



**American Friends
Service Committee**



U.S. HUMAN RIGHTS OBLIGATIONS WITH RESPECT TO THE PROTECTION OF THE PALESTINIAN PEOPLE AND HUMAN RIGHTS DEFENDERS

Joint Submission to the United Nations Universal Periodic Review of The United States of America

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American Friends Service Committee (AFSC)

1822 R St NW, Washington, DC 20003

RJarrar@AFSC.org | (202) 483-3341 | www.AFSC.org

Center for Constitutional Rights (CCR)

666 Broadway, 7th Floor, New York, NY 10012

lraymond@ccrjustice.org | (212) 614-6459 | www.CCRjustice.org

Rachel Corrie Foundation for Peace and Justice (RCF)

203 East Fourth Ave., Suite 402, Olympia, WA 98501

cindy@rachelcorriefoundation.org | (360) 754-3998 | www.RachelCorrieFoundation.org

US Campaign to End the Israeli Occupation

P.O. Box 21539, Washington, DC 20009

uscampaign@endtheoccupation.org | (202) 332-0994 | www.EndTheOccupation.org

Jewish Voice for Peace (JVP)

1611 Telegraph Ave, Suite 550, Oakland, CA 94612

info@jewishvoiceforpeace.org | (510) 465-1777 | www.JewishVoiceForPeace.org

I. SUMMARY:

1. In August 2014, U.S. State Department Deputy Spokesperson Marie Harf stated that the Obama administration “has across the board provided more funding for Israel’s security than any in history, period.”¹ According to an April 2014 Congressional report:

“Israel is the largest cumulative recipient of U.S. foreign assistance since World War II. To date, the United States has provided Israel \$121 billion (current, or non-inflation-adjusted, dollars) in bilateral assistance.

Almost all U.S. bilateral aid to Israel is in the form of military assistance, although in the past Israel also received significant economic assistance.”²

2. Since the last Universal Periodic Review of the U.S., thousands of Palestinian civilians have been killed, tens of thousands injured, and hundreds of thousands displaced as a result of Israeli military operations in the Occupied Palestinian Territory. Thousands of Palestinian houses have been destroyed either completely or partially, including multistory apartment buildings.
3. During Israel’s 2014 attack on Gaza during “Operation Protective Edge,” civilian infrastructure was targeted by Israel including Gaza’s only power plant, multiple hospitals, ambulances, media outlets and personnel, and one-third of Gaza’s mosques and its only two churches. Israeli attacks have also targeted many United Nations Relief and Works Agency (UNRWA) shelters that were housing internally displaced persons.
4. The targeting of civilians or use of force which is indiscriminate or disproportionate is forbidden under international humanitarian law (IHL), as is collective punishment. Accountability measures have not been enforced, and impunity reigns.
5. Providing foreign assistance, in the form of military assistance, to Israel in the face of longstanding impunity for human rights crimes represents an ongoing failure of the United States to fully implement International Humanitarian Law (IHL) and accountability measures required under the U.S. Leahy Laws.

Methodology:

6. Our organizations' work in Israel and Palestine includes regular interaction with victims of human rights abuses in the region. We have on-the-ground experience in Gaza,

¹ Deputy Spokesperson Marie Harf, U.S. DOS Daily Press Briefing, August 18, 2014 <http://www.state.gov/r/pa/prs/dpb/2014/08/230695.htm>

² Jeremy Sharp, Specialist in Middle Eastern Affairs, “U.S. Foreign Aid to Israel,” Congressional Research Service, April 11, 2014, available at: <http://fas.org/sgp/crs/mideast/RL33222.pdf>

Jerusalem, the West Bank and Israel, and we work closely with regional legal and human rights organizations and with civil society rights defenders who strive to more effectively use nonviolent strategies in the face of injustice.

7. Our organizations are also in direct contact with U.S. policymakers in Washington, D.C. We regularly meet with government officials to discuss issues pertaining to Israel and Palestine, and we have access to firsthand information through these meetings.
8. As organizations with histories engaging the U.S. government on human rights issues, we monitor the U.S. diplomatic, financial and military support for the Israeli military and security forces.

II. LEGAL FRAMEWORK

Scope of International Obligations:

9. **International Humanitarian Law (IHL):** Common Article 1 of the Geneva Conventions, to which the U.S. is a party, is a foundational element of IHL, which requires that parties “ensure respect” for the Convention “in all circumstances.” This applies to Israel’s actions in the Occupied Palestinian Territory. Specifically, the United Nations Security Council (UNSC) has unanimously called upon parties to the Fourth Geneva Convention to abide by Article 1 and “ensure respect by Israel, the occupying Power, for its obligations under the convention” in UNSC Resolution 681. The UN General Assembly similarly has affirmed this duty in relation to the conflict and in 2009 called for a Conference of the High Contracting Parties to pursue enforcement of the Convention. In 2001, the High Contracting Parties of the Fourth Geneva Convention called upon all parties “directly involved in the conflict or not, to respect and to ensure respect for the Geneva Conventions in all circumstances, to disseminate and take measures necessary for the prevention and suppression of breaches of the Conventions.”³

U.S. Federal Laws and Regulations:

10. U.S. federal law governing the distribution and regulation of U.S. foreign assistance, including military assistance, impacts human rights globally, including the rights of the Palestinian people.
11. **The Arms Export Control Act (AECA)**⁴ and the **Foreign Assistance Act of 1961, as amended (FAA)**,⁵ contain relevant human rights provisions. The AECA restricts arms sales to foreign governments to a few narrow uses, including internal security, “legitimate” self-defense, and preventing proliferation of weapons of mass destruction. The FAA bars assistance to any government that “engages in a consistent pattern of gross violations of internationally recognized human rights,” except in certain circumstances.
12. **The “Leahy Laws”** refer to Section 620M of the Foreign Assistance Act as well as provisions within the Department of Defense Appropriations bills. Under these laws, the State Department is required to vet all foreign security units and individuals that receive U.S. assistance. If credible information surfaces that a unit or an individual took part in a gross human rights violation, the unit or individual are barred from receiving funding

³ Conference of High Contracting Parties to the Fourth Geneva Convention: Declaration 4, Geneva, 5 December 2001, available at <http://www.icrc.org/eng/resources/documents/misc/5fldpj.htm>

⁴AECA text available at: https://www.pmdc.state.gov/regulations_laws/aeca.html

⁵ Text of FAA as amended through P.L. 113-76, Enacted January 17, 2014 available at: <http://legcounsel.house.gov/Comps/Foreign%20Assistance%20Act%20Of%201961.pdf>.

unless the Secretary determines and reports that the foreign government is taking necessary steps to bring the responsible parties to justice.⁶

13. In March 2012, the State Department adopted an administrative regulation that effectively speeds exports of military items and services to Israel. (**ITAR, the federal rules through which the AECA is implemented**, was amended to add Israel to the list of countries granted a higher dollar threshold for the reporting requirement and a shorter (15 day) time period for Congressional notification and certification).⁷
14. In addition, **Presidential Policy Directive (PPD-27)**, issued in January 2014, purports to promote restraint and transparency “in transfers of weapons systems that may be destabilizing or dangerous to international peace and security” and affirms as a U.S. policy goal “ensuring that arms transfers do not contribute to human rights violations or violations of international humanitarian law.” The directive states that criteria guiding arms transfers will include the human rights record of the recipient and “the likelihood that the recipient would use the arms to commit human rights abuses or serious violations of international humanitarian law” or to “identify the United States with” such abuses and violations. It also proclaims that the U.S. “will not authorize any transfer if it has actual knowledge at the time of authorization that the transferred arms will be used to commit: genocide; crimes against humanity; grave breaches of the Geneva Conventions of 1949; serious violations of Common Article 3 of the Geneva Conventions of 1949; [or] attacks directed against civilian objects or civilians who are legally protected from attack or other war crimes as defined in 18 U.S.C. 2441.”⁸

Recommendations from the First Universal Periodic Review:

15. In 2011, the Human Rights Council made Recommendations 52 and 227 that concern, respectively, the implementation of the United States’ obligations under international humanitarian law vis-à-vis the Palestinian people and that U.S. security assistance to all countries is subject to Leahy Law review and enforcement. The U.S. supported both recommendations in part, adding the reservations that: a) international humanitarian law governs conduct in the context of armed conflict, and the United States cannot accept the implication that the U.S. is in an armed conflict with the Palestinian people; and b) the U.S. considers information from all sources, including classified sources, in its application of Leahy Laws and cannot make its decision-making public.

⁶ Nina M. Serafino, “Leahy Law” Human Rights Provisions and Security Assistance: Issue Overview” Congressional Research Service, January 29, 2014. Text available at: <http://fas.org/sgp/crs/row/R43361.pdf>.

⁷ 16592 Federal Register/ Vol. 77, No. 55 / Wednesday, March 21, 2012 / Rules and Regulations available at: <http://www.pmdtc.state.gov/FR/2012/77FR16592.pdf>.

⁸ The White House, Presidential Policy Directive -- United States Conventional Arms Transfer Policy (PPD-27), January 15, 2014, available at: <http://www.whitehouse.gov/the-press-office/2014/01/15/presidential-policy-directive-united-states-conventional-arms-transfer-p>

III. U.S. COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Issue I: Implementation of obligations under international humanitarian law (IHL) vis-à-vis the Palestinian people

16. While the U.S. supported UPR Recommendation 52 in part, the United States' deference to the Israeli government and military when it comes to the human rights of Palestinians and its funding of the Israeli military continue despite grave and continuous violations of international humanitarian law by Israel. Furthermore, the U.S. reservation to recommendation 52 fails to appreciate the U.S. responsibility to ensure respect for humanitarian law in all circumstances by other States, even if the U.S. is not directly involved in the armed conflict.
17. The continued U.S. sale of weapons including an undisclosed amount of mortar shells and illumination rounds,⁹ as well as fuel shipments,¹⁰ in the midst of the 2014 Israeli offensive on Gaza, offers evidence that the U.S. is not ensuring respect for and taking necessary measures for the prevention and suppression of breaches of the Conventions with regards to Israel. To the contrary, this arms transfer is just the latest U.S. failure to fulfill its duty under IHL to ensure respect for the law of war. Such transfers would appear to violate U.S. policy expressed in PPD-27. Moreover, the United States could be aiding and abetting war crimes and other violations of IHL in Gaza by knowingly supplying the ammunition to Israel to commit them.
18. In addition to the obligations the United States holds under Article 1, the Fourth Geneva Convention's Article 146 requires High Contracting Parties, including the U.S., to "search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts," or in the alternative send the defendant for trial in the courts of another High Contracting Party. At the very least, the Human Rights and Special Prosecutions Section (HRSP) of the Department of Justice that prosecutes human rights violators should investigate Israeli officials in the U.S. who are alleged to have committed war crimes, as is its obligation.

⁹ Adam Entous, "Gaza Crisis: Israel Outflanks the White House on Strategy." *The Wall Street Journal*, " August 14, 2014. Available at: <http://online.wsj.com/articles/u-s-sway-over-israel-on-gaza-at-a-low-1407979365>

¹⁰ Michelle Wiese Bockmann, "U.S. Intervention Sought as American Jet Fuel for Israel Military Arrives", August 13, 2014. Available at: <http://www.fleetmon.com/newsroom/2014/4442/us-intervention-sought-american-jet-fuel-israel-mi>

Issue 2: U.S. Implementation of Obligations under the “Leahy Laws” – Impunity for Israeli Crimes and the Right to Life

19. Recommendation 227, supported in part by the U.S. government, urges that the model legal framework expressed by the Leahy Laws be applied with respect to all countries receiving U.S. security assistance, and that the human rights records of all units receiving such assistance be documented, evaluated, made available and followed up upon in cases of abuse.
20. Israel is the recipient of over \$3 billion in military assistance annually, comprising 55% of total U.S. foreign military funding, as well as multiple training programs.¹¹ This funding and other assistance has continued despite well-documented reports of human rights violations, including war crimes, and consistent condemnation by the international community. In fact, according to meetings some of our groups have had with high-ranking officials at the Department of State, no Israeli units have ever been sanctioned under the Leahy Laws.
21. The Department of State has utilized a computerized system called the International Vetting and Security Tracking (INVEST) system, which, according to the Department of State, has facilitated a major increase in the number of individuals and units vetted for military training and assistance worldwide since 2010. We were informed by the Department of State that it is engaged in discussions with the Department of Defense aiming to upgrade the INVEST system in the upcoming months. While we welcome improvements, large holes in tracking and vetting mechanisms exist when it comes to all foreign assistance and many more steps must be taken to increase transparency, to improve engagement with human rights defenders and victims of human rights crimes, and ultimately to ensure that vetting leads to increased accountability and greater protections for civilians.
22. According to the Department of State, the U.S. does not currently employ mechanisms to track which Israeli units receive U.S. military assistance. This directly contravenes existing Leahy Law which states that the Secretary of State “must ensure that for each country [receiving assistance] the Department of State has a current list of all security force units receiving United States training, equipment, or other types of assistance.”¹²
23. The Leahy Laws can have the greatest impact when government action is assisted by the efforts of civil society and transparency is necessary for civil society to be engaged.

¹¹ Congressional Budget Justification, Foreign Assistance Summary Tables, Fiscal Year 2014:

<http://www.state.gov/documents/organization/208292.pdf>

¹² See Sec. 620M(d)(1) of the Foreign Assistance Act and the FY2014 Department of Defense (DOD) appropriations bill as contained in the Consolidated Appropriations Act, 2014 (P.L. 113-76)

Human rights defenders are often the best suited to provide information on the units which may be responsible for human rights violations; however, without greater transparency throughout the entire process, it is impossible for civil society to monitor whether the U.S. is effectively applying the Leahy Laws with respect to all countries.

24. Further, the Leahy Law (within the Foreign Assistance Act language) requires that the Department of State “make publicly available, to the maximum extent practicable, the identity of those units for which no assistance shall be furnished.” However, in its reservation regarding Recommendation 227 the U.S. suggests that the government is unable to provide information about implementation of the Leahy Laws because the process may consider information from classified sources. We note that over-classification can be used as a tool to hide U.S. complicity in the very crimes it is entrusted with preventing, or to shield others from prosecution. Even if some information is properly classified, important steps can be taken to ensure greater transparency. Information that is not classified, as well as Department of State final decisions regarding Leahy implementation, should be made public. The list of units “for which no assistance shall be furnished” should be made readily available and to further transparency, the U.S. should engage civil society in a targeted effort to identify and overcome barriers faced by human rights defenders in supporting the efficacy of Leahy Law implementation.

IV. Case Studies: U.S. Human Rights Defenders Killed by Israeli Units with Impunity, in which the Leahy Laws Should Be Applied:

Rachel Corrie:

25. Since the last Universal Periodic Review, developments in the case of human rights defender Rachel Corrie, a U.S. citizen killed by an Israeli military bulldozer in Gaza in 2003 as she non-violently protested the demolition of a Palestinian home, reflect the U.S. government's failure to effectively and transparently apply Leahy Laws and attain accountability for human rights violations by Israel's military.
26. In May 2011, U.S. Ambassador Daniel Shapiro stated that, "For seven years, we have pressed the Government of Israel at the highest levels to conduct a thorough, transparent, and credible investigation into the circumstances of [Rachel's] death."¹³ White House advisor Antony "Tony" Blinken wrote in November 2011, that he recently raised Rachel's case on multiple occasions with Israeli Ambassador Michael Oren and "stressed to him the importance our administration places in a thorough, transparent, and credible investigation of all the circumstances surrounding Rachel's death." Blinken shared the Ambassador's response, including the Ambassador's statement that Israel "made changes in policy and procedure to guide future actions." But, Blinken added "obviously, these answers do not address culpability or accountability."¹⁴ Statements from U.S. officials like these, pertaining to investigation and accountability in the Corrie case, have been made for over a decade now. They are best summed up by a statement from Michelle Bernier-Toth, U.S. Department of State's Managing Director of Overseas Citizens Services, who wrote in 2008, "We have consistently requested that the Government of Israel conduct a full and transparent investigation into Rachel's death. Our requests have gone unanswered or ignored."¹⁵
27. Testimony in 2010-2011 in the civil lawsuit brought by the Corrie family in Israel confirmed that investigators failed to question key military witnesses, including those recording communications; failed to secure the military video, allowing it to be taken for nearly a week by senior commanders with only segments submitted to court; failed to address conflicting soldiers' testimonies; and ignored damning statements in the military log confirming both a "shoot to kill" order and a command mentality to continue the unit's work, despite the threat that the bulldozers posed to the safety of the activists.¹⁶

¹³ Questions for the Record Submitted to Ambassador – Designate Daniel Shapiro by Senator John Kerry (#5) Senate Foreign Relations Committee, May 4, 2011.

¹⁴ Letter to the Corrie family of November 9, 2011, from Antony Blinken, Office of the Vice President, Deputy Assistant to the President and National Security Advisor to the Vice President.

¹⁵ Letter to the Corrie family of March 14, 2008, from Michelle Bernier-Toth, United States Department of State, Managing Director of Overseas Citizens Services.

¹⁶ Corrie, Cindy. "Op-ed; The deeply disturbing Israel court ruling on Rachel Corrie" *The Seattle Times* Sept. 29, 2012.

28. Nevertheless, in August 2012, an Israeli District Court judge ruled in the civil lawsuit that Rachel was killed as an act of war that absolved the Israeli military of all responsibility. President Jimmy Carter¹⁷, Human Rights Watch¹⁸, Amnesty International¹⁹ and numerous other legal and human rights groups in the U.S., Israel, and Palestine²⁰ condemned the ruling, pointing to the climate of impunity enjoyed by the Israeli military and the court's utter disregard for the Geneva Conventions.
29. The U.S. position continues to be that the Israeli investigation into Rachel's killing was unsatisfactory, and Embassy-Tel Aviv and State Department officials have had access to the troubling testimony of witnesses in the Corrie civil case. The identities of several of the soldiers involved are known. Yet, after an eleven-year failure to hold Israel accountable, no military unit has ever been sanctioned and the U.S. has taken no substantive action to effectively enforce the Leahy Laws. Today, the U.S. may well be funding the very unit and/or individuals responsible for the killing of its own citizen and human rights defender.

Furkan Doğan:

30. During the attack on the Free Gaza flotilla at approximately 4:00am on May 31, 2010, in international waters, Israeli commandos operating with the naval special forces unit Shayetet 13 shot and killed nine unarmed civilian passengers. U.S. citizen Furkan Doğan was shot five times, including one shot to the head at point-blank range.²¹ Instead of heeding international calls to investigate and hold accountable the Israeli forces responsible for the attack and killings, just days after the incident, the U.S. Department of Defense started planning training exchanges to prepare the Israeli military on how to deal with future flotillas; for example, just two months after this incident the U.S. Seal Team Four participated in a training exchange with an unidentified unit as part of U.S. follow-up to the flotilla attack.²²
31. Furthermore, not only did the U.S. vote against the UN Human Rights Council's Fact-Finding Mission to investigate Israel's attack of the flotilla, the U.S. tried to derail the investigation. One cable released to the Center for Constitutional Rights as part of a

¹⁷ The Carter Center. (Aug. 29, 2012) Carter Center Calls for Accountability After Corrie Verdict [Press Release] Available at: <http://www.cartercenter.org/news/pr/rachel-corrie-verdict-082912.html>

¹⁸ See Bill Van Esveld, HRW as quoted in <http://www.theguardian.com/world/2012/aug/28/rachel-corrie-ruling-deeply-troubling> and <http://www.npr.org/2012/08/28/160196025/judge-rules-americans-death-in-gaza-an-accident>

¹⁹ Amnesty International (Aug. 28, 2012) Rachel Corrie Verdict Highlights Impunity for Israeli Military [Press Release] Available at: <http://www.amnestyusa.org/news/press-releases/rachel-corrie-verdict-highlights-impunity-for-israeli-military>

²⁰ RCF, "Response of Legal and Human Rights Organizations to the Haifa District Court Verdict and the Israeli Supreme Court Appeal in Corrie Case" May 2014. Available at: <http://rachelcorriefoundation.org/trial/legal-and-human-rights-observers>

²¹ 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. UN Human Rights Council. September 27, 2010. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf

²² Department of Defense, Cable: Israel Sue After-Action Report, September 10, 2010. Available at: http://ccrjustice.org/files/Documents_Re_DOD_Flotilla_FOIA_Production_Guide_0.pdf

Freedom of Information Act request noted that the U.S. Mission in Geneva “explored ways to ‘turn off’ the flotilla fact finding mission” and that “[the U.S. is] very strongly favor having this fact finding mission (FFM) fall away.”²³

Summary of Case Studies:

32. We raise these case studies as part of an ongoing effort to secure accountability for the killings of Rachel Corrie and the flotilla passengers, but also to illustrate how implementation of the Leahy Laws is failing in its goal of promoting respect for human rights by U.S. aid recipients when it comes to its largest aid recipient, the State of Israel. These cases highlight how the U.S. has not complied with the law even when its own citizens have been killed by Israel. Adding to concerns are the cases of U.S. citizens severely injured by Israeli forces in which credible investigations never occurred (such as activists Tristan Anderson (2009), Brian Avery (2003), and more).²⁴ But, the Leahy Laws equally apply to the vast number of human rights violations committed against Palestinians and others. As U.S. and Israeli human and legal rights organizations wrote in 2014 as the Corrie family’s civil case was appealed to the Israeli Supreme Court, “The impunity so far enjoyed by Israel and Israeli officials in the Rachel Corrie case is not an anomaly. Impunity reigns when the victim is Palestinian or a foreigner working in solidarity with Palestinians.”²⁵

²³ Department of State, U.S. Mission Geneva, Cable: HRC Gaza Flotilla Fact-Finding Mission: What Next?, August 30, 2010, Available at: <http://ccrjustice.org/files/StateDept0432-0533.pdf>

²⁴ Center for Constitutional Rights, “Israel’s Attacks on United States Human Rights Defenders Since 2003.” Updated May 2014. Available at: <http://ccrjustice.org/files/US%20HRDs%20Injured%20and%20Killed%20updated%202014%202.pdf>

²⁵ Joint Statement of Adalah, Al-Haq, CCR, FIDH, PCHR, Al Mezan, and PCATI. “Accountability Sought for Killing of U.S. Peace Activist by Israeli Bulldozer” May 21, 2014. Available at: <http://ccrjustice.org/newsroom/press-releases/human-rights-groups-urge-israel-end-impunity-killing-of-rachel-corrie>

V. CONCLUSION

33. The United States' funding of the Israeli military continues despite grave and continuous violations of international humanitarian law by Israel. The U.S. continues to provide military assistance to Israel despite longstanding impunity for human rights crimes. This represents an ongoing failure of the United States to uphold its obligations under International Humanitarian Law and fully implement U.S. Leahy Laws. The United States has failed to implement the 2010 UPR Recommendations 52 and 277. Further steps are needed to ensure U.S. compliance.

Recommendations:

- The United States must fully adopt the 2010 Recommendations 52 and 277.
- The United States should immediately implement an effective mechanism to track U.S. military assistance sent to Israeli units and suspend assistance until its implementation.
- The United States should improve the process of upgrading the current Leahy vetting system INVEST by including NGOs and other stakeholders. The U.S. should also invite NGOs and other stakeholders to submit information about suspected cases of gross human rights violations.
- The United States should make public the final decisions regarding Leahy implementation and should make readily available the list of units “for which no assistance shall be furnished.”
- The United States should support an investigation into alleged war crimes and crimes against humanity in the Occupied Palestinian Territory and suspend all arm sales until apparent violations are credibly investigated and resolved in accordance with the law.