



Adalah The Legal Center for Arab Minority Rights in Israel
مركز العدالة القانونية لحقوق الاقليات العربية في اسرائيل
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مركز الميزان لحقوق الانسان
AL MEZAN CENTER FOR HUMAN RIGHTS

April 10, 2019

Secretary of State Michael Pompeo
U.S. Department of State
2201 C Street NW, Washington, DC 20520

Re: Cease All Forms of Military Assistance to Israel

Secretary of State Pompeo:

The undersigned human rights organizations are writing to demand that the United States cease all forms of military assistance to Israel in light of continuing grave concerns regarding U.S. military support for Israel despite credible reports that Israel's army may have committed gross human rights violations in responding with lethal force to Palestinian protesters in Gaza.

Adalah Justice Project, Adalah – The Legal Center for Arab Minority Rights in Israel, Al-Haq, Al Mezan Center for Human Rights (Gaza), Amnesty International USA, the Center for Constitutional Rights, Defense for Children International – Palestine, and the Palestinian Center for Human Rights wrote to you on May 15, 2018 calling on the Department of State to investigate Israel's use of lethal force against Palestinian protesters in Gaza since March 30, 2018. In the letter, the organizations also called for the U.S. to halt further assistance to Israeli military units involved in these shootings, in accordance with U.S. law.

Since you received this letter the United Nations established an independent international Commission of Inquiry (COI). The COI was mandated to investigate the killings and injuries that occurred in Gaza between March 30 and December 31, 2018, and released its report on February 29, 2019, during the 40th Session of the U.N. Human Rights Council. The COI found that "183 people were shot dead, another 6,106 were wounded with live ammunition" and

“[a]mong those shot were children, paramedics, journalists, and persons with disabilities.”¹ A “further 1,576 persons (including 345 children and 59 women) - probably not the intended targets - were injured by bullet fragmentation or shrapnel.”² The UN Relief and Works Agency for Palestine Refugees (UNRWA) reported treating 533 injured children at its health care facilities.³ In just one day, May 14, 2018, the Commission found that “Israeli security forces shot at least 1,162 people with live ammunition,” which the Commission calculated as “almost one person each minute in Gaza City” between 9.30am and 5.30pm.⁴ Two weeks later UNRWA Commissioner General Pierre Krähenbühl publicly stated that “the direct consequence of the number of injured and nature of wounds has brought the health-care system in Gaza to a breaking point.”⁵

The United States Government has not directly responded to the findings of the COI report. The 2018 country report for Israel released by the U.S. Department of State repeats several perspectives of the Israel Defense Forces:

The [Israeli] government stated that since March 30 it had been “contending with violent attempts led by Hamas to sabotage and destroy Israel’s defensive security infrastructure separating Israel from the Gaza Strip, penetrate Israel’s territory, harm Israeli security forces, overrun Israeli civilian areas, and murder Israeli civilians.” ... The government stated that many of the victims were operatives of Hamas or encouraged by Hamas to protest near the fence. The government claimed the IDF used live fire as a last resort, when a clear and imminent threat existed, and they aimed below the knee with the intention to wound but not to kill. The government also stated that it used live fire with lethal intent against terrorists perpetrating attacks against IDF forces at the border. The IDF stated they opened an internal inquiry into each Palestinian death at the border.⁶

The findings of the COI contradict these claims from the Israeli Government, noting that:

In the commission’s view, the demonstrations were civilian in nature, had clearly stated political aims and, despite some acts of significant violence, did not constitute combat or

¹ United Nations, Independent International Commission of Inquiry on the Protests in the Occupied Palestinian Territory, *Report of the detailed findings of the independent international Commission of inquiry on the protests in the Occupied Palestinian Territory* (‘Commission report’), A/HRC/40/74 (supplement) (18 March 2019), Summary. Available at:

<https://www.ohchr.org/EN/HRBodies/HRC/ColOPT/Pages/OPT.aspx>

² Commission report, para. 400.

³ United Nations Relief and Works Agency for Palestine Refugees in the Near East, ‘Gaza’s “great march of return”, one year on: impact on palestine refugees and unrwa services’ (2019) . Available at:

<https://unrwausa.us8.list-manage.com/track/click?u=b59f045d65c11f858cd9eb93b&id=ac5cd4cf6c&e=145e937213>

⁴ Commission report, para. 453.

⁵ United Nations Relief and Works Agency for Palestine Refugees in the Near East, ‘Gaza’s “great march of return”, one year on: impact on palestine refugees and unrwa services’ (2019), p. 13.

⁶ U.S. Department of State Israel and the Golan Heights 2018 Human Rights Report, *Executive Summary*, p. 2. Available at: <https://www.state.gov/documents/organization/289453.pdf>

a military campaign. Thus, the legal framework applicable to policing the protests was that of law enforcement, based in international human rights law. This assessment did not change following the commission's investigation into the demonstrators' affiliation to or membership in organized armed groups...The interpretation and application of the legal thresholds of "imminent threat to life" under international human rights law and "direct participation in hostilities" under international humanitarian law had a direct impact on the commission's findings, ultimately serving to distinguish between lawful and unlawful uses of lethal force.⁷

There is no indication that the Department of State has itself assessed whether Israeli military units have committed gross violations of human rights against protesters in Gaza since March 30, 2018. It has been reported that the State Department refuses to even trace whether Israel is using U.S. military aid illegally.⁸

Since the COI released its report, the Israeli army has continued to use lethal force against protesters in Gaza. Al Mezan, a human rights organization in Palestine, has documented that in 2019 Israeli forces have killed a further 21 protesters, including 8 children and 1 woman. Another 2,321 persons have been wounded, including 702 children, 129 women, 34 paramedics, and 31 journalists. Of the wounded, 729 were wounded from live fire, including 184 children and 10 women.

Our May 15, 2018 letter indicated that the Israeli military had been using U.S.-made military equipment to fire on protesters in Gaza.⁹ The COI revealed important additional information concerning this matter, finding that Israeli "troops operating along the Gaza fence were seen in open source media with three standard-issue small arms that fire high-velocity ammunition: Israeli-made Tavor assault rifles...and both M24 and SR25 sniper rifles manufactured in the United States."¹⁰ These weapons, of which the Israeli-made Tavor is the least powerful,¹¹ inflict devastating harm on the human body. The Commission report contained disturbing findings from a number of international doctors with experience in conflict zones who worked in Gaza's hospitals between March 30 and December 31, 2018, noting:

that "*absolutely horrific*" injuries featuring complex tissue and bone damage are entirely predictable when high-velocity ammunition is fired into human bodies by snipers. As the

⁷ Commission report, para. 32.

⁸ Alex Kane, In These Times, *Inside Sources Say the State Dept Refuses To Trace Whether Israel Is Using U.S. Military Aid Illegally* (January 2019 Issue), December 13, 2018. Available at:

<http://inthesetimes.com/features/israel-palestine-killings-us-aid-military-weapons.html>

⁹ Joint Letter from 9 Human Rights Organizations to U.S. Secretary of State Pompeo, May 15, 2018: "Human rights organisations have documented that the Israeli military has used the U.S.-made Remington M24 sniper rifle to fire on protesters in Gaza."

¹⁰ Commission report, para 731 citing The Times of Israel, *Israel's use of live fire in Gaza Protests faces legal test*, (30 April 2018); Israel Defense, "New Sniper Rifles for IDF Counter-Terrorism Units", (24 May 2018).

¹¹ Commission report, para 732.

doctors explained: “*that is what a sniper bullet does. It is what it is designed to do.*” In the view of one doctor the Commission spoke to: “*...using high velocity bullets on a population that are 100 metres away doesn’t make sense, it is like using a tank to kill a fly.*”¹²

As outlined in our May 15, 2018 letter, U.S. law, specifically section 502 B(a)(2) of the Foreign Assistance Act, requires that “except under circumstances specified in this section, 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”, which includes crimes against humanity. The COI found that:

During armed conflict or occupation, international humanitarian law prohibits, inter alia, willful killing and willfully causing great suffering. Unless undertaken lawfully in self-defence, intentionally killing a civilian not directly participating in hostilities is a war crime. The Commission found reasonable grounds to believe that individual members of the Israeli security forces, in the course of their response to the demonstrations, killed and gravely injured civilians who were neither directly participating in hostilities nor posing an imminent threat. If committed in the context of a widespread or systematic attack directed against a civilian population pursuant to or in furtherance of a State or organizational policy, serious human rights violations may also constitute crimes against humanity. Murder and “other inhumane acts” that cause great suffering or serious injury qualify as such violations. In the course of the investigation, **the Commission found serious human rights violations that may constitute crimes against humanity.**¹³

Despite these findings and their direct relevance to the operation of U.S. law in this context, the U.S. Government has not publicly responded to the findings of the COI report and military assistance to Israel continues as before.

No country has received as much foreign military aid from the U.S. as Israel. Between 2009-2017 the U.S. Department of State’s annual reports on arms exports document that the U.S. provided to Israel almost 9 million guns and accessories, more than 100 million aircraft related items, over 2 million bombs and more than 4.5 million toxicological agents and related items - totalling \$3,042,557,714.¹⁴ Put in perspective, this is equivalent to the annual U.S. taxpayer resources spent on publicly educating more than 250,000 school students in the United States.¹⁵ In 2016 the United States significantly increased military assistance to Israel by signing a 10-year memorandum of understanding (MoU) to provide a total of \$38 billion; \$33

¹² Commission report, para 735.

¹³ Commission report, paras 980, 981. Emphasis added.

¹⁴ Alex Kane, In These Times, *Inside Sources Say the State Dept Refuses To Trace Whether Israel Is Using U.S. Military Aid Illegally* (January 2019 Issue), December 13, 2018.

¹⁵ Governing, *Education Spending Per Student by State*. Available at: <https://www.governing.com/gov-data/education-data/state-education-spending-per-pupil-data.html>

billion for military assistance and \$5 billion for missile defense.¹⁶ By comparison, in the previous 70 years combined, the U.S. provided Israel with \$94.7 billion in military assistance and \$5.7 billion for missile defense.¹⁷

An examination of the private U.S. defense contractors that lobbied to support approval of the MoU provides an indication of who stands to benefit most from it. Lockheed Martin is the maker of the F-35 fighter jet, which Israel can purchase from the U.S. using Foreign Military Financing under the MoU. Public records indicate that in 2016 Lockheed Martin spent \$24.1 million lobbying the U.S. Congress, in part to support approval of the MoU.¹⁸ Two months after the MoU was signed Israel agreed to pay Lockheed Martin an estimated \$1.7 billion for seventeen F-35 fighter jets.¹⁹

While U.S. corporate military contractors reap the financial windfall of providing the armaments needed by Israel to perpetuate its ongoing illegal occupation of Palestinian territory, it is Palestinians that suffer the consequences - such as those killed and injured in Gaza since March 30, 2018 - and U.S. taxpayers that are made to pay the multi-billion dollar bill.

Considering the apparent absence of any intention by the Department of State (or any other entity of the U.S. Government) to investigate this latest failing to uphold Section 502B (a)(2) of the Foreign Assistance Act, **we are compelled to demand that the U.S. immediately cease all military aid or assistance to Israel.**

If you have any questions or require further information please contact Nadia Ben-Youssef, Advocacy Director of the Center for Constitutional Rights, at: nbenyoussef@ccrjustice.org.

Sincerely,

Adalah Justice Project
Adalah – The Legal Center for Arab Minority Rights in Israel
Al-Haq
Al Mezan Center for Human Rights (Gaza)
The Center for Constitutional Rights
Defense for Children International – Palestine

¹⁶ U.S. Department of State, *Ten-Year Memorandum of Understanding Between the United States and Israel*. Available at <https://www.state.gov/r/pa/prs/ps/2018/10/286363.htm> “Under the terms of the MOU, the United States will set funding for Israel at levels of \$3.3 billion in Foreign Military Financing and \$500 million for cooperative programs for missile defense over each of the next ten years, a **significant increase** enabling Israel to acquire additional advanced military capabilities from the United States that will, over time, enhance Israel’s security and strengthen our bilateral relationship” [Emphasis added].

¹⁷ Congressional Research Service, *U.S. Foreign Aid to Israel*, April 10, 2018, Table, p.1 - Military Foreign Aid Obligations to Israel, 1946-2017: \$94,792,790,000. Available at: <https://fas.org/sqp/crs/mideast/RL33222.pdf>

¹⁸ U.S. Senate Lobbying Disclosure Act Database, search results for Lockheed Martin. Available at: <https://soprweb.senate.gov/index.cfm?event=processSearchCriteria>

¹⁹ Judah Ari Gross, *Israel finalizes agreements to buy 17 more F-35 jets*, Times of Israel, 27 August 2017. Available at: <http://www.timesofisrael.com/israel-finalizes-agreements-to-buy-17-more-f-35-jets/>

cc:

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Senator Mike Lee
Senator Robert Menendez
Senator Bernie Sanders
Senator Rand Paul
Senator Jack Reed
Senator Jeanne Shaheen
Senator Elizabeth Warren
Senator Todd C. Young

Congressman Joaquin Castro
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