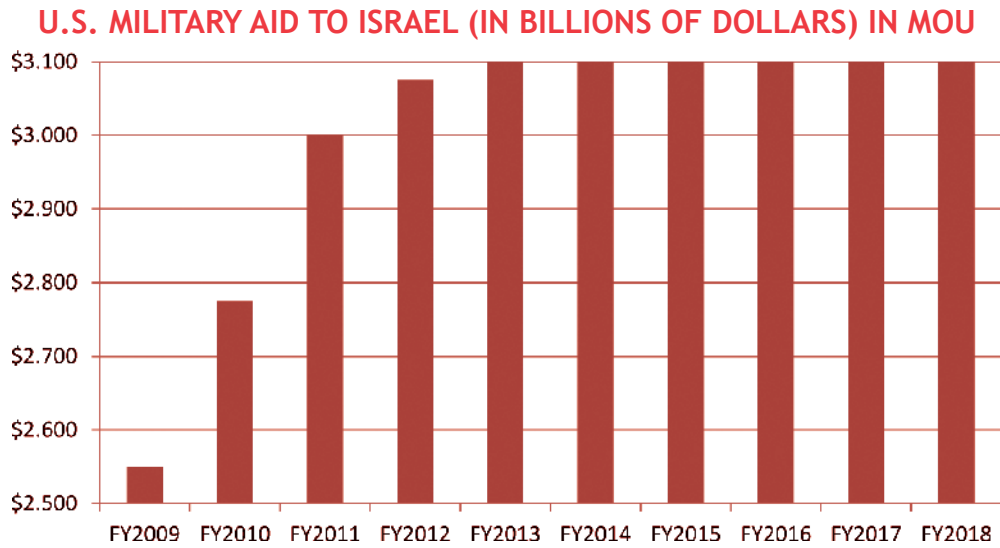
2000 and 2003: United States gives Israel approximately \$3.1 billion each year in military aid grants as Israel brutally suppresses the Palestinian uprising against Israeli occupation

2009: United States and Israel begin ten year Memorandum of Understanding to provide \$30 billion in military aid grants

⁵ The text of the MOU is available at: <http://endtheoccupation.org/downloads/2007israelusmou.pdf>

the supercommittee to produce a deficit-reduction plan in 2011 could trigger automatic across-the-board budget cuts beginning in FY2013 that would affect the ability of the United States to continue increased appropriations

of military aid to Israel as envisioned in the MOU. As a result of the potential cuts, Israel is expected to lose \$250 million per year from its anticipated military aid package from FY2013-2018.⁶



⁶ Nathan Guttman, "Israel Faces \$250 Million Slash in Aid," *Jewish Daily Forward*, December 2, 2011, available at: <http://forward.com/articles/147213/?p=1>

Part 2

What Is the Impact of Military Aid to Israel?

From 2000 to 2009, the United States appropriated \$24.1 billion in Foreign Military Financing (FMF) to Israel.⁷ With this taxpayer money, the United States

licensed, paid for and delivered more than 670,903,390 weapons, rounds of ammunition and related equipment to Israel, valued at \$18.866 billion, through three major weapons transfer programs during this same period. (The remaining approximately \$5.25 billion—or 22 percent of the total appropriation—was presumably spent by Israel on its own domestic weapons industry, a unique legislative exemption for Israel noted above.) These three programs included:

- Foreign Military Sales (FMS).

Through this program, the Defense Department contracted, financed and delivered to Israel more than 9,500 weapons, valued at more than \$10 billion.

- Direct Commercial Sales (DCS). Through this program, the State Department approved the licensing, financing, and delivery to Israel of more than 670 million weapons, valued at more than \$8.5 billion.

- Excess Defense Articles (EDA). Through this program, the Defense Department delivered more than 5,200 used weapons to Israel, valued at more than \$42 million.

During this 10-year period, the United States provided the Israeli military, at U.S. taxpayer expense, with nearly 500 different categories of weapons and related military equipment, ranging from the truly mundane—one used food steamer, valued at \$2,100—to the most sophisticated and advanced U.S. weapons systems—93 F-16D fighter jets, valued at nearly \$2.5 billion—and running the gamut of everything in between.⁸ Due to the quantity and scope of U.S. weapons deliveries to the Israeli military, it is highly unlikely that even the most routine Israeli military patrol could be accomplished without utilizing U.S. ammunition and guns, communications equipment and vehicles, making the United States complicit in and partly responsible for all of Israel's military actions and the human rights abuses it routinely commits against Palestinians in its 44-year military occupation of the West Bank, including East Jerusalem and the Gaza Strip.

It is highly unlikely that even the most routine Israeli military patrol could be accomplished without utilizing U.S. ammunition and guns, communications equipment, and vehicles, making the United States complicit.



⁷ Sharp, *ibid.*, p. 24.

⁸ All values and quantities of U.S. weapons deliveries to Israel are taken from a comprehensive database maintained by the US Campaign to End the Israeli Occupation, available at: <http://www.weaponstoisrael.org>



Israeli tank and Palestinian child. Photo: Reuters / Navef Hashlamoun.

CIVILIAN FATALITIES

Indeed, U.S. weapons to Israel have had a devastating impact upon Palestinians who live under Israeli military occupation. During roughly the same period in which the United States provided more than 670 million weapons and related military equipment to Israel—September 29, 2000 to December 31, 2009—the Israeli military killed at least 2,969 Palestinians who took no part in hostilities in the West Bank, including East Jerusalem, and the Gaza Strip, according to the Israeli human rights organization B’Tselem, the Israeli Information Center for Human Rights in the Occupied Territories. Among these fatalities were at least 1,128 Palestinian children less than 18 years of age.⁹ These killings thereby system-

atically violated the most fundamental human right to life (Article 3, Universal Declaration of Human Rights).

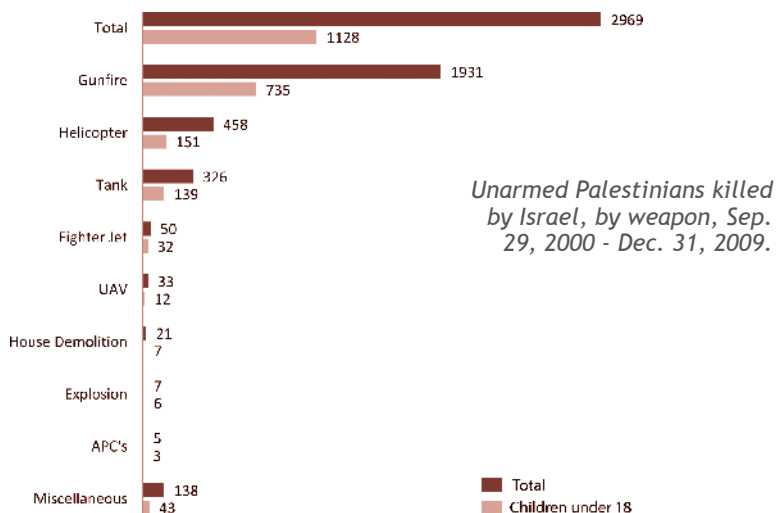
These statistics do not include an estimated 1,191 Lebanese who, according to Lebanese authorities, were killed by the Israeli military during its July-August 2006 war against Lebanon. A United Nations commission found that the war had a “devastating impact” on Lebanese civilians and that the Israeli military “did not give effective warning as required under international humanitarian law” to minimize civilian casualties.¹⁰ In addition, the statistics do not include 12 foreign nationals, including U.S. citizen Rachel Corrie, killed by the Israeli military in the Occupied Palestinian Territories



Dogan & Corrie

⁹ The original data from B’Tselem is available at: <http://www.btselem.org/statistics>. The US Campaign to End the Israeli Occupation has posted a detailed spreadsheet and statistical slide show of these Palestinian fatalities, which is available at: <http://weaponstoisrael.org/article.php?id=2940>. These statistics do not include Palestinians who were killed by Israel while participating in hostilities, nor do they include those Palestinians in whose cases B’Tselem was unable to determine whether or not they had been participating in hostilities when killed.

¹⁰ “Report of the Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1,” United Nations General Assembly, A/HRC/3, November 23, 2006, p. 3, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/specialsession/A.HRC.3.2.pdf>



since September 29, 2000;¹¹ nor do they include the nine foreign nationals, including U.S. citizen Furkan Dogan, killed by the Israeli military in international waters on May 31, 2010 aboard an international flotilla of humanitarian ships attempting to break Israel’s illegal siege of the Gaza Strip.¹²

In many instances, such as those detailed in the subsequent case studies, the linkage between Israel’s violations of Palestinians’ right to life and its reliance on U.S. weapons to commit these human rights violations is evident. For example, on July 22, 2002, Israel deliberately dropped a one-ton bomb from a U.S.-provided F-16 fighter jet on a Gaza City apartment in an extrajudicial assassination of Hamas member Salah Shehadeh that also killed 14 Palestinian civilians, including eight children.¹³ The Bush Administration deemed it a “heavy-handed action that is not consistent with dedication to peace in the Middle East” and a “deliberate

attack against a building in which civilians were known to be located.”¹⁴ This bombing prompted a class action lawsuit in U.S. federal courts on behalf of Palestinians killed or injured, against Avi Dichter, former director of Israel’s General Security Service (GSS), for claims under the Alien Tort Statute (ATS) and Torture Victim Protection Act (TVPA).¹⁵ So far there has been no legal action against the U.S. manufacturers of the F-16 or the U.S. officials who authorized its purchase with U.S. tax dollars despite knowledge of Israel’s pattern and practice of such violations.

CASE STUDY #1: TEAR GAS

Since 2000, the Israeli military has killed at least five Palestinians and gravely injured two U.S. citizens with tear gas. On June 13, 2002, the Israeli military killed 62-year-old Khader ‘Abd al-Fatah al-Gharbi in his East Jerusalem home after he inhaled tear gas from more than 20 grenades thrown into his house by soldiers. On June 29, 2002, the Israeli military killed 14-year-old Muhammad Ahmad Mabareq a-Shtewi in the al-Far’a refugee camp. After he collapsed from being hit in the chest with a rubber bullet, an Israeli soldier fired a tear gas canister that exploded near his face, killing him.¹⁶

Israel repeatedly has misused U.S.-supplied tear gas to break up Palestinian nonviolent protests. Israeli soldiers often have fired high-velocity tear gas canisters directly and deliberately at protesters, in contravention of the weapon’s operating manual, to gravely injure and kill both Palestinians and U.S. citizens. The Abu Rahmah family, whose members have played central roles in organizing weekly nonviolent protests against Israel’s ex-

¹¹ Data from B’Tselem, available at: <http://www.btselem.org/statistics>

¹² “Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance,” United Nations General Assembly, A/HRC/15/21, September 27, 2010, pp. 26-27, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.PDF

¹³ Yuval Yoaz, “State Commission to Examine Civilian Deaths in 2002 Shahade Assassination,” *Ha’aretz*, September 18, 2007, available at: <http://www.haaretz.com/print-edition/news/state-commission-to-examine-civilian-deaths-in-2002-shahade-assassination-1.229532>

¹⁴ “Press Briefing by Ari Fleischer,” July 23, 2002, archived at: <http://www.presidency.ucsb.edu/ws/index.php?pid=62979#axzz1jAUUV75b>

¹⁵ For additional details about the case, see materials posted by the Center for Constitutional Rights at “Matar et. al. v. Dichter,” available at: <http://ccrjustice.org/ourcases/current-cases/matar-v.-dichter>

¹⁶ These two killings and their details were published by B’Tselem and reproduced in spreadsheet format under “Palestinian Fatalities,” available at: <http://weaponstoisrael.org/article.php?id=2940>

propriation of land for its illegal settlements and wall in the West Bank village of Bil'in, have paid a particularly devastating price as a result of Israel's misuse of tear gas. Israeli soldiers killed 29-year-old Bassem Abu Rahmah on April 17, 2009, when he was hit in the chest with a high-velocity tear gas canister. His sister, 36-year-old Jawaher, died of cardiac arrest on January 1, 2011, after inhaling tear gas fired into her village by Israeli soldiers the previous day.¹⁷

On March 13, 2009, 37-year-old U.S. citizen Tristan Anderson was critically injured after an Israeli soldier shot him in the head with a high-velocity tear gas canister in the West Bank village of Ni'lin while he was observing a nonviolent Palestinian protest. The tear gas canister made a large hole in his forehead, causing brain damage and leaving him largely paralyzed. On May 31, 2010, 21-year-old U.S. citizen Emily Henochowicz was also struck in the face by a high-velocity tear gas canister fired by an Israeli soldier during a demonstration against Israel's attack on the Gaza Freedom Flotilla at the Qalandia checkpoint outside of Jerusalem. She lost her left eye as a result.¹⁸

On December 9, 2011, an Israeli soldier fired a high-velocity tear gas canister from an armored vehicle directly at 28-year-old Mustafa Tamimi, of the West Bank village of Nabi Saleh. The projectile hit him in the face and he died of his wounds the next day.¹⁹

In the cases of Bassem and Jawaher Abu Rahmah, Tristan Anderson, Emily Henochowicz and Mustafa Tamimi, there is evidence that the high-velocity tear gas canisters were supplied to the Israeli military by Combined

Systems, Inc. (CSI) of Jamestown, PA.²⁰ From FY2000 to 2009, the State Department licensed—and U.S. taxpayers funded—the delivery of more than 595,000 tear gas canisters and other “riot control” equipment to the Israeli military, valued at more than \$20.5 million.²¹

In the Consolidated Appropriations Act, 2012 (P.L.112-74), a new provision in the Foreign Military Financing program stipulates that “not later than 90 days after enactment of this Act and 6 months thereafter, the Secretary of State shall submit a report to the Committees on Appropriations detailing any crowd control items, including tear gas, made available with appropriated funds or through export licenses to foreign security forces that the Secretary of State has credible information have repeatedly used excessive force to repress peaceful, lawful, and organized dissent.” In light of the cases cited above, the State Department is obligated to include in this report Israel's misuse of tear gas and other crowd control items to injure and kill civilians participating in nonviolent protests.

CASE STUDY #2: HOUSE DEMOLITIONS

Israel commits numerous human rights abuses of Palestinians with specially-made bulldozers supplied by the Peoria, IL-based corporation Caterpillar. These abuses include, but are not limited to: the destruction of houses, private property and public infrastructure, the uprooting of crops, and the construction of Israel's illegal



Tear gas projectile fired by Israeli military. The label identifies a U.S. manufacturer. Photo: Oren Ziv / ActiveStills.

¹⁷ Josh Ruebner, “Less Lethal? Ask the Abu Rahmah Family,” *Huffington Post*, January 25, 2011, available at: http://www.huffingtonpost.com/josh-ruebner/less-lethal-ask-the-abu-r_b_813687.html

¹⁸ “A Pattern of Abuse against American Citizens,” Institute for Middle East Understanding, June 28, 2011, available at: <http://imeu.net/news/article0019196.shtml>

¹⁹ Robert Mackey, “After Fatal Shooting of Palestinian, Israeli Soldiers Defended Use of Force Online,” *New York Times*, December 11, 2011, available at: <http://thelede.blogs.nytimes.com/2011/12/11/after-fatal-shooting-of-palestinian-israeli-soldiers-defended-use-of-force-online/>

²⁰ Josh Ruebner, “Less Lethal? Ask the Abu Rahmah Family,” *Huffington Post*, January 25, 2011, available at: http://www.huffingtonpost.com/josh-ruebner/less-lethal-ask-the-abu-r_b_813687.html and Adalah-NY, “More Deaths and Injuries from US Tear Gas in Palestine, around the Middle East, and Oakland,” January 15, 2012, available at: <http://adalahny.org/document/726/more-deaths-and-injuries-us-tear-gas-palestine-around-middle-east-and-oakland>

²¹ Data taken from “Direct Commercial Sales,” available at: <http://weaponstoisrael.org/article.php?id=2757>

settlements and the West Bank Separation Wall, which was ruled to be illegal by the International Court of Justice in July 2004.²²

Since 1967, Israel has destroyed an estimated 24,813 Palestinian homes in the occupied West Bank, including East Jerusalem, and the Gaza Strip.²³ In the course of these home demolitions, often carried out with specially-constructed Caterpillar bulldozers armored by the Israeli military to facilitate military operations, Israel has killed 21 unarmed Palestinians, including seven



Israeli demolition of Palestinian homes in East Jerusalem, March 14, 2007. Photo: ActiveStills / Keren Manor.

children. Among those killed were:

- Eight members of the al-Sho'bi family in Nablus, who were crushed to death when the Israeli military destroyed their home in April 2002 and failed to give them adequate time to evacuate beforehand;
- Jamal Fayed, a paralyzed man whose relatives informed Israeli soldiers that he was inside the house about to be demolished, who was crushed to death in April 2002 in the Jenin refugee camp in the West Bank; and
- Ibrahim Khalafallah, a man in his seventies unable to move without assistance, who was crushed to death in his home in the Khan Younis refugee camp, Gaza Strip, in June 2004.

In addition to these fatalities, the Israeli military killed Rachel Corrie, a 23-year-old U.S. citizen from Olympia,

WA, on March 16, 2003, with a Caterpillar D9 bulldozer as she nonviolently attempted to protect a Palestinian home from being demolished in Rafah, Gaza Strip.²⁴

Unlike the case of tear gas, the data for which is based on publicly available records, the total quantity and value of Caterpillar bulldozers transferred from the United States to Israel is not known, as neither the Defense Department nor State Department has an explicit category for bulldozers in their published reports. The bulldozers may be categorized under “Other Commercial Vehicles” in the Foreign Military Sales program, which amounted to \$87.9 million from FY2000 to 2009. This figure would appear to be in line with a document submitted by Caterpillar in a U.S. federal court case, *Corrie et. al. v. Caterpillar, Inc.*, which sought redress for people killed by Israel with Caterpillar bulldozers. In this document, Caterpillar admitted that its transfers of bulldozers to Israel are approved by the Defense Security Cooperation Agency (an agency within the Department of Defense) and paid for by U.S. taxpayers through Foreign Military Financing. In one such deal, U.S. taxpayers provided \$32.6 million for Israel’s purchase of 50 Caterpillar D9 bulldozers.²⁵

In October 2010, in the midst of a civil trial in Israeli court brought by the Corrie family against the Israeli military, Israel’s Channel 2 news reported that Caterpillar had delayed the delivery of tens of D9 bulldozers—valued at \$50 million—to the Israeli military. The report speculated that this “sounds like an American military sanction.” Neither the Department of State nor Caterpillar confirmed or denied the report, and it remains unclear whether U.S. deliveries of bulldozers to the Israeli military have resumed.²⁶

²² For more detailed descriptions and legal analysis of human rights abuses committed by Israel with Caterpillar bulldozers, see “Israel’s Human Rights Violations Facilitated by the Use of CAT Bulldozers,” available at: <http://endtheoccupation.org/article.php?id=1178>

²³ Estimate by the Israeli Committee Against House Demolitions, available at: http://www.icahd.org/?page_id=76

²⁴ These cases are drawn from Josh Ruebner, “US Government Complicity in the Supply of Caterpillar Bulldozers to Israel,” in Asa Winstanley and Frank Barat (editors), *Corporate Complicity in Israel’s Occupation*, Pluto Press, 2011, p. 141; “Israel’s Human Rights Violations Facilitated by the Use of CAT Bulldozers,” available at: [http://endtheoccupation.org/downloads/cat_legal_memo\[1\].pdf](http://endtheoccupation.org/downloads/cat_legal_memo[1].pdf); and *Corrie et. al. v. Caterpillar*, Civil Action No. CV-05192-FDB, (USDC Washington 2004), available at: http://ccrjustice.org/files/Corrie_AmendedComplaint.pdf

²⁵ Winstanley and Barat, *ibid.*, p. 140, citing a Caterpillar declaration available at: http://ccrjustice.org/files/Corrie_WeinbergDeclaration_10_05.pdf

²⁶ Additional details are available at: <http://endtheoccupation.org/article.php?id=2832>

CASE STUDY #3: WHITE PHOSPHORUS

During “Operation Cast Lead,” Israel’s December 2008—January 2009 air, land and sea attack on the blockaded Gaza Strip, which killed 1,419 Palestinians, 1,167 of whom were civilians (82.2 percent), and injured 5,300,²⁷ the Israeli military fired white phosphorus artillery shells at at least five civilian targets, including a UN compound, two hospitals and a civilian home.²⁸ These munitions contain 116 felt wedges soaked in white phosphorus, which ignite and burn for up to seven minutes upon contact with oxygen. The chemical is oil and fat soluble, leaving those who are exposed to it with severe burns that can penetrate to the bone. Reports from the Israeli military and Ministry of Health, cited by Human Rights Watch, also conclude that white phosphorus exposure can cause “kidney failure and infections,” is “extremely destructive to tissue,” can lead to “systemic poisoning” and “can cause serious injury and death when it comes into contact with the skin, is inhaled or is swallowed.”²⁹

On January 4, 2009, a white phosphorus shell hit the Abu Halima house in Sifaya, a village near Beit Lahiya in the Gaza Strip. 16 members of the family were taking shelter in the house at the time of the attack. “According to family members who survived,” stated a UN report, “there was intense fire and white smoke in the room, the walls of which were glowing red. Five members of the family died immediately or within a short period: Muhammad Sa’ad Abu Halima (aged 45) and four of his children, sons Abd al-Rahim Sa’ad (aged 14), Zaid (aged 12) and Hamza (aged 8), and daughter Shahid (aged 18 months). Muhammad Sa’ad and Abd al-Rahim Sa’ad

were decapitated, the others burnt to death. Five members of the family escaped and suffered various degrees of burns: Sabah Abu Halima, her sons Youssef (aged 16) and Ali (aged 4), daughter-in-law Ghada (aged 21), and Ghada’s daughter Farah (aged 2).” Two other family members—Muhammad Hekmat Abu Halima and Matar Abu Halima—were subsequently shot and killed by Israeli soldiers while trying to transport wounded survivors to a hospital.³⁰

Researchers from Human Rights Watch noted that all of the white phosphorus shells they found in Gaza were manufactured in the United States with markings denoting their production in April 1989 by Tiokol Aerospace, which then operated the Louisiana Army Ammunition Plant. Reuters also photographed an Israeli artillery unit near Gaza handling M825A1 shells on January 4, 2009, with lot numbers indicating they were produced in the United States at Pine Bluff Arsenal in September 1991.³¹

As a result of its investigation, Human Rights Watch concluded that “Israel’s use of white phosphorus munitions during the armed conflict in Gaza violated international humanitarian law” and called upon the United States to halt the transfer of this weapon to Israel until



White phosphorus shell strikes UNRWA compound in Gaza City, January 15, 2009, wounding three and destroying more than \$3.7 million worth of medical supplies. Photo: UNRWA.

²⁷ Palestinian Centre for Human Rights, “3 Years After Operation Cast Lead Justice has been Comprehensively Denied; PCHR Release 23 Narratives Documenting the Experience of Victims,” December 27, 2011, available at: http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=7979:3-years-after-operation-cast-lead-justice-has-been-comprehensively-denied-pchr-release-23-narratives-documenting-the-experience-of-victims-&catid=36:pchrpressreleases&Itemid=194

²⁸ “Report of the UN Fact-Finding Mission on the Gaza Conflict,” A/HRC/12/48, September 25, 2009, pp. 133, 141, 147, 178, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>

²⁹ “Rain of Fire: Israel’s Unlawful Use of White Phosphorus in Gaza,” Human Rights Watch, March 2009, pp. 11-12, available at: <http://www.hrw.org/sites/default/files/reports/iopt0309web.pdf>

³⁰ “Report of the UN Fact-Finding Mission on the Gaza Conflict,” A/HRC/12/48, September 25, 2009, pp.177-179, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>

³¹ “Rain of Fire: Israel’s Unlawful Use of White Phosphorus in Gaza,” Human Rights Watch, March 2009, p. 13, available at: <http://www.hrw.org/sites/default/files/reports/iopt0309web.pdf>



UNRWA orphanage school in Rafah, Gaza, destroyed Jan. 12, 2009. Photo: International Solidarity Movement.

the United States conducts an investigation into Israel's violations of international and U.S. arms export laws.³²

Due to the lack of specificity in publicly available reports from the Department of State and Department of Defense, the exact quantity and value of U.S. exports of white phosphorus shells to Israel is not known. White phosphorus is fired from 155mm artillery shells. From 2000 to 2009, the Department of Defense provided Israel with \$11.38 million worth of cartridges in the range of 105mm-155mm, some of which may have been white phosphorus

shells.³³

ADDITIONAL HUMAN RIGHTS VIOLATIONS

In addition to U.S. weapons playing a primary role in Israel's killing of unarmed Palestinians, Israel misuses U.S. weapons to commit additional human rights abuses of Palestinians while enforcing its 44-year military occupation of the West Bank, East Jerusalem and Gaza Strip. From September 28, 2000, to April 2, 2011, the Israeli military and settlers injured an estimated 51,328 Palestinians, including 17,532 with rubber-coated steel bullets, 9,126 with live ammunition, and 6,981 with tear gas. Among those Palestinians injured, 3,643 were permanently disabled or maimed.³⁴ From 2007 to 2009, the Department of State licensed the export of 47 mil-

lion rounds of ammunition to Israel, valued at \$9.5 million,³⁵ more than enough to injure or kill every Palestinian living under Israeli military occupation 10 times over. This massive injuring of Palestinians, many of whom are civilians, is a violation of the right to security of person (Article 3, Universal Declaration of Human Rights).

The U.S. arming and equipping of the Israeli military also implicates U.S. taxpayers in Israel's wholesale and deliberate destruction of Palestinian civilian infrastructure. In addition to the wide-scale policy of demolishing Palestinian homes, mentioned above, the Israeli military has over the years routinely attacked and destroyed schools, hospitals, businesses, agriculture, roads, water treatment and electrical generation plants, the Gaza airport and other public infrastructure and private businesses. The damage to the civilian infrastructure of the Gaza Strip during "Operation Cast Lead" alone provides one measure. Israel damaged or destroyed 11,154 housing units, 211 industrial premises, 703 stores, 100 other commercial and public premises, 6,271 dunams of agricultural land, and 448,298 trees.³⁶ Initial estimates put the damage to Palestinian civilian infrastructure at nearly \$2 billion.³⁷ The destruction of real or personal property by an Occupying Power is prohibited except where absolutely necessary by military operations (Article 53, Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, cited hereafter as the Fourth Geneva Convention). A UN report debunked the notion that this deliberate destruction was "absolutely necessary." Instead it "categorically denounced" Israel's own claims that the operation's reliance upon "disproportionate force, attacks on civilian population and the destruction of civilian property are legitimate means to achieve Israel's military and political objectives."³⁸

³² *Ibid.*, pp. 63,10.

³³ "Foreign Military Sales (FMS)," available at: <http://weaponstoisrael.org/article.php?id=2731>

³⁴ Data taken from MIFTAH's Facts and Figures, available at: <http://www.miftah.org/report.cfm>

³⁵ "Direct Commercial Sales (DCS)," available at: <http://weaponstoisrael.org/article.php?id=2757>

³⁶ Data taken from Al-Haq, "'Operation Cast Lead': A Statistical Analysis," August 2009, available at: <http://www.alhaq.org/attachments/article/252/gaza-operation-cast-lead-statistical-analysis%20.pdf>

³⁷ "Gaza: Humanitarian Situation," BBC News, January 30, 2009, available at: http://news.bbc.co.uk/2/hi/middle_east/7845428.stm

³⁸ "Report of the UN Fact-Finding Mission on the Gaza Conflict," A/HRC/12/48, September 25, 2009, p. 408, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>

U.S. weapons also play a direct and indirect role in facilitating Israel's restrictions on Palestinians' right to freedom of movement. Israel has for years maintained hundreds of roadblocks and checkpoints in the West Bank, the number of which stood at 522 in September 2011.³⁹ The wall Israel has built within the West Bank, which was declared illegal by the International Court of Justice in July 2004, also severely restricts Palestinian movement. The Court ruled that "all States are under an obligation not to recognize the illegal situation arising from the construction of the wall, not to render aid or assistance in maintaining that situation and to co-operate with a view to putting an end to the alleged violations and to ensuring that reparation will be made therefor."⁴⁰ Nevertheless, the United States continued to provide direct assistance to Israel that effectively makes the wall permanent. The Emergency Supplemental Appropriations Act of 2005 (P.L.109-13) provided \$200 million for "programs, activities, and efforts to support Palestinians," but gave \$50 million of this to Israel "to help ease the movement of Palestinian people and goods in and out of Israel."⁴¹

The Court ruled that "all States are... not to recognize the illegal situation arising from the construction of the wall, [and] not to render aid or assistance in maintaining that situation..." Nevertheless, the United States continued to provide direct assistance to Israel that effectively makes the Wall permanent.

With this money, Israel planned to build 34 terminals at "crossing points along the revised route of the security fence."⁴² These systematic restrictions violate Palestinians' rights to freedom of movement and residence (Article 13(1), Universal Declaration of Human Rights).

Finally, U.S. weapons are employed directly and indirectly by the Israeli military to build and expand illegal Israeli settlements in the West Bank and East Jerusalem, and to commit human rights abuses of Palestinians in the course of building, expanding and maintaining these settlements, including, but not limited to, the expropriation of Palestinian land and agriculture. There are currently 152 recognized Israeli settlements in the West Bank and East Jerusalem⁴³ and, according to Israeli Prime Minister Benjamin Netanyahu, 650,000 Israelis live on land occupied by Israel since 1967.⁴⁴ A 1979 Department of State legal opinion found Israel's settlements to be "inconsistent with international law."⁴⁵ An Occupying Power is prohibited from transferring parts of its own civilian population into territory it occupies (Article 49, Fourth Geneva Convention).

³⁹ "Movement and Access in the West Bank," United Nations Office for the Coordination of Humanitarian Affairs, September 2011, available at: http://www.ochaopt.org/documents/ocha_opt_MovementandAccess_FactSheet_September_2011.pdf

⁴⁰ "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories," International Court of Justice, July 9, 2004, available at: <http://www.icj-cij.org/docket/files/131/1671.pdf>

⁴¹ The text is available at: <http://www.gpo.gov/fdsys/pkg/PLAW-109publ13/html/PLAW-109publ13.htm>

⁴² Details from "No US Funding for Israel's Illegal Wall," US Campaign to End the Israeli Occupation, July 6, 2005, available at: <http://endtheoccupation.org/article.php?id=1134>

⁴³ Data from Foundation for Middle East Peace, available at: http://fmep.org/settlement_info/

⁴⁴ "Speech by PM Netanyahu to a Joint Meeting of the U.S. Congress," Israel Ministry of Foreign Affairs, May 24, 2011, available at: http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2011/Speech_PM_Netanyahu_US_Congress_24-May-2011.htm

⁴⁵ Glenn Kessler, "1979 State Dept. Legal Opinion Raises New Questions About Israeli Settlements," *Washington Post*, June 17, 2009, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2009/06/16/AR2009061603285.html>

Part 3

Is U.S. Military Aid to Israel Legal?

U.S. RESTRICTIONS ON MILITARY AID

Because Israel misuses U.S. weapons to commit human rights abuses of Palestinians living under Israeli military occupation in the West Bank, East Jerusalem and Gaza Strip, including, but not limited to: the injuring and killing of civilians, the destruction of Palestinian civilian infrastructure, the severe restrictions on Palestinians' freedom of movement, and the expropriation of Palestinian land and resources for Israeli settlements, it is pertinent to investigate whether Israel is violating U.S. laws aimed at ensuring that U.S. military aid and weapons are appropriately and legally used.

There are two primary laws that place conditions and restrictions on how foreign governments can use U.S. foreign assistance: the Foreign Assistance Act and the Arms Export Control Act.

The Foreign Assistance Act (FAA) (P.L. 87-195), which regulates all U.S. bilateral economic and military aid programs, declares that "The United States shall, in accordance with its international obligations as set forth in the Charter of the United Nations and in keeping with the constitutional heritage and traditions of the United States, promote and encourage increased respect for human rights and fundamental freedoms throughout the world without distinc-

tion as to race, sex, language, or religion. Accordingly, a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries." In furtherance of this goal, "no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights." To promote human rights as a cornerstone of U.S. foreign policy, the law directs the president "to formulate and conduct international security assistance programs of the United States in a manner which will promote and advance human rights and avoid identification of the United States, through such programs, with governments which deny to their people internationally recognized human rights and fundamental freedoms, in violation of international law or in contravention of the policy of the United States".⁴⁶

In addition, the Foreign Assistance Act more narrowly determines that "No assistance shall be furnished under this chapter or the Arms Export Control Act [22 U.S.C. 2751 et seq.] to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights."⁴⁷

The Arms Export Control Act (AECA) (P.L. 90-629), which conditions and restricts the sale and leasing of U.S. defense articles and services, limits the use of U.S. weapons "solely for internal security, for legitimate self-

⁴⁶ 22 U.S.C. §2304, available at: <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title22/html/USCODE-2010-title22-chap32.htm>

⁴⁷ 22 U.S.C. §2378(d), available at: <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title22/html/USCODE-2010-title22-chap32.htm>



Palestinians homeless in Gaza after Operation Cast Lead. Photo: Physicians for Human Rights.

defense, for preventing or hindering the proliferation of weapons of mass destruction and of the means of delivering such weapons, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations.” The law stipulates that no credits, guarantees, sales, or deliveries of weapons can be extended to a foreign country if it is “in substantial violation (either in terms of quantities or in terms of the gravity of the consequences regardless of the quantities involved)” of the narrowly limited uses of weapons cited above.⁴⁸

Given that U.S. military aid to Israel, as documented in the previous section, does not further the advancement of human rights, but rather directly contributes to Israel’s systematic human rights violations against Palestinians, and that these human rights violations cannot constitute “legitimate self-defense” and take place not in the context of “internal security” but in the framework

of furthering a foreign military occupation, strong *prima facie* evidence exists to find that Israel is in violation of the FAA and AECA. Both Congress and the President must utilize the investigative and reporting mechanisms found in these laws and hold Israel accountable for any and all violations of these laws as required.

PRIOR U.S. SANCTIONS AGAINST COUNTRIES VIOLATING THESE LAWS

To exempt Israel’s use of U.S. military aid and weapons from scrutiny would be to deviate from the rule of law and to hold Israel to a lower standard of account than the United States does for other countries. As the supposed democratic ally of the United States in the Middle East, to do so for Israel is unacceptable. Indeed, on many occasions in past decades, the United States has held foreign countries, many of them considered close U.S. allies, accountable for their violations of these laws, including in the following cases.

⁴⁸ 22 U.S.C. §2754, §2753, available at: <http://www.gpo.gov/fdsys/pkg/USCODE-2010-title22/html/USCODE-2010-title22-chap39.htm>



Select countries sanctioned for violating U.S. aid laws.

Turkey: In July 1974, Turkey used U.S. equipment during its military intervention in Cyprus. President Richard Nixon considered this an inappropriate use of U.S. military assistance under the terms of the AECA and independently suspended the issuance of new Foreign Military Sales credits and guarantees for Turkey from late July until October 17, 1974. On that day, Congress imposed an embargo on military sales, credits, assistance and deliveries to Turkey and on December 10, 1974, an arms embargo against Turkey went into effect. The embargo was partially lifted by President Gerald Ford in 1975 and fully lifted by President Jimmy Carter on September 26, 1978.⁴⁹

Indonesia: In response to Indonesia's military intervention in East Timor on December 7, 1975, the Ford Administration initiated a policy review and placed a hold on new contracts and orders that were part of the U.S. military assistance program to Indonesia. The policy review was completed in May 1976 and military assistance and sales resumed in July because no formal finding was made of substantial violations of U.S.-Indonesian agreements regarding the use of U.S. military equipment.⁵⁰

Guatemala: In 1977 the Carter Administration sus-

pending direct military aid to Guatemala after determining the government was a gross and consistent human rights violator. Aid was not resumed until 1983 by President Ronald Reagan who claimed the human rights situation was improving. In 1990 President George H.W. Bush again cut military aid after a U.S. citizen was murdered by Guatemalan soldiers.⁵¹

El Salvador: In 1981 Congress passed the International Security and Development Act, which required the president to certify every six months that El Salvador was making a concerted effort to ensure progress in improving human rights conditions if it were to be eligible for U.S. assistance. This law was enacted in response to a hearing of the House Appropriations Subcommittee on Foreign Operations, which found that Salvadoran death squads, responsible for the murder of thousands, were made up of members of the security forces and that high-ranking members of the military actually planned the murders. By threatening to cut off aid, the United States did succeed in forcing the Salvadoran military to reassign the officers who were known to be leaders of the death squads. In 1983 President Reagan submitted a document to Congress outlining that El Salvador no longer demonstrated a consistent pattern of human rights abuses and Congress agreed to continue providing aid.⁵²

Argentina: On April 30, 1982 the Reagan Administration reported to Congress that Argentina may have substantially violated its agreements with the United States by using U.S.-supplied military equipment in its military operations in the Falkland Islands on April 2. The United States suspended all deliveries of defense articles and services to Argentina until September 24, 1982.⁵³

Nicaragua: Between December 1982 and December 1985, Congress enacted several pieces of legislation reducing and then prohibiting U.S. military or security

⁴⁹ Richard F. Grimmert, Specialist in National Defense, "U.S. Defense Articles and Services Supplied to Foreign Recipients: Restrictions on Their Use," Congressional Research Service, March 14, 2005, pp. 6-7, available at: <http://www.fas.org/sgp/crs/natsec/RL30982.pdf>.

⁵⁰ *Ibid.*, p. 6.

⁵¹ Clair Apodaca, *Understanding U.S. Human Rights Policy: A Paradoxical Legacy*, Routledge, 2006, pp. 99-100.

⁵² *Ibid.*, pp. 18-19, 101-103.

⁵³ Grimmert, *ibid.*, p. 5.

assistance for the Contra rebels, an armed force of Nicaraguan exiles intent on overthrowing the Sandinista government. The rebels had been accused of kidnapping, torturing and killing civilians. The Boland Amendment, first passed by Congress in 1982, only outlawed U.S. assistance to the Contras for the purpose of overthrowing the Nicaraguan government while allowing limited humanitarian assistance. In October 1984 it was amended to forbid action supporting the Contras by the Department of Defense, the Central Intelligence Agency and all U.S. government agencies. This ban lasted two years before Congress approved \$100 million of military and humanitarian aid to the Contras.⁵⁴

Turkey: Turkey was again a target of U.S. sanctions in 1999 when the Leahy Amendment, subsequently enacted into permanent law as part of the FAA and referenced above, was invoked to substantially slow down the sale of U.S. military equipment, specifically armored personnel vehicles. In order to win Congressional approval of deliveries, President Bill Clinton had to stipulate that the vehicles would not be sent to Turkish provinces that were associated with Turkey's human rights violations against the Kurds.⁵⁵

Zimbabwe: In 2002 President George W. Bush imposed an embargo on arms sales to Zimbabwe in response to the government's subversion of the democratic process through a flawed presidential election, a campaign of violence and intimidation against its political opposition and other serious human rights abuses.⁵⁶

Colombia: In response to thousands of unsolved cases of extrajudicial killings by Colombian armed forces, which took place between 1985 and 2009, Congress since 2002 has required that the Secretary of State certify

that the Colombian military and police forces are severing their links to paramilitaries, investigating complaints of human rights abuses and prosecuting those who have had credible charges made against them. Funding to the Colombian military is contingent on these certifications, which have been approved every year.⁵⁷

Philippines: Since 2008 the United States has placed human rights conditions upon its military aid program to the Philippines. In FY2008, \$2 million was withheld pending the satisfaction of human rights conditions. The penalty was raised to \$3 million the following year. The Consolidated Appropriations Act for FY2010 provided \$32 million in military aid for the Philippines, of which \$3 million was to be held back until the Secretary of State reported in writing to the Appropriations Committees that the government of the Philippines was continuing to take effective steps to eliminate extrajudicial executions and was punishing military personnel who have violated human rights.⁵⁸

Pakistan: In October 2010, the Obama Administration suspended U.S. military aid to approximately half a dozen Pakistani army units that were believed to have committed human rights abuses, including the killing of unarmed prisoners and civilians during recent military offensives.⁵⁹ This was just the latest example of U.S. aid to Pakistan being cut. In 1979 the Carter Administration cut aid in response to Pakistan constructing a uranium enrichment facility. The Soviet invasion of Afghanistan led President Reagan to negotiate an economic and military aid package with Pakistan in September 1981, but four years later, Section 620E(e)—the Pressler Amendment—was added to the FAA requiring the president to certify to Congress that Pakistan does

⁵⁴ Apodaca, *ibid*, pp. 88-90, 103-104.

⁵⁵ Apodaca, *ibid*, pp. 161-162.

⁵⁶ Jan Grebe, "And They are Still Targeting: Assessing the Effectiveness of Targeted Sanctions Against Zimbabwe," *Africa Spectrum*, volume 45, number 1, January 2010, pp. 16-17, available at: <http://hup.sub.uni-hamburg.de/giga/afsp/article/viewFile/246/246>

⁵⁷ June S. Beittel, Analyst in Latin American Affairs, "Colombia: Issues for Congress," Congressional Research Service, March 18, 2011, p. 36, available at: <http://www.fas.org/sgp/crs/row/RL32250.pdf>

⁵⁸ Thomas Lum, Specialist in Asian Affairs, "The Republic of the Philippines and U.S. Interests," Congressional Research Service, January 3, 2011, pp. 8-9, available at: <http://www.fas.org/sgp/crs/row/RL33233.pdf>

⁵⁹ Eric Schmitt and David E. Sanger, "Pakistani Troops Linked to Abuses Will Lose Aid," *New York Times*, October 21, 2010, available at: <http://www.nytimes.com/2010/10/22/world/asia/22policy.html>

not possess a nuclear explosive device during the fiscal year for which aid is to be provided. Due to this restriction, President Bush suspended most economic and all military aid in October 1990.⁶⁰

Bahrain: On September 14, 2011, the Pentagon informed Congress that it intended to fulfill a planned sale of \$53 million in weaponry to Bahrain. The sale was to have included 44 armored Humvees and 300 missiles. This alarmed many in Congress who were concerned with Bahrain's harsh treatment of pro-democracy protesters. According to human rights organizations, since February 2011, more than 40 people have been killed by security forces and another 1,600 people have been arrested. The government has led a campaign of retribution against anyone participating in or supporting protests, firing about 2,500 employees and destroying 40 Shi'a mosques and religious sites. Both the House and Senate introduced resolutions to prevent the U.S. government from going ahead with the weapons sale; however the Obama Administration is proceeding with the sale of spare parts and maintenance of equipment.⁶¹

PRIOR U.S. CONDITIONING, WITHHOLDING, AND SANCTIONING OF AID TO ISRAEL

As evidenced in the previous section, Congress and various Administrations have worked in a bipartisan fashion to sanction a broad array of countries that have misused U.S. weapons in violation of U.S. law, and to promote human rights as the objective of U.S. foreign policy and

the basis upon which to determine eligibility for U.S. weapons. Not only have Latin American, Asian, African and Middle Eastern countries faced these sanctions; Congress and previous Administrations have also conditioned, withheld, and sanctioned aid to Israel on several occasions.

In 1952 the United States and Israel signed a Mutual Defense Assistance Agreement, limiting the use of U.S. military equipment to defensive purposes. In language mirroring the Arms Export Control Act, it states that "The Government of Israel assures the United States Government that such equipment, materials or services as may be acquired from the United States... are required

Israel was warned in November 1956 that if it did not withdraw from Egyptian territory, there would be a complete termination of U.S. governmental and private aid. Israeli Prime Minister David Ben-Gurion announced the next day that Israel would withdraw.

for and will be used," *inter alia*, "solely to maintain its internal security" or "its legitimate self-defense," and "that it will not undertake any act of aggression against any other state."⁶²

In October 1953 President Dwight Eisenhower suspended economic aid to Israel as requested by the United Nations

Truce Supervision Organization after Israel refused to stop work on its hydroelectric project on the upper Jordan River. Aid was resumed only after Israel ended the water project.⁶³ In response to the joint Israeli-British-French October 1956 war against Egypt, the United States again suspended all governmental aid to Israel.⁶⁴ On November 1, President Eisenhower explained that "We cannot—in the world any more than in our own nation—subscribe to one law for the weak, another law for the strong; one law for those opposing us, another for those allied with us. There can only be one law—or

⁶⁰ K. Alan Kronstadt, "Pakistan-U.S. Relations," Congressional Research Service, March 6, 2006, pp. 2-3, available at: <http://www.fas.org/sgp/crs/row/IB94041.pdf>

⁶¹ Josh Rogin, "Obama Administration Using Loophole to Quietly Sells Arms Package to Bahrain," The Cable, January 27, 2012, available at: http://thecable.foreignpolicy.com/posts/2012/01/27/obama_administration_selling_new_arms_package_to_bahrain

⁶² Text of agreement in author's files.

⁶³ Steven Spiegel, *The Other Arab-Israeli Conflict: Making America's Middle East Policy, from Truman to Reagan*, University of Chicago Press, 1985, p. 63.

⁶⁴ Spiegel, *ibid*, p. 79.

⁶⁵ David A. Nichols, *Eisenhower 1956: The President's Year of Crisis—Suez and the Brink of War*, Simon & Schuster, 2011, p. 226.

there shall be no peace.”⁶⁵ Israel was warned on November 7 that if it did not withdraw from Egyptian territory, there would be a complete termination of U.S. governmental and private aid. Israeli Prime Minister David Ben-Gurion announced the next day that Israel would withdraw. Israel completed its withdrawal in March 1957.⁶⁶

Israel's intransigence in diplomatic negotiations after the 1973 war led President Gerald Ford to “reassess” U.S.-Israeli relations. In March 1975, after Israel rejected a plan to partially withdraw from Egyptian territory it had occupied since the 1967 war, Ford sent the Israeli government a letter stating: “I wish to express my profound disappointment over Israel’s attitude in the course of negotiations... Failure of the negotiations will have a far-reaching impact on the region and on our relations. I have given instructions for a reassessment of United States policy in the region, including our relations with Israel, with the aim of ensuring over-all American interests... are protected. You will be notified of our decision.”⁶⁷ The United States for six months refused to conclude a new arms agreement with Israel until it agreed to withdraw from parts of the Egyptian Sinai Peninsula.

On four different occasions between 1978 and 1982, the Secretary of State notified Congress that Israel “may” have violated the provisions of AECA. In March 1978 Israel invaded Lebanon and used U.S.-made antipersonnel cluster bombs to kill civilians. President Jimmy Carter instructed the State Department to prepare a UN Security Council resolution condemning Israel’s actions and informed Israeli Prime Minister Menachem Begin that he was required by law to notify Congress

On four different occasions between 1978 and 1982, the Secretary of State notified Congress that Israel “may” have violated the provisions of AECA.

cut U.S. military aid because on both occasions Israel assured the State Department that it would not misuse U.S. cluster bombs again.⁶⁹

President Ronald Reagan temporarily suspended the delivery of F-16 aircraft to Israel after it bombed the Iraqi nuclear reactor Osirak in 1981. The United States also voted for UN Security Council Resolution 487 which condemned the attack.⁷⁰ On July 15, 1982, the Reagan Administration determined that Israel “may” have violated the Mutual Defense Assistance Agreement by reportedly using U.S.-supplied anti-personnel cluster munitions against civilian targets during its invasion of Lebanon. In response to this finding, as well as Congressional hearings on Israel’s war in Lebanon, the Reagan Administration prohibited the export of cluster bombs to Israel for six years. The ban was lifted in 1988 only after Israel asserted that the cluster bombs would not be used against civilian targets,⁷¹ a pledge which Israel subsequently violated again during its 2006 war on Lebanon.

In 1991 Israeli Prime Minister Yitzhak Shamir requested \$10 billion in U.S. loan guarantees to help absorb Jewish immigrants from the former Soviet Union. President George H.W. Bush refused to fulfill this request due to Shamir’s rejection of a U.S. stipulation that Israel freeze all settlement activity in the Occupied Palestinian Territories. The loan guarantees were later approved in October 1992 after Yitzhak Rabin came into office and

that U.S. weapons were being used illegally, which could result in the end of military aid to Israel.⁶⁸ Israel’s actions in Lebanon brought scrutiny from the Carter Administration again in 1979 but no action was taken to

⁶⁶ Spiegel, *ibid*, p. 77.

⁶⁷ Spiegel, *ibid*, p. 293.

⁶⁸ Jimmy Carter, *Palestine Peace Not Apartheid*, Simon & Schuster, 2006, pp. 44-45.

⁶⁹ Michael F. Brown, “Arms Export Control Act: Israeli Breaches and U.S. Indulgence Result in Palestinian and Lebanese Civilian Casualties,” The Palestine Center, April 15, 2008, pp. 6-7, available at: http://www.thejerusalemfund.org/images/AECA_MichaelFBrown.pdf

⁷⁰ Spiegel, *ibid*, p. 409.

⁷¹ Grimmett, *ibid*, p. 5.

his coalition approved a partial settlement construction freeze.⁷² This loan guarantee package and its successor program enacted in 2003 (Emergency Wartime Supplemental Appropriations Act of 2003, P.L. 108-11) limit



Illegal Israeli settlement of Halamish, built on land belonging to Nabi Saleh Village, West Bank. Photo: Keren Manor/Activestills.

funds from the loan guarantees “only to support activities in the geographic areas which were subject to the administration of the Government of Israel before June 5, 1967.” Also, the amount of loan guarantees that could be issued “shall be reduced by an amount equal to the amount extended or estimated to have been extended by the Government of Israel... for activities which the President determines are inconsistent with the objectives and understandings reached between the United States and the Government of Israel regarding the implementation of the loan guarantee program,” a provision which has been interpreted by the president as the amount of money Israel spends on settlements in the Occupied Palestinian Territories.⁷³

In short, the United States has in the past sanctioned both Israel and other countries for violations of U.S. laws. Yet, despite Israel’s killing of at least 2,969 Pales-

tinians who took no part in hostilities during the 2000s and its other systematic human rights abuses during this period, not once since 2000 has any Administration formally or publicly held Israel accountable for its misuse of U.S. weapons in violation of its own laws, as detailed above.

On at least five occasions since 2000, Members of Congress have requested the Administration to investigate Israel’s potential violations of U.S. laws and/or the Administration has considered reporting a violation, including the following instances:

- In June 2001, Rep. John Conyers wrote a letter to President George W. Bush expressing concern that Israel’s use of U.S. weapons in extrajudicial assassinations, or “targeted killings,” of Palestinians constituted a violation of the Arms Export Control Act. According to the *Jerusalem Post*, on August 17, 2001, Secretary of State Colin Powell sent Rep. Conyers a letter in response, stating, in part, “Under the AECA, we are required before supplying defense articles to obtain the recipient’s agreement that those defense articles will be used only for specified purposes, including internal security and legitimate self-defense. Under section 3c, a report must be submitted to Congress if a substantial violation of such an agreement may have occurred.” Secretary Powell concluded: “Based on our assessment of the totality of the underlying facts and circumstances, we believe that a report under section 3c of the AECA is not required.”⁷⁴

- On July 23, 2002, Rep. Nick Rahall and Rep. John Dingell wrote a letter to President George W. Bush condemning in the “strongest possible terms” Israel’s missile strike on an apartment building in

The United States has in the past sanctioned both Israel and other countries for violations of U.S. laws. Yet, despite Israel’s... systematic human rights abuses during this period, not once since 2000 has any Administration formally or publicly held Israel accountable.

⁷² James A. Baker III with Thomas M. Defrank, *The Politics of Diplomacy: Revolution, War and Peace, 1989-1992*, G.P. Putnam’s Sons, 1995, pp. 540-557.

⁷³ Text of the law is available at: <http://www.gpo.gov/fdsys/pkg/PLAW-108publ11/html/PLAW-108publ11.htm>

⁷⁴ Janine Zacharia, “Powell: Israel use of U.S. Arms not Illegal,” *Jerusalem Post*, September 9, 2001, archived at: <http://www.highbeam.com/doc/1P1-46811445.html>

Gaza City that killed at least 17 Palestinians and wounded 150. These Members of Congress wrote to “request that the Administration examine whether the American-made and supplied military hardware employed in this attack was used in violation of the Arms Export Control Act, U.S. Public Law 90-829.”⁷⁵

- On May 1, 2005, *U.S. News and World Report* reported that Undersecretary of State John Bolton “recalled” a “split memo” to Secretary of State Colin Powell in which officials of the Department of State outlined positions both for and against Israel’s possible violations of the Arms Export Control Act in the same July 2002 missile strike on an apartment building in Gaza City.⁷⁶

- On January 30, 2007, the *Washington Post* reported that the Department of State preliminarily notified Congress that Israel may have violated the Arms Export Control Act through its use of cluster bombs during its 2006 war on Lebanon. The report was reportedly sent to Sen. Joseph Biden and Rep. Nancy Pelosi. Department of State spokesperson Sean McCormack stated that “There may likely could

have been some violations” of the Arms Export Control Act but that the Department of State had not yet made a final determination.⁷⁷

- On January 5, 2009, during Israel’s war on the Gaza Strip, or “Operation Cast Lead,” Rep. Dennis Kucinich wrote a letter to Secretary of State Condoleezza Rice in which he stated that “I believe that with the current escalation of violence in Gaza, a legal threshold has been reached, warranting a Presidential examination and report to Congress. I hereby request an examination of Israel’s compliance with the provisions of the Arms Export Control Act of 1976 (AECA).”⁷⁸

The US Campaign to End the Israeli Occupation submitted a Freedom of Information Act (FOIA) request to the Department of State on March

26, 2009, for documents pertaining to these cases and other potential cases of U.S. investigations into Israel’s misuse of U.S. weapons since 2000. At the writing of this paper, the organization has not received any documents as a result of this request.



Palestinian children run from Israeli tank. Photo: Reuters / Saeed Dahlah.

⁷⁵ The letter is in author’s files.

⁷⁶ “White House Week: Foggy Bottom’s Case of the Missing Memo,” *U.S. News and World Report*, May 1, 2005, available at: <http://www.usnews.com/usnews/news/articles/050509/9whitehouse.htm>

⁷⁷ Glenn Kessler, “Israel May Have Misused Cluster Bombs, U.S. Says,” *Washington Post*, January 30, 2007, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/29/AR2007012900510.html>

⁷⁸ “Israel May Be in Violation of Arms Export Control Act,” Press Release, January 6, 2009, available at: <http://kucinich.house.gov/News/DocumentSingle.aspx?DocumentID=108151>

Part 4

Is Military Aid to Israel the Right Policy for the United States?

UTILIZING MILITARY AID TO ISRAEL TO ACHIEVE U.S. FOREIGN POLICY OBJECTIVES

The Obama Administration has articulated several foreign policy goals regarding the Israeli-Palestinian conflict—an Israeli settlement freeze, easing Israel’s blockade of the Gaza Strip, negotiations leading to the establishment of an independent Palestinian state, and the admittance of Palestine as a member of the United Nations—that have, as of this writing, not been achieved.

In large measure, President Obama’s policy goals have been frustrated because the Administration has relied on a policy of all carrots and no sticks toward Israel, creating disincentives for Israel to recognize and shape its own policies in ways that advance, or at least do not hinder, U.S. foreign policy objectives. Despite tough talk from Vice President Joe Biden, who promised that the United States would hold Israel “accountable for any statements or actions that inflame tensions or prejudice the outcome of talks,”⁷⁹ after Israel announced the expansion of an East Jerusalem settlement in advance of his March 2010 visit, this pledge has not materialized. Not only has this promise of accountability gone unfulfilled despite repeated Israeli diplomatic provocations;

the Obama Administration has tried to placate Israel’s intransigence by showering it with additional military aid and uncritical diplomatic backing.

This unproductive policy approach was demonstrated to be a failure most spectacularly after the demise of the short-lived September 2010 Israeli-Palestinian bilateral negotiations, convened under U.S. auspices. Desperate to revive the talks, which broke down after Israel refused to extend a temporary and incomplete settlement “moratorium,” President Obama reportedly sent a letter to Israel offering additional sophisticated weapons systems, including \$3 billion worth of additional F-35 fighter jets, missiles, missile defense systems and satellites; agreeing to an Israeli military presence in the Jordan Valley of the West Bank after Palestinian statehood is established; and guaranteeing U.S. obstruction of Palestinian and Arab initiatives at the United Nations, in exchange for a one-time temporary settlement moratorium extension.⁸⁰ This offer, which *New York Times* columnist Thomas Friedman referred to as a “bribe,”⁸¹ was rejected by Israel, which saw no reason to accept an offer that would constrain its options when it knew there would be no negative repercussions for its rejectionism and that it could still get the benefits of the offered pack-

⁷⁹ Paul Richter, “Biden Tells Palestinians U.S. Won’t Be Deterred,” March 11, 2010, *Los Angeles Times*, available at: <http://articles.latimes.com/2010/mar/11/world/la-fg-biden-palestinians11-2010mar11>

⁸⁰ Eli Berdenstein, “Obama’s Letter: Incentives in Exchange for Lengthening the Freeze,” *Ma’ariv* (in Hebrew), September 29, 2010, available at: <http://www.nrg.co.il/online/1/ART2/161/524.html?hp=1&cat=404> and David Makovsky, “Dear Prime Minister: U.S. Efforts to Keep the Peace Process on Track,” September 29, 2010, Policy Watch #1707, Washington Institute for Near East Policy, available at: <http://www.washingtoninstitute.org/templateC05.php?CID=3256>

⁸¹ Thomas Friedman, “Reality Check,” *New York Times*, December 11, 2010, available at: <http://www.nytimes.com/2010/12/12/opinion/12friedman.html>



Injured Palestinian child in Gaza. Photo: Reuters / Mohammed Salem.

age down the line without accepting the terms of the deal at that moment.

The Obama Administration's approach to U.S.-Israel relations—including record-breaking requests to Congress for military aid to Israel that are not tied to major advances in the “peace process” and unprecedented levels of Pentagon partnership and funding for joint research and development projects and joint military exercises—has backfired by providing Israel with disincentives to support stated U.S. policy goals. Rather than continuing to feed Israel's insatiable appetite for more U.S. taxpayer-funded weapons and closer U.S.-Israeli military ties in the mistaken hope that doing so will somehow, despite all evidence to the contrary, support U.S. policy goals, the Obama Administration should look to the examples cited above from the Eisenhower, Ford, Carter, Reagan, and George H.W. Bush Administrations to see how the threat of or actual imposition of sanctions against Israel has compelled positive changes in Israel's behaviors to bolster U.S. policy objectives. A continuation of an all-

carrots-no-sticks policy will lead only to future policy objectives being frustrated.

EXPANDING EARMARKS FOR ISRAEL IN A TIME OF ECONOMIC CRISIS

The United States is more than \$15 trillion in debt; the inability of the Congressional supercommittee to agree upon a deficit-reduction plan could trigger across-the-board budget cuts in 2013; millions of Americans suffer from the crises of poverty, lack of health care, unemployment and home foreclosures; and our country's infrastructure is literally crumbling, as evidenced by the August 2007 collapse of a bridge over the Mississippi River on a federal interstate, due to the lack of adequate funding for maintenance and improvement.

During this time of economic crisis, it is irresponsible for the United States to continue to expand military aid to Israel—or, indeed, continue it at present levels. The remainder of the \$30 billion pledged to Israel in the 2007 Memorandum of Understanding (MOU), but

BUDGETARY TRADE-OFFS OF MILITARY AID TO ISRAEL

Training for 500,000 new green jobs each year, or...



Bulldozers for Israel to destroy Palestinian farms?



Health care for 24 million Americans each year, or...



More weapons to injure & kill Palestinian civilians?



350,000 affordable home vouchers each year, or...



Fortifications for Israel's illegal apartheid wall?



Early reading for 900,000 kids each year, or...



Weapons for Israel to keep Palestinians out of school?



Photo credits (top row from left): Roxanne Jo Mitchell, Neustock, Flickr/TeamSaintLouis, Ekaterina Monakhova, (bottom row from left) Reuters / Mahfouz Abu Turk, Reuters / Mohammed Salem, Flickr / DelayedGratification, Reuters / Nayef Hashlamoun

not yet appropriated, could be easily foregone, thereby reducing the U.S. national debt. A far better use of the taxpayer money the United States now gives to Israel—the 28th wealthiest country in the world in 2011 according to the International Monetary Fund⁸²—for weapons could be much better spent to help meet unmet community needs here at home. Take, for example, a typical mid-size U.S. city like Ft. Wayne, Indiana (population 254,000), whose residents are responsible for paying an estimated \$40.9 million of their federal taxes to finance U.S. military aid to Israel from 2009 to 2018 under the terms of the MOU. With that same amount of money, the federal government could instead each year:

- Provide 497 low-income families in Fort Wayne with affordable housing vouchers; or
- Retrain 697 unemployed workers in Fort Wayne to enter the green jobs economy; or
- Teach early reading skills to 1,209 disadvantaged Fort

Wayne school children; or

- Provide basic health care to 33,125 Fort Wayne residents without insurance.⁸³

DIMINISHING STRATEGIC RATIONALE FOR U.S. MILITARY AID TO ISRAEL

Ever since Israel transitioned from being a relatively poor food-aid recipient to an increasingly technologically advanced strategic partner of the United States, supporters of the unusually close U.S.-Israel relationship have branched several arguments to justify it.

From Egyptian President Gamal Abdul Nasser's Czech arms deal and subsequent embrace of the Soviet Union in 1955 until the dissolution of the bipolar superpower system in 1991, Israel's supporters maintained that this Western-leaning enclave served U.S. interests by thwarting the advance of Communism in the Middle East.

The abrupt end of the Cold War necessitated a new argu-

⁸² Data are from "World Economic Outlook Database," September 2011, International Monetary Fund, available at: <http://www.imf.org/external/pubs/ft/weo/2011/02/weodata/index.aspx>. Ranking determined by gross domestic product per capita, current prices in U.S. dollars.

⁸³ These statistics are drawn from the US Campaign to End the Israeli Occupation's interactive database, which highlights budgetary trade-offs between military aid to Israel and unmet domestic needs at the state, Congressional district, county, and city levels, and includes a detailed methodology for the calculations, available at: <http://www.aidtoisrael.org>

ment, and the rising lethality of transnational terrorism in the 1990s and 2000s provided one: Israel and the United States supposedly shared a common enemy and struggle in the “war on terror,” a theme which resonated with many in a shell-shocked post-9/11 political environment. Israeli Prime Minister Ariel Sharon encapsulated this thesis just two days after September 11, declaring to Secretary of State Colin Powell that Palestinian Authority President Yasser Arafat “is our Bin Laden.”⁸⁴

However, as post-9/11 U.S. wars against and occupations of Iraq and Afghanistan wore on inconclusively, this argument lost a great deal of its initial salience. With Israel unable to play more than a behind-the-scenes technological and intelligence role in supporting U.S. war efforts, and with the Muslim world rejecting Israel’s ongoing colonization of Palestinian land and its brutal treatment of Palestinians living under its military occupation, U.S. military leaders began to note that Israel actually is a drag on the “war on terror,” rather than an asset.

In his former position as Commander of U.S. Central Command, General David Petraeus testified to the Senate Armed Services Committee in March 2010 that “Arab anger over the Palestinian question limits the strength and depth of U.S. partnerships with governments and peoples in the AOR [Area of Responsibility of CENTCOM] and weakens the legitimacy of moderate regimes in the Arab world. Meanwhile, al-Qaeda

and other militant groups exploit that anger to mobilize support.”⁸⁵

The outbreak of the Arab Spring last year further eroded claims that U.S. military aid to and diplomatic support for Israel pay dividends for U.S. strategic interests in the region. As autocratic regimes in the Middle East are overthrown and democracies hopefully are firmly implanted, the United States will find it increasingly difficult to establish friendly diplomatic relations with these countries as long as it is viewed as being complicit in Israel’s military occupation of Palestinian territory. Truly democratic Arab regimes will never agree—as did Hosni Mubarak’s Egypt—to acquiesce to and benefit from U.S. policies that make them co-sponsors of Israel’s repression of Palestinians.

DOES ISRAEL EVEN NEED OR WANT U.S. MILITARY AID?

Israel in 2011 had a higher *per capita* gross domestic product than Korea and Saudi Arabia according to the



*Palestinian child confronted by Israeli army unit blocking a road in Umm Salamuna, near Bethlehem.
Photo: Keren Manor/Activestills.*

International Monetary Fund.⁸⁶ It has a developed, technologically advanced economy, making it an unlikely and unreasonable candidate to be the largest recipient of U.S. foreign assistance in the post-World War II era. Today, total U.S. military aid to Israel accounts for a minuscule 1.5 percent of its gross domestic product,⁸⁷ providing

Israel with a budgetary luxury rather than a necessity at

⁸⁴ Brian Whitaker, “Sharon Likens Arafat to Bin Laden,” *The Guardian*, September 14, 2011, available at: <http://www.guardian.co.uk/world/2001/sep/14/israel.september11>

⁸⁵ “Statement of General David H. Petraeus, U.S. Army, Commander, U.S. Central Command, Before the Senate Armed Services Committee, on the Posture of U.S. Central Command,” March 16, 2010, available at: <http://armed-services.senate.gov/statemnt/2010/03%20March/Petraeus%2003-16-10.pdf>

⁸⁶ Data are from “World Economic Outlook Database,” September 2011, International Monetary Fund, available at: <http://www.imf.org/external/pubs/ft/weo/2011/02/weodata/index.aspx>

⁸⁷ Haim Malka, “Crossroads: The Future of the U.S.-Israel Strategic Partnership,” Center for Strategic and International Studies, 2011, p. 1, available at: http://csis.org/files/publication/110908_Malka_CrossroadsUSIsrael_Web.pdf

the expense of hard-pressed U.S. taxpayers.

It would be difficult, if not impossible, to find any Palestinian living under Israeli military occupation who would be in favor of the United States continuing to provide Israel with the weapons with which it commits human rights violations in the Occupied Palestinian Territories. More surprisingly, an increasing number of Israeli individuals and institutions from across the political spectrum are raising questions about the necessity and propriety of Israel continuing to receive the lion's share of U.S. military aid especially during a time of economic difficulty in the United States.

For example, Joel Bainerman, publisher of *Tel Aviv Business*, argued that accepting U.S. aid constrains Israel's policy options and diminishes its government's credibility. "Israel's no longer being the number-one recipient of U.S. foreign aid would also deprive the State Department of a means to manipulate Israeli decision making with threats ('Do what we say or we'll cancel this gift'). Further, aid is welfare and welfare demeans, for states as well as for individuals."⁸⁸

More recently, in January 2011, the Jerusalem Institute for Market Studies published a report entitled "Economic and Strategic Ramifications of American Aid to Israel." Its author, Yarden Gazit, argued that U.S. military aid to Israel, Egypt and Jordan is fueling an arms race that requires Israel to spend more money on weapons than it would otherwise. He estimated that for every dollar of U.S. military aid to Egypt, the levels of which have been

proportionate to Israel's military aid package since the 1978 Camp David accords, Israel has to spend between 1.6 and 2.1 dollars in order to maintain its qualitative military edge, but that Israel only receives 1.5 dollars for every dollar that goes to Egypt. "Not only does American assistance not provide Israel with an economic advantage," he argued, "it requires Israel to expend additional amounts from its own internal security reserves."⁸⁹ Gazit also pointed out that U.S. military aid undercuts the Israeli weapons industry, which loses out on valuable contracts with the Is-

raeli military.⁹⁰ Gazit concluded that U.S. military aid has caused Israel "extensive economic and strategic damage." He projected that "its damaging effects will only worsen. Israel would be well served if the Government acts to preempt the inevitable and initiate a disengagement."⁹¹

Other Israelis have noted the unfairness and untenable nature of asking U.S. taxpayers to pay for Israeli guns as U.S. domestic butter becomes scarcer. Surveying the U.S. political and economic landscape, Israeli journalist Ran Dagoni argued that "The time has come to bid goodbye to the military aid that the US extends to Israel, that generous package (currently worth \$3 billion) that enables the Israeli taxpayer to share the cost of procuring equipment for the IDF with the US taxpayer. Israel should itself initiate the process of detachment from the Washington breast." He noted: "Doubtless Israel enjoys, and will continue to enjoy, strong support in Congress, but when things are being said about damage to Social



Palestinian day-laborers queue for hours each morning behind a checkpoint in Bethlehem, West Bank. Photo: Flickr / DelayedGratification.

⁸⁸ Joel Bainerman, "End American Aid to Israel?: Yes, It Does Harm," *Middle East Quarterly*, September 1995, pp. 3-12, available at: <http://www.meforum.org/258/end-american-aid-to-israel-yes-it-does-harm>

⁸⁹ Yarden Gazit, "Economic and Strategic Ramifications of American Assistance to Israel," Jerusalem Institute for Market Studies, January 2011, p. 4, available at: <http://jimsisrael.org/pdf/PPUsaidEnglish.pdf>

⁹⁰ *Ibid*, p. 5.

⁹¹ *Ibid*, p. 12.

Security, for example, legislators are liable to come to the conclusion that their own needy come first.”⁹²

Finally, some Israelis recognize that U.S. military aid promotes Israeli militarism and makes the establishment of a just and lasting Israeli-Palestinian peace more difficult. For example, Jonathan Ben-Artzi, a nephew of Israeli Prime Minister Benjamin Netanyahu, noting the

effect of U.S. military aid in perpetuating Israel’s military occupation of the West Bank, East Jerusalem and Gaza Strip, concluded that “If Americans truly are our friends, they should shake us up and take away the keys, because right now we are driving drunk, and without this wake-up call, we will soon find ourselves in the ditch of an undemocratic, doomed state.”⁹³

⁹² Ran Dagoni, “Israel Should Give Up US Military Aid,” *Globes*, January 19, 2011, available at: <http://www.globes.co.il/serveen/globes/docview.asp?did=1000616232&fid=4116>

⁹³ Jonathan Ben-Artzi, “Peace for Israelis and Palestinians? Not Without America’s Tough Love,” *Christian Science Monitor*, April 1, 2010, available at: <http://www.csmonitor.com/Commentary/Opinion/2010/0401/Peace-for-Israelis-and-Palestinians-Not-without-America-s-tough-love>

Part 5

What Are U.S. Policy Options Regarding Military Aid to Israel?

If credible evidence exists that Israel misuses U.S. weapons to commit grave and systematic human rights abuses in violation of U.S. laws; if the \$30 billion in U.S. military aid pledged to Israel from 2009 to 2018 could be put to better use to reduce the debt or fund unmet domestic needs; if U.S. military aid to Israel creates disincentives for Israel to support U.S. foreign policy objectives; if even Israelis cast doubts on the benefits of U.S. military aid for their country's strategic, political, and economic options; and if Israel should not be held to a different standard, but be held accountable to the rule of law like other countries, then the United States must stop giving Israel *carte blanche* with its military aid.

This policy paper, along with the accompanying data presented by the US Campaign to

End the Israeli Occupation at <http://www.weaponstoisrael.org>, presents ample evidence that Israel has misused and continues to misuse U.S. weapons in violation of the Foreign Assistance Act and Arms Export Control Act to commit grave and systematic human rights abuses, including, but not limited to: the injuring and killing of tens of thousands of Palestinian civilians since 2000, the deliberate destruction of Palestinian civilian infrastructure, the denial of Palestinians' right to freedom of movement, and the construction of Israeli settlements on expropriated Palestinian land.

Because violations of the Fourth Geneva Convention

and Universal Declaration of Human Rights can never be considered "legitimate self-defense" and because Israel commits these human rights violations against Palestinians not in the context of "internal security," but outside its agreed-upon armistice lines to further entrench and prolong its 44-year foreign military occupation of the Palestinian West Bank, East Jerusalem and Gaza Strip, Congress and the President should take immediate steps to end all U.S. military aid to Israel until, at the very

Congress and the President should take immediate steps to end all U.S. military aid to Israel until, at the very least, it abides by UN Security Council Resolution 242 and implements the stated U.S. foreign policy objective encompassed in that resolution.

least, it abides by UN Security Council Resolution 242 and implements the stated U.S. foreign policy objective encompassed in that resolution—of ending the Israeli military occupation of these Palestinian territories.

Given that Congress and/or the President are unlikely to take

this bold and necessary step due to the heavy-handed influence of weapons manufacturers and organizations such as the American Israel Public Affairs Committee (AIPAC), which lobby for additional weapons to Israel with no accountability for their misuse, there are still several lesser steps that Congress and the President can and should adopt in the framework of the FY2013 budget, the request for which includes \$3.1 billion in military aid to Israel. These policy options, spelled out below, would ensure that Israel is held accountable for its prior violations of U.S. laws and that any future military aid to Israel provided by the United States does not contribute to future Israeli human rights violations.



The Oval Office. Photo: WhiteHouse.gov.

POLICY OPTION #1: RESTRICT THE USE OF U.S. WEAPONS TO ISRAEL'S SOVEREIGN TERRITORY

To ensure that U.S. weapons are not being used to commit human rights abuses against a protected civilian population, Congress should state that U.S. weapons should not be used by Israel in its military occupation of the Palestinian Gaza Strip, West Bank and East Jerusalem. By so doing, Congress would still be affirming Israel's right to use these weapons for "legitimate self-defense" against an attack by a foreign country or for "internal security" consistent with the terms of the AECA.

There is precedent for restricting Israel's use of U.S. assistance within its own sovereign territory through the loan guarantee program. As cited above, in the April 2003 supplemental war appropriation bill authorizing \$9 billion in loan guarantees to Israel, Congress stipulated that these funds can be used "only to support activities in the geographic areas which were subject to the administra-

tion of the Government of Israel before June 5, 1967."

Congress should insert the same or similar language to that of the loan guarantee program in Israel's FY2013 Foreign Military Financing (FMF) earmark to ensure that such funds are not being used in violation of the AECA to maintain a foreign military occupation and to commit human rights abuses against an occupied people.

POLICY OPTION #2: INVESTIGATE PRIOR VIOLATIONS OF THE AECA BEFORE MORE MONEY IS APPROPRIATED

Despite Israel's manifold misuses of U.S. weapons since 2000, as documented above, the State Department has not publicly informed Congress of any violation of the AECA.

Members of Congress can take no action against violations of the AECA until the Executive Branch notifies them of a violation. Therefore, to ensure that Congress adheres to the letter and spirit of the AECA, Members of

Congress should insert the following language into the FY2013 budget line-item for FMF to Israel:

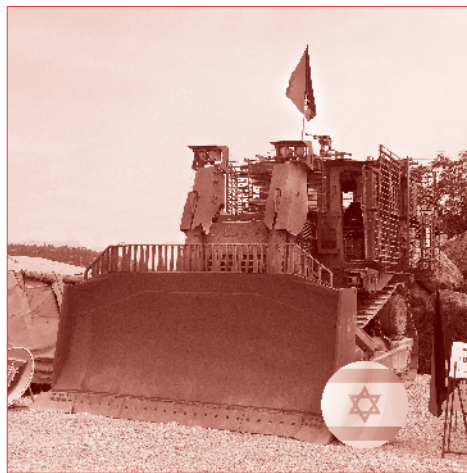
“No amounts appropriated under this bill shall be disbursed prior to the State Department transmitting to Members of Congress and making public the results of a complete, accurate and transparent investigation into Israel’s possible violations of the Arms Export Control Act since September 29, 2000.”

POLICY OPTION #3: USE U.S. MILITARY AID TO ISRAEL TO PROMOTE A FREEZE ON ISRAELI SETTLEMENTS

Since 1967, every U.S. Administration has upheld the illegality of Israel’s settlements in the Occupied Palestinian Territories, decried them as obstacles to peace, and urged Israel not to expand settlements. Despite this stance, Israel has continued to build and expand settlements in the West Bank and East Jerusalem. During the Oslo “peace process,” the number of Israeli settlers doubled. Currently, 650,000 Israeli settlers live in more than 150 illegal settlements in the West Bank and East Jerusalem, making a contiguous and viable Palestinian state impossible.

On numerous occasions, Israel has pledged to halt the expansion of settlement building, most recently in the 2003 “road map,” at the 2007 Annapolis peace conference, and during a 2010 self-defined limited “moratorium.” Yet these promises have gone unfulfilled as Israel continues to expand its illegal settlements.

Members of Congress should hold Israel to its pledge to halt settlement activities and back the Obama Administration’s position on settlements by inserting the following language into the FY2013 budget line-item for FMF to Israel:



Caterpillar D9 bulldozer used by Israeli military to demolish Palestinian homes, crops and infrastructure in the occupied territories. Photo: Flickr / Zachi Evenor.

“Amounts appropriated under this bill shall be disbursed only in quarterly installments after the Administration delivers to Congress a report verifying that during the previous quarter Israel has fulfilled its commitments under the ‘road map’ and Annapolis peace conference to halt the building of new settlements in the Palestinian West Bank and East Jerusalem and to freeze the expansion of existing settlements in these areas, including so-called ‘natural growth’ of these settlements. Israel shall be ineligible to receive a quarterly installment of this appropriation if the President reports that Israel has undertaken any form of settlement expansion during the previous quarter.”

POLICY OPTION #4: USE U.S. MILITARY AID TO PROMOTE THE LIFTING OF ISRAEL’S ILLEGAL BLOCKADE OF GAZA

Since 2006, Israel has maintained a full-scale land, sea and air blockade of the occupied Gaza Strip in an illegal act of collective punishment against the 1.5 million Palestinian civilians who reside there. This blockade has led to a dire humanitarian crisis and debilitated the economic life of the region.

In January 2009, President Obama declared that “Gaza’s border crossings should be open to allow the flow of aid and commerce.”⁹⁴ Members of Congress should support this important policy goal by insisting that no military aid to Israel be disbursed until the blockade is eased and that the borders of the Gaza Strip remain open to humanitarian aid, civilian travel, and normal economic activities by inserting the following language into

the FY2013 budget line-item for FMF to Israel:

“No amounts appropriated under this bill shall be disbursed prior to the President certifying in a public, writ-

⁹⁴ “President Obama Delivers Remarks to State Department Employees,” January 22, 2009, CQ Transcriptions, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/22/AR2009012202550.html>

ten report to Congress that Israel has ended its blockade of the Gaza Strip and that its borders are open to the free flow of civilians in and out of the area, humanitarian aid, and for all normal economic transactions, including imports and exports of materials, and that all provisions of the 2005 Agreement on Movement and Access are being implemented. Amounts appropriated under this bill shall be disbursed thereafter only in quarterly installments after the Administration delivers to Congress a report verifying that during the previous quarter Israel has not reestablished its blockade of the Gaza Strip nor violated the terms of the 2005 Agreement on Movement and Access.”

As an immediate step toward achieving the U.S. policy goal of establishing a just and lasting Israeli-Palestinian peace, Members of Congress and the President should induce Israel to freeze settlement growth, end the block-

ade of the Gaza Strip, and end the human rights abuses associated with its military occupation of the Palestinian West Bank, East Jerusalem, and Gaza Strip by enacting these provisions.

These provisions can successfully leverage U.S. influence over Israel through its FMF appropriation. Blank checks to Israel have not succeeded in modifying its behavior to accomplish U.S. policy goals of promoting human rights and establishing peace. In fact, just the opposite is true. When the United States has leveraged its influence over Israel by either threatening to withhold aid or sanctioning it, Israel has changed its policies and behaviors to comport with U.S. policy objectives. The continuation of the current policy of “all-carrots-no-sticks” will bring only the same failed results and policy frustrations. The time for change is overdue.

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