U.S. Military Aid to Israel

An Analysis of the U.S. Leahy Laws

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INTRODUCTION

In this research, I will consider whether United States military aid to Israel meets the premise of the Leahy Laws. The following research aims to provide a legal analysis of the applicability of the Leahy Laws to the pertinent case of Israel. I will begin with a background discussion of reports recounting the Israeli military offensive, Operation Protective Edge of 2014. Secondly, I will provide an analysis of the military court system in the West Bank and Gaza and reports documenting the abuse of Palestinian minors, as well as Palestinian relief and charity workers, inside Israeli prisons and detention facilities. Lastly, I will analyze reports documenting the efforts by Israeli occupation forces to ethnically cleanse the Palestinian population in East Jerusalem, and those within historic Palestine. Following these cases, I will discuss whether these events qualify as gross human rights violations and ultimately fulfill the definitions and restrictions presented in the Leahy Laws. Ultimately, I ask the question: Is the United States violating the Leahy Laws in its military support of Israel?

The Memorandum of Agreement on Security Cooperation, the first 10-year agreement between the U.S. Department of State (DoS) and the Israeli government, was secured in 1999. (Sharp, 2019, p.5) From then on, annual Memoranda of Understanding (MOUs) have been arranged, with U.S. aid expenditures increasing exponentially each year. (Sharp, 2019, p.7) In 2016, a MOU was established for the 2019 to 2028 fiscal years, with the United States government pledging $38 billion in military aid to Israel. (Sharp, 2019, p.2) $33 billion in Foreign Military Financing (FMF) grants and the remaining $5 billion in missile defense

appropriations. The total amount of aid (military, economic, and missile defense) allocated to Israel from 1946 to 2017 has amounted to $134,776.709 billion. (Sharp, 2019, p.2)

A year prior to the establishment of the first MOU between Israel and the United States, the first of the Leahy Laws were established by Vermont Senator, Patrick Leahy. In 1998, the first institution was an amendment made to the Foreign Assistance Act of 1961 (FAA) in Section 620M. The amendment stated that assistance granted under the FAA or the Arms Export and Control Act (AECA) is to be suspended or discontinued if there is credible information that the recipient foreign security force unit has committed a gross human rights violation. A "gross human rights violation" is defined by the FAA as:

> "Cruel, inhumane, or degrading treatment or punishment; prolonged detention without charges and trial; causing the disappearance of persons by the abduction and clandestine detention of those persons; and other flagrant denial of the right to life, liberty, or the security of person." (Serafino et al., 2014, p. 2)

The second implementation of the Leahy Laws is found in the Department of Defense appropriations bill/the Consolidated Appropriations Act of 2014. The amendment requires that none of the funds administered through the act shall be used to provide "training, equipment, or other assistance for the members of a unit of a foreign security force if the secretary of defense has credible information that the unit has committed a gross violation of human rights." (Serafino et al., 2014, p. 4)

There are three differences between the Leahy Laws in the FAA and the DOD appropriations bill as stated by Serafino et al. The first of these differences is that exceptions are permitted by the FAA if "the government is taking effective steps to bring the responsible

members of the security forces unit to justice", and permitted by the DOD appropriations bill if "all necessary corrective steps have been taken." (Serafino et al., 2014, p.5) The second difference is that the DOD appropriations bill allows the Secretary of Defense to waive the prohibition under "extraordinary circumstances" and the FAA does not permit a waiver. (Serafino et al., 2014, p. 6) The third and last significant difference is that the FAA requires that the Secretary of State must promptly inform the foreign government of the discontinuation of assistance, providing the reasoning as well as providing them assistance in bringing the violators to justice; The DOD appropriations bill does not include the "duty to inform". (Serafino et al., 2014, p. 19)

Serafino et al. offers a timeline of the developments made to the Leahy Laws since their establishment in 1998. In 1974, provisions to Section 502B of the FAA prohibited the provision of security assistance to any country found to engage in a "consistent pattern" of gross human rights violations. This development provided the definition of human rights that is used to inform this legislation and the vetting process. In 1997, conditions were applied to counternarcotic (CN) assistance, prohibiting State Department CN appropriations for foreign security forces that had committed gross human rights violations. In 1998, conditions were applied to Section 8130 of the Department of Defense appropriations bill prohibiting the allocation of DOD funds to train units of a foreign military or other security force who had committed gross human rights abuses. At the time, this condition only applied to training, and did not pertain to appropriations dedicated to equipment, support services, grants, loans, or cash transfers. In 2000, this condition was amended to include the training of foreign police forces. In 2011, three significant amendments were made to the FAA's Section 620M.

Firstly, when referring to gross human right violations in the FAA, the amendment changed “violations” to singular, implying that one violation could be responsible for a complete discontinuation of aid to that respective unit. Secondly, when referring to effective measures that must be taken to redeem the country or unit, the amendment changed “effective measures” to “effective steps” with the intention of requiring the violators to be brought to justice. Thirdly, the amendment changed the requirement of providing “credible evidence” of human rights abuses to “credible information” to make potentially disregarded data more accessible and relevant to a congressional investigation. In 2014, provisions were made to the Consolidated Appropriations Act of 2014, prohibiting “any training, equipment, or other assistance for the members of a unit of a foreign security force” found guilty of gross human rights violations. (Serafino et al., 2014, p.4) In 1998, this act only prohibited training of such forces. However, this act makes an exception for disaster relief aid and humanitarian assistance.

Serafino et al. states that there is persistent debate regarding the efficacy of enforcing the Leahy Laws and whether the United States’ interests conflict with the promotion of human rights based foreign policy. This suggests that the Leahy Laws have been regarded as a suggestion, rather than law that is obligatory, especially in the context of Israel.

Israel has been accredited as the facilitator of the longest military occupation in modern history. Israel, being an Occupying Power, has certain responsibilities and obligations under international law. However, regardless of the criticisms from the international community and reputable human rights agencies, Israel has yet to be held liable by their generous American patrons. The state of Israel was established on the ruins of historic Palestine, and was actualized through of a brutal ethnic cleansing campaign and the colonization of a people. 72 years later,

Israel and its various institutions remain committed to that very colonial regime upon which it was established.

The United States does not have a tradition of investigating its allies. Actually, the United States has only launched a single investigation against Israel during the span of several years they have sponsored the Israeli military. This investigation occurred during Israel's offensive against Lebanon in 2006. (Berrigan, 2009, p.14) The Israeli military received backlash for its indiscriminate use of cluster munitions in civilian areas of Lebanon. According to Human Rights Watch and other spectators, the majority of the cluster bombs were provided to the Israeli military by the United States. The Center for Constitutional Rights addressed the United States involvement in a letter addressed to former President George Bush and the former Secretary of State, Condoleezza Rice. In the letter, they stated: "Defense articles provided to Israel are not being used for internal security or legitimate self-defense…The AECA (Arms Export Control Act) prohibits sales of deliveries to a country that is in substantial violation of these authorized purposes. Rather than stopping the supply of weapons to Israel, as required by law, the United States Government is reportedly rushing additional weapons to Israel - an act that will result in further loss of innocent lives." (Berrigan, 2009, p.14) An investigation was launched by the State Department regarding how substantial Israel's violation of the AECA was. However, the investigation was not embraced by Congress and the United States continued their weapon transfers to Israel as usual.

Overall, the findings of this research expose the quantity, magnitude and consistency of human rights violations (and therefore Leahy Law violations) committed by Israeli military forces. However, Israel has only been under investigation by the United States once, despite

being the Israeli militaries largest benefactor, and not once for the cases mentioned in this research. The validity of these cases has been recognized by the most credible of human rights agencies, in the United States, the United Kingdom, Israel, Palestine and beyond. Given the significance of the results, and the consequences they assume, I argue that the United States government should investigate the crimes of the Israeli military by applying the Leahy Laws, which should lead to subsequent denial of further military support.

Currently, there is no literature focused on the financing of the Israeli military and the Leahy Laws, though there does exist literature examining the case of Israel and the Foreign Assistance Act and the Arms Exports and Control Act. The literature I have utilized discusses the political immunity of Israel and cases in which the United States has succeeded in withholding aid from countries with gross human rights violations. I too have employed human rights reports from the United Nations Commission of Human Rights, Human Rights Watch, Amnesty International, and other reputable sources to discuss the status of Israel in regards to its qualifications for being a recipient of U.S. aid.

BACKGROUND

THE UNITED NATIONS PARTITION PLAN

With the impending termination of the British mandate over Palestine, on November 29, 1947, the United Nations voted to partition British Mandate Palestine into two separate territories, a Jewish state, and a Palestinian-Arab state. 33 countries voted in favor of the partition, the majority of which were European, and 13 voted against, the majority of which were Middle Eastern. (UNISPAL, 1979) Still, the partition was not accepted by Palestinians and other Arabs alike. Without a practical international consensus, the mass exodus and extermination of the Palestinian people began in 1948 at the hands of the Israel Defense Forces.

BRITISH MANDATE AND AL NAKBA (THE CATASTROPHE)

The modern European colonization of Palestine has been ongoing since the 1900s. And though the British Mandate of Palestine ended on May 15, 1948, it paved the way for a new colonization over the region and the indigenous population. On May 14, 1948, the state of Israel was established with the blessing of the British government and other European powers. (Cronin, 2017) The Israeli governments' vision for "a land without people for a people without at land" subsequently led to the Nakba, "The Catastrophe", the mass expulsion of Palestinians by the Israeli military as an effort manifest their vision requiring an erasure of the indigenous inhabitants to create room for the new state. (Khalidi, 2010, p.101) During the Nakba, 750,000 Palestinian people out of the total 1.9 million population were made refugees. (Takkenberg,

1998, p.13) Survivors of the Nakba and their descendants amount to roughly 7.1 million people displaced either in camps in the Gaza Strip and the West Bank, Lebanon, Syria, Jordan, or in other places all over the world. (Barghouti, 2011, p.45) Over the course of over 70 massacres, Israeli forces and settlers killed an estimated 15,000 Palestinians and destroyed an estimated 70% of all Palestinian villages, and another 22% were left barely standing. (Sadi, Abu-Lughod, 2007, p.55) During this period, Israeli forces took over 78% of historic Palestine. (Al Jazeera, 2017) In the period between 1948-1967 the remainder of historic Palestine, East Jerusalem, the West Bank, and the Gaza Strip, were administered by Jordan and Egypt respectively. (Quigley, 2010) This ended in 1967 when Israel conquered the rest of Palestine, following the June 1967 war.

THE 1967 WAR AND AL NAKSA (THE GREAT SETBACK)

On June 5, 1967, Israel attacked the Egyptian air forces' fleets which sat unattended, decimating the entire Egyptian air force. (UNISPAL, 1999) This attack initiated the 1967 war. During the following six days, Israel dominated Egypt, Jordan, Syria, and Palestinian resistance, seizing the Golan Heights, the West Bank, Gaza, and the Sinai Peninsula. (Bowen, 2013) Within a matter of days, Israel, not two decades old, occupied three times more territory than they had pre-1948, including territory allocated to the Palestinians in the United Nations Partition Plan of 1947. (Tucker, 2008, p.10) Although, Israel returned the Sinai Peninsula during the Camp David Accords of 1978, the Israeli militaries occupation of the remaining Palestinian territory in the Gaza Strip, the West Bank, as well as the Syrian Golan Heights manifested into the longest military occupation in modern history. (Anziska, 2020, p.123)

After the war of 1967, the United Nations classified Israel as a “belligerent occupant” which had earned new responsibilities regarding its governance of the occupied population who were now considered “protected persons.” (UNISPAL, 1999) The United Nations Security Council also adopted resolution 242 which stressed “the inadmissibility of the acquisition of territory by war", requesting a "withdrawal of Israel armed forces from territories occupied in the recent conflict" as well as the "termination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force." (UNSC, 1967)

Following the international consensus concerning the applicability of the Fourth Geneva Convention to the occupied territories in 1967, Israel rejected the classification as an Occupying Power, and ever since, according to the U.N., has “committed serious violations of every relative provision of the Convention.” (UNISPAL, 1999)

ISRAEL’S “DISENGAGEMENT” FROM THE GAZA STRIP AND THE GAZA SIEGE

Since 1967, Israel had occupied the Gaza Strip, and in contravention of International Law, built approximately 21 settlements and transferred its citizens to the occupied territory. On August 15, 2005, 38 years later, Israel decided to withdraw both their settlers and military from the Gaza Strip in supposed hopes to revive the peace process and relieve pressure on the Israeli government following the Second Intifada. (Backmann, 2010, p.223) Many argue the withdrawal was disingenuous. As Mr. John Dugard of the Report of the Special Rapporteur states: “Israel’s withdrawal from Gaza does not, however, mean that the occupation of the territory has come to

an end. Israel still retains effective control over the territory through its control of airspace, territorial sea and external land boundaries." (Dugard, 2006)

Although Israel's imposition of movement restrictions for Palestinians in the Gaza Strip began in the 1990's, they only intensified when Hamas, Gaza's governing authority, was elected. Under the guise of "security concerns", Israel imposed a land, sea and air blockade. (OCHA) According to the United Nations Office for the Coordination of Humanitarian Affairs, "1.8 million Palestinians in Gaza remain 'locked in', denied free access to the remainder of the territory and the outside world." (OCHA)

These harsh restrictions have devastated Gaza's economy. As a result, employment in the Gaza Strip has been consistently increasing since the beginning of the blockade, with the average rate of unemployment ranking at over 45% in 2019. (OCHA, 2020) The impacts of the blockade have been particularly significant during Israel's three military onslaughts on the Gaza Strip since their "disengagement", leaving Gaza's medical infrastructure, as well as water and sanitation centers, completely devastated, and Palestinian victims left without refuge. A study conducted by the United Nations predicted that Gaza could be "unlivable" by the year 2020. (Samhouri, 2017) The study stated that without immediate intervention, "There will be virtually no reliable access to sources of safe drinking water, standards of healthcare and education will have continued to decline, and the vision of affordable and reliable electricity for all will have become a distant memory for most. (UN, 2012, p.16)

UNITED STATES & ISRAEL ALLIANCE

As the United States' relationship with Egypt dwindled as Egypt's partnership with the Soviet Union grew, their economic and military relationship with Israel grew stronger, compensating for the regional loss. (Ro'i, 2008, p.54) Israel's success, with the help of American armaments during the 1967 war, solidified the military relationship between the United States and Israel, and the symbolic sale of a Phantom aircraft was promptly approved by Congress. (Sharp, 2019, p.18) According to Jeremy M. Sharp, a Middle East Policy Analyst for the Congressional Research Service, this sale established "the precedent for U.S. support for Israel's qualitative military edge over its neighbors." According to Sharp, Israel is the largest "cumulative recipient of U.S. foreign assistance since World War II". (Sharp, 2019, p.i) As Israel became more self-sufficient economically, the U.S. slowly removed economic aid and supplemented Israeli military financing, and officially removed Israel as a recipient of the Economic Support Fund in 2008. (Sharp, 2019, p.2)

The enforcement of both the Department of State Leahy Laws as well as the Foreign Assistance Act Leahy Laws have been underwhelming to say the least. According to a study conducted by Ivan Waggoner, from 2010-2013 out of the 530,000 military and security force units vetted, only 2,516 units were rejected aid by the Department of State under the Leahy Laws. (Waggoner, 2017, p.268) Similarly, according to the RAND Corporation, from 2011 to 2015, almost 90 percent of all cases received approval with a rejection rate of 0.3% of cases per year. (McNerney, Blank, Wasser, Boback, & Stephenson, 2017, p.24)

The Leahy Laws have been employed to suspend aid to military and security force units in Bangladesh, Columbia, Guatemala, Honduras, Indonesia, Nigeria, Pakistan, Turkey and Sri

Lanka. (Hunter-Bowman, 2017, pp.847, 876) However, aid packages have been restored to implicated units, such as those in Columbia and Nigeria. (Hunter-Bowman, 2017, p.847) Yet, the application of the Leahy Laws is usually confidential and not available in public records. Senator Patrick Leahy has argued that "This is a law that works, if it is enforced…We can help reform foreign security forces, but they need to show they are serious about accountability. If not, we are wasting American taxpayers' money and risk prolonging the abusive conduct that we seek to prevent." (Schmitt, 2013)

LITERATURE REVIEW

Nathanael Tenorio Miller similarly notes these shortcomings in their article: “Leahy Law: Congressional Failure, Executive Overreach, and the Consequences”. (Miller, 2012) Miller begins the article with a testimony of Najib and Ahmad, Afghani men who were arrested by police in Kandahar, Afghanistan, and subsequently tortured. Miller uses this story to contextualize the broader failure of the United States government in preventing arms and aid from being distributed to foreign military units with gross human rights violation records. When “human rights violations are enabled even in part by the U.S. funding and training, the United States limits its own access to the moral high ground.” (Miller, 2012, p.695)

Miller then provides an explanation of the Leahy Laws, the failures of the Leahy Laws, cases of its failure, then four factors which Miller states guarantees the ineffectiveness of the laws. The four factors are: “the statutory distinction between the two laws; the narrow definition of “unit”; the difficulty in tracking aid; and the fact that arms, and to a lesser extent training, are fungible commodities.” (Miller, 2012, p.670) Miller also requests that receipts should be declassified and publicized, allowing government accountability on a public level. As of now, the Department of Defense when providing FMF to foreign nations, does not require an explanation or specificity of where the funds were spent. Overall, Miller criticized the extreme lack of enforcement due to the domination of the executive branch. Miller went so far as to say that even if the legislation was stronger, the legislative branch would still be incapable of ever enforcing the Leahy Laws.

Miller concludes that the Leahy Law is a "well-intentioned piece of legislation" that is in need of improvement. (Miller, 2012, p.696) Although, due to the unlikeliness of judicial oversight, let alone enforcement, that the law must be rewritten to "make larger segments of foreign militaries ineligible for funding or to categorically deny funding to countries whose militaries have been accused of human rights violations." (Miller, 2012, p.670)

Ivan Waggoner's article, "Military Assistance Conditioned on Justice: An Empirical Study of the Leahy Law and Human Rights Prosecutions", employs the Arms for Influence theory which theorizes that "military aid is a source of bargaining power and that powerful countries use it to encourage recipients to behave in a desirable manner." to develop the hypothesis for a multivariate analysis: "The more countries depend on security assistance after the enactment of the DoS Leahy Law, the more human rights violations they will prosecute in the future." (Waggoner, 2017, p.260) The theory helps to envision the potential efficacy of such human rights centered legislation if it was sincerely administered.

The study used data from countries which are members of the United Nations, and/or receive security assistance from the U.S. government. The dependent variable in the analysis was data concerning prosecutions in a state pertaining to violations of human rights. The independent variables include a measurement of the state's dependency on security assistance appropriations, the time since the enactment of the Leahy Laws, a calculation of the state's ratified treaties, the presence of armed conflict in the state, etc. The result of the study found that after the implementation of the Leahy Law, there was a significant increase in prosecutions based on human rights violations two years after receiving U.S. security assistance. It is important to note that prosecutions discussed are not equivalent to convictions.

The results show that each country included in the data set had approximately one human rights prosecution within that span of time. Waggoner suggests that this could be explained "by the low volume of units the DoS denies security assistance under the Leahy Laws." (Waggoner, 2017, p.268) Waggoner cites that from 2010 through 2013, only 2,516 international military and police units (including individuals) were barred from receiving aid under the Leahy Law, out of the 530,000 units that were vetted. The study thus rejected the null hypothesis. Waggoner explains this limitation with the employment of a 2001 statement made by Human Rights Watch, in which they argued that the Department of State "will outright violate the law if a unit is important enough for U.S. strategic objectives." (Waggoner, 2017, p.258)

However, Frida Berrigan argues that the "special relationship" between Israel and the United States is responsible for informing their lack of disciplinary actions towards them, as well as the lack of enforcement of the Arms Export Control Act. Berrigan's article, "Made in the U.S.A: American Military Aid to Israel", discusses the unique relationship between the United States and Israel. (Berrigan, 2009) This relationship, as suggested by Berrigan, includes special perks concerning military aid. An example of this is that Israel is the only country that is allowed to utilize a significant portion of this aid to "build its domestic military industry." (Berrigan, 2009, p. 6) The Arms Export Control Act of 1976 limits the use of foreign military aid for the purpose of "internal security" and "legitimate self-defense"; definitions for these terms never have been defined. Israel has retained these qualifications by claiming self-defense, even during the most aggressive of offensives. (Berrigan, 2009, p. 11)

Berrigan cites the 2006 war in Lebanon, Operation Cast Lead in 2008 through 2009, fortifications supplied by the U.S. including 226 F-16 fighter jets, over 700 M-60 tanks, 6,000

armored personnel carriers, attack helicopters and aircrafts, and “innumerable bombs and tactical missiles” including cluster bombs and white phosphorous. (Berrigan, 2009, p. 9) During the period in which this article was written, the United States has also proposed to Israel a deal including the furnishing of 75 F-35 Joint Strike Fighters, 9 C-130J-30 aircraft, as well as 4 littoral combat ships. Berrigan states that it is guaranteed that the Israel Defense Forces will be using U.S. designed weapon systems whenever and wherever they are involved in armed combat. Israel, nor any other state, has been terminated from receiving aid under the AECA, according to a Congressional Research Service report in May of 2005.

The Reagan administration temporarily suspended military aid and weapons transfers to Israel when coming to the conclusion that there may have been a violation of the Mutual Defense Assistance Agreement of 1952 during the 1982 Israeli invasion of Lebanon. After a 10-week investigation, the current secretary of state, Alexander Haig stated that they could “argue until eternity” about whether the invasion was offensive or defensive, and subsequently the ban was lifted while a ban on cluster bomb exports was sustained for the following 6 years. (Berrigan, 2009, p. 12) Berrigan also cites that Israel, during the period in which this was written, initiated two wars over the course of three years, with the help of U.S. weaponry; there was never a congressional investigation.

Berrigan uses the case of Operation Cast Lead, the Israeli invasion of the Gaza Strip in December of 2008. This operation too took a disproportionate toll on citizens, as it was found that the targets for many strikes, arsenal courtesy of the United States, were residential spaces, such as hospitals, universities, homes, and mosques. Israel utilized American F-15, F-16, and Apache helicopters in its assault. It too used American rockets and missiles. They employed the

use of what Berrigan identifies as “controversial munitions” such as antipersonnel and bunker busting munitions, flechette rounds, white phosphorus and depleted uranium. (Berrigan, 2009, p. 15) The nature of the armaments prompts us to evaluate what Israel considers defensive measures. During this invasion, 1,434 Palestinians were killed. Out of these 1,434 people, 960 were civilians, which included 121 women and 288 children. Berrigan notes the contrast, as this operation took the lives of 2 Israeli citizens and 11 Israeli occupation force soldiers. This contrast prompts us to evaluate the definition of self-defense on the part of Israel, and many other similar aggressions. Regardless, “Israel has been the largest recipient of U.S. security assistance since the early 1970s…” (Berrigan, 2009, p.6) Foreign Military Financing (FMF), U.S. grants for weapon purchases, are provided to Israel in a single lump sum every year. Israel’s “fast track” status for weapon sales thus permits them to make deals directly with the weapon manufacturers, which essentially removes the Pentagon from the transaction. (Berrigan, 2009, p.7)

During the invasion of the Gaza Strip in 2014, The United States was transferring over $62 million worth of grenades, mortar rounds, guided missile parts, rocket launchers, and other artillery to the Israeli army. In response, Amnesty International released a statement entitled: USA: Stop arms transfers to Israel amid growing evidence of war crimes in Gaza, condemns the transfer of war munitions to Israel and called for an international arms embargo on Israel, via the United Nations. Brian Wood, the Head of Arms Control and Human Rights at Amnesty International stated: “It is deeply cynical for the White House to condemn the deaths and injuries of Palestinians, including children, and humanitarian workers, when it knows full well that the Israeli military responsible for such attacks are armed to the teeth with weapons and equipment bankrolled by US taxpayers… As the leading arms exporter to Israel, the USA must lead the way

and demonstrate its proclaimed respect for human rights and international humanitarian law by urgently suspending arms transfers to Israel and pushing for a UN arms embargo on all parties to the conflict. By failing to do so it is displaying a callous disregard for lives being lost in the conflict on all sides," (Amnesty International, 2014)

Berrigan ultimately argues that it's not necessarily the law that is ineffective, but Congress' inability to implement U.S. law in the case of Israel. Weaknesses exist in the legislation, with no definitions of what constitutes self-defense, allowing the aggressing state to construct the definition for themselves. Berrigan owes this to the "special relationship" that exists between the United States and Israel that initially allowed, and subsidized, the abuses cited above to occur. (Berrigan, 2009, p.9) Berrigan's article does an excellent job of applying various cases to argue for a reevaluation of U.S. military aid to Israel as per U.S. law. There is little research like it in regards to the Arms Export and Control Act, let alone other comparable legislation.

Duncan L. Clarke supplements Berrigan's claims in his article "US Security Assistance to Egypt and Israel: Politically Untouchable?", where Clarke expands on the immunity of Israel in the eyes of American policymakers. (Clarke, 1997) Clarke goes so far as to argue that aid, both economic and military, that is allotted to Israel and Egypt is not up for discussion, even by the Department of State. Clarke states that the considerations made when allotting aid are: "strategic considerations, domestic political forces in the United States, American public opinion toward Israel and foreign assistance, the supposed relationship between aid and influence, pressures to balance the federal budget, and Israel's own conception of the continued utility of foreign aid." (Clarke, 1997, p.205)

While the U.S. government may argue that it takes into account American public opinion when developing foreign expenditures, Clarke cites studies which report disfavor for Israel amongst the American public, and argues that these polls debunk the initial claim. The Chicago Council on Foreign Relations conducted a poll in 1994. The results showed that 44% of the public and 50% of leaders were in favor of either decreasing or stopping aid to Israel. Only 9% of the public and 4% of leaders were in favor of increasing aid to Israel. The Wirthlin Group conducted a poll in 1994 as well. The results showed that 69% of the public wanted to decrease or stop aid to Israel. The Program on International Policy Attitudes at the University of Maryland conducted a survey in 1995. The results showed that there was less public support for aid to Israel (and Egypt) than aid to any other US assistance recipient; 56% wanting aid decreased, and 4% wanting aid increased.

President Clinton made it clear that the strategy for the "Arab-Israel" peace process was to equip Israel with "such generous military economic and political support" that Israel would feel encouraged to withdrawal from the West Bank and the Golan Heights. However, Clarke states that the continued ways in which Israel has threatened its relationship with its neighbors is their "repeated refusal" to discuss denuclearization with Arab states, and their expansion of Jewish settlements in the occupied Palestinian territories.

Clarke argues that because U.S. assistance to Israel has continued past the post-Cold War era, that they have developed an entitlement towards U.S. financial assistance, which Clarke argues has been "reinforced and legitimated by the Congress…" The Israeli Deputy Minister of Finance stated that U.S. aid "is a narcotic and we are hooked…This [aid] elevator will go down when we tell you. You won't tell us." (Clarke, 1997, p.211) Clarke predicts that perhaps

economic aid is “touchable” but that is not the case with military aid, predicting it will continue on, despite “gross misexpenditures of funds and frequent contraventions of US laws and policies.” (Clarke, 1997, p.211) The U.S. Agency for International Development (AID) official Robert Zimmerman said that “No one in the State Department or elsewhere in the US government wants to risk an embarrassing assessment of how aid resources have failed to stimulate the type of economic, social, and political development necessary for self-sustainable peace in the Middle East.” (Clarke, 1997, p.204)

Regardless, the Secretary of State, George Shultz echoed autocratic sentiments and told AIPAC (American Israel Public Affairs Committee) Executive Director, Thomas Dine: “that he hoped to make it impossible for a future secretary of state, who might be less supportive of Israel, “to overcome the bureaucratic relationship between Israel and the US.”” (Clarke, 1997, p.206) These statements clarify the United States’ patience in regards to human rights violations committed by the Israeli military. To cement their role as Israel’s main sponsor, the U.S. has also simply maintained that Israel is not in violation of internationally recognized human rights standards, even if that requires the United States to denounce these standards and those who establish them. (Jakes & Halbfinger, 2019)

The leading discussion concerning human rights standards and their appointed definitions is the international community and their global bodies. Moreover, Human Rights organizations remain consistent in their recognition and condemnation of Israeli military practices. Irrespective, global efforts to cease Israel’s violations of well-established human rights standards against the Palestinian people has been unsuccessful in encouraging or coercing Israel’s cooperation. In contradiction with American positions exhibited by Clarke, an article by Mazin

B. Qumsiyeh, “Human Rights and the Israeli-Palestinian Struggle”, Qumsiyeh outlines circumstances in which Israel was accused of human rights violations by different international organizations as well as how their detrimental record is responsible for the unproductiveness of so called peace agreements. (Qumsiyeh, 2004)

An example provided by Qumsiyeh is the subject of torture as a means of obtaining confessions in Israeli prisons, as well as other manifestations of Israeli torture. Until September 6 of 1999, torture was legal and accepted as a means of extracting confessions. After it was deemed illegal the Israeli Attorney General promised to protect any interrogator who continues to use ‘special means’. The Israeli High Court also failed to define what torture was, preventing integrators from being prosecuted. Amnesty International during a briefing to the UN Committee Against Torture claimed there was strong evidence proving that torture was still taking place within Israeli prisons, including “sleep deprivation often seated in painful positions; prolonged squatting on haunches; painful handcuffing…” (Qumsiyeh, 2004, p.116) Amnesty International called on to UN Committee Against Torture to declare the demolition of Palestinian homes as constituting as ‘cruel, inhuman or degrading treatment’ under Article 16 of the Convention Against Torture. Amnesty International claimed that the ‘prolonged closures’ of towns and villages, denying Palestinians freedom of movement, ‘prolonged curfews’ may also oppose Article 16 of the Convention Against Torture. Qumsiyeh states that: “all human rights organizations have concluded that Israeli forces target non-combatants (civilians) and intentionally shoot children even when Israeli lives are not threatened.” (Qumsiyeh, 2004, p.117)

A report published by Human Rights Watch, “Born Without Civil Rights: Israel’s Use of Draconian Military Orders to Repress Palestinians in the West Bank”, similarly claims that Israel

has failed to uphold the law of occupation, including granting the occupied Palestinian population the right of equal treatment regardless of race, religion, or national identity. (Human Rights Watch, 2019) The Israeli army has employed military orders initially founded by the British Mandate, such as the Defense Regulations of 1945. Human Rights Watch criticizes Israeli military order 101, which criminalizes not only political engagement, but any public gathering of ten or more people that could be "construed as political" without a permit from the Israeli military. (Human Rights Watch, 2019) This could afford someone up to a ten-year prison sentence. Military order 1651 includes the potential penalty of life imprisonment if a Palestinian offends Israeli authorities "act or omission which entails harm, damage, disturbance to the security of the Area or the security of the IDF" or entering an area in close "proximity" to property belonging to the army or state. (Human Rights Watch, 2019)

Generally, there exists a severe lack of research which acknowledges the particular cases presented in this research in regards to the Leahy Laws, much less the case of Israel in regards to the Leahy Laws. This research aims to expand on other literature alike which consider the case of Israel in association to other statutes which condition U.S. assistance to foreign military units.

METHODOLOGY

My research employs a case-study analysis that aims to examine the legality of military funding to the Israeli military in accord with the Leahy Laws, specifically that within the Foreign Assistance Act of 1961. The Foreign Assistance Act, and the Leahy Law which complements the act, differ slightly from the Department of Defense's Leahy Law. These differences are discussed in depth in the literature review. I selected the Foreign Assistance Act's Leahy Law because it was the first installation of the Leahy Laws, as well as because the act's linkage to the FAA definition of a "gross human rights violation" provides a clear set of four legal components that structure my research.

This research will focus on the four main legal components provided in the FAA definition of a "gross human rights violation". These four components were paired with applicable cases that I have chosen, which include the imprisonment and detention of Palestinians and the Israeli military court system, Israeli military offensives, and Israeli efforts to ethnically cleanse Palestinian populations throughout historic Palestine. These cases will address the following: the 2014 Israeli assault on the Gaza Strip, so-called Operation Protective Edge, the imprisonment and torture of Dima Ismail al-Wawi and other Palestinian minors, the imprisonment of Mohamad Al-Halabi and other international charity workers, relief workers and journalists, and the destruction of Palestinian villages, such as that of the Araqeeb village. The date parameters for my research and the selected cases, do not begin at the start of the United States' policy of supplying military provisions to Israel, but rather, the establishment of the FAA

Leahy Laws in 1997, as well as the United States' first MOU with Israel in 1998. The selected cases span across time from the late 1990's throughout present day.

I began my analysis with an assessment of the Leahy Laws and the Foreign Assistance Act's definition of a "gross human rights violation". Following my assessment, I examined the nature and figures of United States military aid to Israel, from 1946, two years before the country was founded, and onward. This laid the groundwork for properly understanding the results of military aid to Israel and the relationship between the United States government and human rights centered legislation.

Unfortunately, a great deal of necessary documentation is classified by both the Israeli and U.S. governments, and unobtainable for this research. Some U.S. officials have argued that given the significant amount of aid allotted to Israel, a process should be established of tracking and providing the U.S. government, as well as U.S. taxpayers, receipts of how U.S. expenditures are utilized. As one might imagine, the lack of such mechanisms create a great prospect for the evasion of accountability.

Since the Leahy Laws require credible documentation of human rights abuses, the credibility and security of the selected data sources was a key consideration. In order to provide a comprehensive understanding of the uses of U.S. military aid allotted to Israel, I have collected existing data, including statistics, reports and testimonies from credible sources, which include major human rights organizations and United States government agencies. The utilized sources include the U.S. State Department, the United Nations, Amnesty International, Human Rights Watch, Defense for Children International, B'Tselem, Addameer, and the Congressional Research Service. I employed these documents to conduct a legal analysis; considering the

Leahy Law's definition of a "gross human rights violation" to investigate whether Israel fulfilled the given definitions and determining whether the aiding of the Israeli military is illegal under U.S. legal standards.

As for the logic behind the selection of the specific cases analyzed in this research, I chose Israeli military offensives that directly address the FAA's definition section "Cruel, Inhumane, and Degrading Treatment or Punishment" since past literature has not mentioned Operation Protective Edge of 2014 in the context of conditioning military aid, whether that be via the Leahy Laws, or similar legislation, such as the Arms Export Control Act. Israel's Operation Protective Edge seized the lives of thousands of Palestinians, including hundreds of children. The discussion concerning this assault in particular delves into the inhumane tactics and practice of the Israeli military, which receives billions in aid from the United States, as well as the variety of U.S. provided weaponry utilized to conceive the operation.

I chose the imprisonment and detainment of Palestinians because of its relevance to the FAA's definition section "Prolonged Detention Without Charges and Trial". I chose the case of Dima Ismail al-Wawi in particular, as it provided insight into the experience of Palestinian minors in the Israeli military court system. As I will explain, the treatment of Palestinian minors is especially revealing regarding the intentions and objectives of the Israeli military court system when arresting, trying, convicting, detaining and imprisoning Palestinian children. Likewise, I chose the case of Mohamad Al-Halabi to address the FAA's definition section "Causing the Disappearance of Persons and Clandestine Detention of Those Persons" as it speaks to the targeting of international charity workers by the Israeli judicial system.

Lastly, I chose the ethnic cleansing of Palestinians within historic Palestine to compliment the FAA's definition section "Flagrant Denial to Life, Liberty, or the Security of Person". Although the ethnic cleansing of Palestinians has been ongoing since the British Mandate, the case of the Araqeeb village contextualizes displacement in a modern context. Nothing expresses the "Flagrant Denial to Life, Liberty, or the Security of Person" as much as the systematic and repeated destruction of the Araqeeb village in the Naqab desert. The village has been destroyed 148 times between 2010 and 2019. During this time, the inhabitants of the Araqeeb have been denied every aspect of personal or collective security, and social stability. While the village is a microcosm of the fate of the Bedouin community in the Naqab, its usefulness to my research goes beyond this. Indeed, it serves as an example of the systematic destruction and disruption of social life throughout Palestine in the last 70 years.

Though these examples may seem disconnected, they are in fact directly linked to the particular provisions relevant to the Leahy Laws, and amply illustrate Israel's flagrant violations of human rights. My examination of these particular violations of Leahy Law provisions utilizes the tools the U.S. government has provided for determining when a country is qualified, or disqualified from receiving foreign military financing and assistance under international human rights law and U.S. law. These examples also provide a collective analysis of varying segments of Palestinian realities under the U.S. funded Israeli occupation.

RESULTS: SECTION I

CRUEL, INHUMANE, AND DEGRADING TREATMENT OR PUNISHMENT

It was around 12:35pm when an Israeli military aircraft fired a warning missile at the roof of Said Ghafour. The missile signaled that the house would be bombed within five minutes following the warning. Said and his relatives hurried to collect the children to flee their home, but five minutes was not enough time. Four Israeli missiles hit Said's home, killing Amal, who was 7-months pregnant, and Nirmeen, her 1-year old daughter. Their bodies were discovered by their family "beneath two walls that the force of the blast had knocked over". The explosion left Amal's husband and her 3-year old son wounded. (Human Rights Watch, 2014)

Israel's Operation Protective Edge was launched against Gaza on July 7, 2014, and lasted until August 26, 2014. (American Friends Service Committee, 2014) An estimated 2,191 Palestinians were killed, 1,660 were civilians, including 527 children and 299 women. (Institute for Middle East Understanding, 2014) The Palestinian Ministry of Health documented that 11,100 Palestinians were wounded, including 3,374 children, 2,088 women and 410 elderlies. (Institute for Middle East Understanding, 2014)

Human Rights Watch went so far as to say that they found no evidence of any military targets, making Israel's attacks completely indiscriminate. (Human Rights Watch, 2014) Human Rights Watch recorded several incidents of Israeli forces shooting and killing fleeing civilians in the town of Khuza'a alone between July 23rd and July 25th. On July 23rd, Israeli forces demanded that a group of civilians leave the house they were sheltering in. Akram Al-Najjar told Human

Rights Watch: “The first one to walk out of the house was Shahid al-Najjar. He had his hands up, but the soldiers shot him. He was shot in the jaw and badly injured, but he survived.” (Human Rights Watch, 2020) They were then told to leave the town on foot, and many of the elders died on the journey. A group of young men and boys reached the Tawhid mosque intending to seek refuge, but Israeli soldiers opened fire, wounding three and killing one. On July 25th, an Israeli strike killed 5-year-old Motassem al-Najjar, 62-year-old Kamel al-Najjar, and 70-year-old Salim Qdeih, who were among many sheltering in a basement. The other’s fled after the strike, and held up white flags, and they too were hit by an Israeli missile. “The horrors of war are bad enough for civilians even when all sides abide by the law, but it’s abhorrent that Israeli forces are making matters even worse by so blatantly violating the laws of war designed to spare civilians.” said Sarah Leah Whitson, the Middle East and North Africa director of Human Rights Watch. (Human Rights Watch, 2020)

According to UN estimates, 1,000 of the injured children will suffer from life-long disabilities due to their injuries. (Institute for Middle East Understanding, 2014) The UN estimated at least 373,000 children would require direct and specialized psychosocial support. (Institute for Middle East Understanding, 2014) Israeli attacks left around 108,000 Palestinians homeless, and 485,000 Palestinians displaced, out of the 1.8 million population. (Institute for Middle East Understanding, 2014) Disproportionately, 66 Israeli soldiers and 4 Israeli civilians were killed, again calling in to question Israel’s claims of “self-defense”. (Institute for Middle East Understanding, 2014)

Half way through the assault, Amnesty International released a statement directing the U.S. government to terminate their deliveries of military aircraft fuel to Israel: “The US

government has continued to supply hundreds of thousands of tons of fuel, including fuel for fighter jets and military vehicles, to Israel's armed forces despite a soaring civilian death toll from aerial and other military attacks." (Amnesty International, 2014)

The United States transferred 277,000 tons of jet fuel to Israel since January of 2013, including over 26,000 tons just a week into the assault. (Amnesty International, 2014)

During the assault, Israel attacked at least 3 different United Nations (UN) schools sheltering civilians, killing approximately 43 people and wounding over 150. (Institute for Middle East Understanding, 2014) UN officials stated that they asked the Israeli military twice "to allow a humanitarian corridor to evacuate civilians from the school during the day, but Israel refused." (Institute for Middle East Understanding, 2014)

During the assault, Israel attacked medical facilities, damaging 24 facilities, and killing at least 16 health care workers. (Institute for Middle East Understanding, 2014) "The harrowing descriptions by ambulance drivers and other medics of the utterly impossible situation in which they have to work, with bombs and bullets killing or injuring their colleagues as they try to save lives, paint a grim reality of life in Gaza… Even more alarming is the mounting evidence that the Israeli army has targeted health facilities or professionals. Such attacks are absolutely prohibited by international law and would amount to war crimes. They only add to the already compelling argument that the situation should be referred to the International Criminal Court." said Philip Luther the Middle East and North Africa Director at Amnesty International. (Amnesty International, 2014)

Operation Protective Edge, according to reputable human rights organizations, permitted a complete arms embargo with Israel. (Amnesty International, 2014) The evidence above

classifies these acts as a gross human rights violation in accordance with the FAA definition: “Cruel, inhumane, or degrading treatment or punishment”.

Unfortunately, the violent approaches demonstrated by the Israeli military were not unique to this specific operation, but their routine practice. In a press release by B’Tselem released on March 2, 2002, they stated: “In every city and refugee camp that they have entered, IDF soldiers have repeated the same pattern: indiscriminate firing and the killing of innocent civilians, intentional harm to water, electricity and telephone infrastructure, taking over civilian houses, extensive damage to civilian property, shooting at ambulances and prevention of medical care to the injured.” (Qumsiyeh, 2004, p.117)

Physicians for Human Rights USA similarly found: “the pattern of injuries seen in many victims did not reflect IDF [Israel Defense Forces] use of firearms in life-threatening situations but rather indicated targeting solely for the purpose of wounding or killing.” (Qumsiyeh, 2004, p.117) Physicians for Human Rights USA then sent forensics experts and an orthopedic surgeon who concluded that the Israeli army “has used live ammunition and rubber bullets excessively and inappropriately…soldiers appear to be shooting to inflict harm, rather than solely in self-defense.” (Qumsiyeh, 2004, p.117)

An Israeli border guard confirmed these observations and was quoted by Haaretz saying: “[age] twelve and up, you’re allowed to shoot. That’s what they tell us.” (Qumsiyeh, 2004, p.118)

RESULTS: SECTION II

PROLONGED DETENTION WITHOUT CHARGES AND TRIAL

12-year-old Dima was not feeling well. She could not find her parents at home and asked her younger siblings who pointed her towards the field, a plot of land owned by her family where they worked during the day with Dima's older siblings. Her family's land is located in the town of Halhul, north of Hebron. Halhul is surrounded on all sides by Jewish only settlements and roads. Dima desperately searched her family's land, hoping her mother could take her to the hospital. She had nearly reached the nearby Jewish settlement when an armed man began to charge at her. The man shoved Dima onto her stomach and held her down by stepping on her back. The man held a gun to Dima, tied her hands, and blindfolded her. Dima sobbed. An Israeli army jeep approached and Israeli soldiers threw Dima onto the floor of the vehicle. Dima was accused by the settler that attacked her that Dima had attempted to stab him. They transferred her into Israel and then from prison to prison, making her parents inaccessible to her, against the Geneva convention. Dima was interrogated for hours upon hours by seven large officers. She denied their accusations: "Ma'miltish ishi!" she cried, "I didn't do anything!". She was cuffed in stress positions for hours. She was placed in a compound with adult prisoners, who with time became like her mothers. She was kept awake at night by the sound of Palestinian men screaming as they were being tortured. Dima was held for two and a half months in HaSharon prison in Israel. When released, the Israeli military abandoned her at a checkpoint in Tulkarm, far from her village. (Baroud, Jarrar, & Falk, 2020, p.63)

Prior to examining the impact of the military court system in the West Bank, I will give a brief history regarding Israel's jurisdiction over all the Occupied Palestinian Territories. The signing of the Oslo Accords II in 1995 gave the Palestinian National Authority (PNA) jurisdiction over the legal affairs of the Occupied Territories: The West Bank and the Gaza Strip. There are considerable exceptions to this agreement: those include "offenses committed inside Jewish settlements, Israeli military installations, and offences committed by or against Israelis", offenses against the state of Israel, including businesses in Gaza, property inside of Gaza, and notably, against Israel or its agents. (Cavanaugh, 2007, p.201) This is particularly significant when a historical framework is applied. For example, during the First Palestinian Intifada, Israel had the highest per capita prison population in the world, as resistance efforts were struggling against the occupying military. (Hajjar, p.103)

From 1967 to 2005, military law applied to both the Gaza Strip and the West Bank. However, in August of 2005, the Israeli government "disengaged" from the Gaza Strip. (Cavanaugh, 2007, p.199) What this means concerning Gazan prisoners is complex. Technically, Gazans are tried by the PNA, although, in regards to war, this jurisdiction shifts. For instance, when Israeli agents are on the ground, that is when the majority of arrests in Gaza take place, where they are then detained, interrogated, convicted and imprisoned within Israel. Regardless, Gaza is known internationally as being the "world's largest open-air prison", despite the fact that traditional Israeli prisons don't exist within that physical territory. (Dugard, 2006)

Often, extrajudicial killings are utilized as an alternative to imprisonment. (Amnesty International, 2016) For example, in 2018, during the Great March of Return in the Gaza Strip, when asked why troops were shooting at demonstrators, Israeli Ministry of Foreign Affairs

spokeswoman, Michal Maayan, responded “Well, we can’t put all these people in jail.”, which provided meaningful insight to the mentality regarding the implementation of state sanctioned punishment by Israel. (Global Research, 2018)

The Israeli occupation of the West Bank and Gaza is the longest military occupation in modern history. In Lisa Hajjar’s book, Courting Conflict: The Israeli Military Court System in the West Bank and Gaza, Hajjar states: “The Israeli state has made prodigious use of law to maintain and legitimize its rule over Palestinians in the West Bank and Gaza and to punish and thwart resistance.” (Hajjar, 2005, p.49) This argument finds particular relevance in the case of Palestinian minors convicted of stone throwing or other methods of opposition towards the occupation forces, be they police or military personnel. In Kathleen Cavanaugh’s article “The Israeli Military Court System In The West Bank and Gaza”, Cavanaugh notes the important fact that “...neither Palestinian victims nor their families can seek prosecution of Israelis in the Military Court system or through the Palestinian Courts controlled by the Palestinian Authority. Palestinians who are victims of Israeli attacks or violations can only appeal a decision.” (Cavanaugh, 2007, p.206) Given this legal immunity exhibited frequently by the Israeli justice system, “it is unsurprising to note that most Palestinian civilians, encouraged by their attorneys, plead out their cases rather than face a criminal justice system that is deeply flawed...It is within this space that Palestinians as defendants, and Palestinians as victims, find concepts of justice and rule of law vacated.” (Cavanaugh, 2007, p.222)

The military court system in Israel has existed since the beginning of its military occupation over Gaza and the West Bank in 1967. Military courts function based on the premise of military law, persecuting those who’ve violated the Israeli military’s body of law. The Israeli

military court having jurisdiction over two types of offenses, those of which include: security offenses, “any offense enumerated in the security legislation and in statute” and threats to public order, offenses that are not classified a security offenses. (B’Tselem, 2017)

In November of 2017, The Israeli Information Center for Human Rights in the Occupied Territories, B’Tselem, released a statement regarding the Israeli military court system, entitled “The Military Courts”. (B’Tselem, 2017) Military courts were initially in place for any person residing in the occupied West Bank, which included Israeli settlers and foreign nationals. However, in the early 1980’s it was decided by the former attorney general that Israeli settlers and foreign nationals would be brought before Israeli civilian courts, and the military court system was exclusively reserved for the prosecution of Palestinians in the occupied West Bank. Therefore, Israelis and Palestinians are prosecuted in “different courts, under different laws, for the exact same offenses...” Palestinian defendants’ “...guilt or innocence determined according to the evidence laws followed in this courts system, and their sentences according to the previsions of military orders.” (B’Tselem, 2017) Palestinians and Israeli settlers in the West Bank are persecuted under completely different legal systems, regardless of them residing in the same region. The statement also claims that the Israeli soldiers are always military judges and prosecutors, they are also solely responsible for all military orders. The statement reads that thousands of Palestinians are brought before military courts every year under various indictments: “entering Israel without a permit, stone-throwing, membership in illegal association, violence, firearms- related offenses and traffic violations.” (B’Tselem, 2017)

According to an Israeli military report analyzed by Haaretz, 9,542 cases were filed in 2010, of those, a mere 25 cases were fully acquitted (4% granted partial acquittal), resulting in

the average conviction rate of 99.74% amongst Palestinian prisoners. (Levinson, 2018) That year, 714 administrative detention requests were made, with 98.77% of the requests approved. "The Palestinians are always viewed as either suspects or defendants, and are almost always convicted. For all these reasons, military courts are not an impartial, neutral arbitrator –nor can they be. They are firmly entrenched on one side of this unequal balance, and serve as one of the central systems maintaining Israel's control over the Palestinian people." (B'Tselem, 2017)

Under International Law and Israeli law, protections for minors are well defined and prioritized. That is where Israeli law and civilian courts deviate from the practices within Israeli military courts and law. No Minor Matter: Violation of the Rights of Palestinian Minors Arrested by Israel on Suspicion of Stone-Throwing, a report by B'Tselem reports that the internationally recognized rights and protections of minors in custody are not upheld by Israeli military courts. (B'Tselem, 2011) Rather the "principal penalty" for the punishment of Palestinian children by Israel is imprisonment, rather than alternative forms of punishment that would be less harmful to the psyche of a child. (B'Tselem, 2011) An example of this malpractice is the refusal to acknowledge the ways in which a minor's age "affects his criminal responsibility and the manner in which he experiences arrest, interrogation, and imprisonment, and which assume that these experiences might harm the minor's development." (B'Tselem, 2011)

The report additionally acknowledged that internationally recognized protections for children, notably including that the separation from adults during detention and imprisonment is not maintained by Israeli prisons and detention facilities that detain and imprison Palestinian children. According to the report, between the years of 2005 and 2010, at least 835 Palestinian minors were arrested and tried in Israeli military courts in the occupied West Bank on charges of

stone throwing. (B'Tselem, 2011) 34 of the minors were of the ages 12 to 13 years old. 255 of the minors were of the ages 14 to 15 years old. 546 of the minors were of the ages 16 to 17 years old. Only one of the previous 835 minors was acquitted. (B'Tselem, 2011) B'Tselem collected the accounts of 50 minors who described their experiences of arrest and incarceration by Israel. 30 of the minors said that were taken and detained in the middle of the night, a common strategy of the Israeli army, and their parents were not allowed to accompany their children. Between 2005 and 2010, 93% of the minors convicted with stone throwing were given a prison sentence, 19 of which (60% of their age group) were under the age of 14. (B'Tselem, 2011) Nevertheless, under Israeli law, it is prohibited to incarcerate an (Israeli) child of this age. Being security prisoners, the minors were not allowed to access a telephone to reach or update their parents or legal representation during their detention.

Israel transfers nearly 66% of minors to prisons inside of Israel. "Transfer of Palestinian detainees... even for brief periods, constitutes an unlawful transfer in violation of Article 76 of the Fourth Geneva Convention…As a practical consequence, children have limited family visits as parents struggle to obtain entry permits to Israel." (Defense for Children International, 2016, p.16, 2) In fact, all prisons and detention centers other than Ofer Prison in the West Bank are located within Israel. Thus, parents must apply for a visit to enter Israel, which is far from an easy process. "The application process is lengthy and can take between one and three months, while the permit itself is valid for only one year." (Addameer, 2014) However, in many cases permits are extremely difficult to obtain, in many cases, impossible. (Addameer, 2014) "In practice, however, hundreds of families fail to receive permits at all, based on "security grounds" ...The reason for the rejection of a permit application is never given apart from the standard

phrase: “forbidden entry into Israel for security reasons.” ... When family visits are allowed, they take place once every two weeks for 45 minutes.” (Addameer, 2014)

An article by Al Jazeera entitled: “What it takes for Palestinians to see their imprisoned relatives” collected testimonies from Palestinians documenting the process of visiting their imprisoned relatives inside Israel. One prisoner’s wife and two children make a 12-hour trip once a month to visit her husband, along with thousands of other Palestinians visiting incarcerated family. (Synenko, 2018) The distance isn’t significant, but the waiting process at checkpoints takes several hours, as well as the required and violating searches of all family members entering the facility. As a result, the majority of the minors that provided testimonies to B’Tselem were not visited by their parents during the length of their detention. (B’Tselem, 2011) These numbers and testimonies verify the violations of international law by the Israeli prison apparatus. Article 116 of the 1949 Geneva Convention IV requires: “Every internee shall be allowed to receive visitors, especially near relatives, at regular intervals and as frequently as possible.” (International Committee of the Red Cross) And Article 37 of the 1989 Convention on the Rights of the Child requires that every child deprived of their liberty “shall have the right to maintain contact with his or her family through ... visits, save in exceptional circumstances.” (International Committee of the Red Cross)

B’Tselem explains that the Israeli military justice system entirely lacks an alternative to remand until the end of legal proceedings, again deviating from Israeli civilian law: “In the vast majority of cases, the judges order the minor held in custody until the end of proceedings.” (B’Tselem, 2011) Often in which an inefficient timeline is provided and they are often held indefinitely. The report mentioned that in cases handled by Defense for Children

International – Palestine, in 2009 and 2010, they handled 133 minors' cases, and of those cases, only 23 of them (17%) were released on bail while awaiting their trial. "As a result, many minors prefer to enter into a plea bargain, in which they confess to the charges against them in exchange for a shorter sentence, fearing that, if a trial was held, they would be kept in jail during the long period of time that it takes to complete the trial." (B'Tselem, 2011) What the report highlights is the differences between Israeli civilian courts, the expected treatment of Israeli children, and the treatment of Palestinian children within Israeli military courts, further exhibiting Israel's disregard for international law.

Another B'Tselem report, Minors in Jeopardy, published in 2018, accounted for the measures that were taken to supposedly eliminate the encroachment on the rights of Palestinian minors in military custody. (B'Tselem, 2018) B'Tselem reveals that these amendments, such as the establishment of the military juvenile court in 2009, the abuse and defiance of international law by the Israeli government and military remains stagnant. For example, as Minors in Jeopardy explains, the military juvenile court does no more than approve plea bargains; a minor's trial and custody are no different than it was handled previously, they are sentenced by the "same judge, same courtroom, same process, same bottom line – just a different heading." (B'Tselem, 2018, p.15) The same goes for the accessibility of the family to the minor in custody. The vast majority of minors in the military court system are tried on the conviction of stone throwing, which to the Israeli military court is considered a "security offense", meaning that regardless of their age, even those under 14 years old, do not have the privilege of a reduced sentence, even with the establishment of the juvenile military court; similarly, the 'advances' of the military court system

in Israel have not resolved the issue of minor's indefinite detention during legal proceedings. (Defense for Children International, 2016, p.51)

As B'Tselem argues, international law, and even Israeli domestic law, believe that the detention of minors should be a final resort when there aren't alternatives available, yet "for the military courts, the detention of Palestinian minors is standard procedure, and the presumptions inexcusable introduced by the military judges result in lengthy detention of minors." (B'Tselem, 2018, p.17) Overall, the Israeli military court's advances have not reduced the number of children in detention, nor has it reduced the conviction rate of minors, 99.74%. B'Tselem provides a summary of a child's experience in military custody, from arrest to imprisonment: "Israeli security forces pick them up on the street or at home in the middle of the night, then handcuff and blindfold them and transport them to interrogation, often subjecting them to violence en route. Exhausted and scared – some having spent a long time in transit, some having been roused from sleep, some having had nothing to eat or drink for hours – the minors are then interrogated. They are completely alone in there, cut off from the world, without any adult they know and trust by their side, and without having been given a chance to consult with a lawyer before the interrogation. The interrogation itself often involves threats, yelling, verbal abuse and sometimes physical violence. Its sole purpose is to get the minors to confess or provide information about others. They are taken to the military court for a remand hearing, where most see their lawyer for the first time. In the vast majority of cases, the military judges approve remand, even when the only evidence against the minors is their own confession, or else allegedly incriminating statements made against them by others. This is the case even when the statements were obtained through severe infringement of the minors' rights." (B'Tselem, 2018,

p.24)

RESULTS: SECTION III

CAUSING THE DISAPPEARANCE OF PERSONS AND CLANDESTINE DETENTION OF THOSE PERSONS

Mohammad Khalil al-Halabi, a husband and a father of five, worked for the U.S. charity organization, World Vision. In 2006, al-Halabi became the Director of World Vision in the Gaza Strip. World Vision is a Christian charity that provides emergency relief services, community centered development, and are committed to helping the world's poor and oppressed populations. World Vision serves Gaza's poor and marginalized, especially following Israeli offenses, like that of 2008 that left nearly half of Gaza's population under extreme poverty.

On June 15, 2016, Israeli forces arrested Mohammad at an Israeli checkpoint. His arrest was a collaboration between Shin Bet security service, the Israel Defense Forces, and the Israeli police. Mohammad's father was notified days after Mohammad's arrest that he had been detained. Mohammad was accused of funneling money from World Vision to resistance groups in Gaza. Mohammad was then subjected to 52 days of interrogation and torture. As told by his father, "Israeli intelligence officers placed a filthy bag over his head and hanged him from the ceiling for prolonged periods…", officers denied Mohammad sleep, and often physically assaulted him, "slapping him, kicked him, especially in his genitals, and then strangled him until he felt that he was about to die...At times, they placed him in a small room and played extremely loud music until the pain in his ears became unbearable. In the summer, they would strip him naked, then blast him with flashes of warm air. They would repeat the same process in the winter, but with cold air, instead." (Baroud, Jarrar, & Falk, 2020, p.87)

Many have speculated that Mohammed's imprisonment was an effort to further cut off Gaza from international humanitarian organizations and undermine international support. According to Human Rights Watch, The Israeli army uses "broadly worded military orders" to detain and punish Palestinian "journalists, activists and others for their speech and activities – much of it non-violent – protesting, criticizing or opposing Israeli policies." (Human Rights Watch, 2019) Human Rights Watch states that Israel targets charitable organizations which work in the Palestinian territories, and have arrested members of the United Nations, Doctors without Borders, the United States Agency for International Development (USAID), and others. Additionally, Qumsiyeh references that the Palestinian Center for Development and Media Freedom reported the arrest of 74 journalists and the closure of 19 media institutions by the Israeli army in the West Bank and East Jerusalem between 2017 and 2018. (Human Rights Watch, 2019) Mohammed remains in Israeli prison to this day, though the charges against him have been discredited by the Australian government and World Vision. (Baroud, Jarrar, & Falk, 2020, p.87)

The subject of prisoners in the Gaza Strip is far different than the reality of prisoners from the West Bank. Israel removed troops from the Gaza Strip in 2005, therefore when prisoners are detained in the Gaza Strip, it is either because they were attempting to cross the border, or due to an Israeli ground invasion. Similarly, Palestinian prisoners arrested in occupied territory are often transferred from prison to prison within Israel, in violation of international law, both as an effort to exhaust and encourage compliance from prisoners, but to also isolate the prisoner from their families. (Human Rights Watch, 2016) However, it is far more difficult for family members in Gaza to receive permits to enter Israel. As Human Rights Watch states, the

Israeli Prison Service allows family members from the West Bank to apply for entry into Israel every two weeks, though Gazan families are allowed to apply every two months at most. (Human Rights Watch, 2016)

Additionally, Israel occasionally suspends family visits for Gazan prisoners completely for confidential "security concerns". The Israel and Palestine Director for Human Rights Watch, Sari Bashi claimed that "The government's security concerns over having these families enter Israel for visits with their loved ones are of its own making." (Human Rights Watch, 2016)

During these periods, particularly during Israel's invasion of 2008, "It often took the families and lawyers several weeks to find out that their loved ones or clients were being detained. According to the United Nations High Commissioner for Human Rights, some lawyers have alleged that Israel deliberately did not disclose the number of detentions, even to ICRC." (United Nations Human Rights Council, 2009)

RESULTS: SECTION IV

FLAGRANT DENIAL OF THE RIGHT TO LIFE, LIBERTY, OR THE SECURITY OF PERSON

Al-Araqeeb, a Palestinian Bedouin village dates back to the seventh century. When Israel was founded in 1948, a brutal ethnic cleansing campaign began against the Bedouin populations of Palestine. After 1953, an estimated 90% of Palestinians were expelled from Al-Araqeeb village in the Naqab desert. (Baroud, 2018) Their village and their descendants now reside in Israel proper, and their villages remain unrecognized by Israel. These Palestinian Bedouins who are citizens of Israel are considered by Israel to be "trespassers on State land," (Cook, 2013) Therefore, the state denies them access to water, electricity, sewage, and other basic needs. In June of 2013, the Israeli government voted in favor of the "Prawer-Begin Bill" which aims to expel the residents of 35 unrecognized Palestinian villages in Israel, displacing up to 70,000 Bedouins. In an effort to create settlements for Jewish citizens of Israel, and further expel and cleanse Israel of Palestinians, Israeli forces have demolished the Araqeeb village over 140 times. And each time, the villagers have rebuilt. (Middle East Monitor, 2019)

The reality of Al-Araqeeb is not unique. In Palestine, home demolitions are frequent. According to the UN Office for the Coordination of Humanitarian Affairs, Israel has demolished over 1,100 structures in occupied East Jerusalem over the past 10 years. The UN Commission on Human Rights reported on March 15, 2000: "The Occupying Power's confiscation of land and properties belonging privately and collectively to the Palestinians in the occupied Palestinian territories is a dominant feature of the occupation and an essential component of population

transfer carried out by Israel. This practice violates the long established international law principle of the unacceptability of the acquisition of territory by force, as well as specific resolutions concerning Israel's confiscation of land and settlement activities. Since 1967, Israel has confiscated land for public, semi-public and private use in order to create Israeli military zones, settlements, industrial areas, elaborate 'by-pass' roads, and quarries, as well as to hold 'State land' for exclusive Israeli use. Estimates place the proportion of Palestinian land confiscated by Israel at some 60 per cent of the West Bank, 33 per cent of the Gaza Strip, and at least 32.5 km^2, or approximately 33 per cent of the Palestinian land area in Jerusalem." (United Nations, 2000)

According to B'Tselem, in 2019, Israel demolished at least 140 Palestinian homes in East Jerusalem, making 238 Palestinians homeless, including 127 minors. These homes, and similar cases in past years, have been due to these houses not having the proper government issued permits. Although, people have accused Israel of discriminatory practices when issuing permits to Palestinian residents. Aviv Tatarsky found that in in 2019, only 7% of Israeli housing permits were allotted to Palestinian neighborhoods, though Palestinians make up one third of the total population in Jerusalem. (Tatarsky, 2020) For example, On June 9, 2020, the Israeli municipality in West Jerusalem demolished the home of single mother and her eight children, making them homeless, for not having the proper permits. (Palestine Chronicle, 2020)

After families have been evicted and their homes demolished, the Israeli municipality in Jerusalem began to expand its borders, absorbing more occupied territory, in contradiction with international law. (United Nations, 2020) In 2019, Amnesty International condemned Israel saying that the "Unlawful transfer of civilians in occupied territory violates the Fourth Geneva

Convention and constitutes a war crime under the Rome Statute of the International Criminal Court." (Amnesty International, 2019)

In 2012, the European parliament passed an historic resolution calling for: "the protection of the Bedouin communities of the West Bank and in the Negev, and for their rights to be fully respected by the Israeli authorities, and condemns any violations (e.g. house demolitions, forced displacements, public service limitations); calls also, in this context, for the withdrawal of the Prawer Plan by the Israeli Government;" as well as the forced displacement and demolishment of Palestinian homes in occupied East Jerusalem. (European Parliament, 2012) Amnesty International has also called for an end to Israeli policies which call for curfews, closures, and demolitions that collectively punish Palestinians, their economy, and their livelihood. Thousands of acres of Palestinian land have been confiscated in order to build settlements, which is in contravention of the Fourth Geneva Convention, Article 49: 'Occupying Power shall not transfer parts of its own civilian population into the territory it occupies'. (United Nations, 1949, p.185)

The findings provided by these cases cumulatively show the broad range of spaces and contexts in which human rights violations in Palestine and Israel occur. These spaces include Israeli detention facilities and prisons, war zones in the Gaza Strip, and Palestinian villages within Israel. These cases are also all recognized and condemned by the most credible of human rights agencies all around the globe.

CONCLUSION

The Department of State's vetting system uses a thorough 8 step process when considering military and security force units for U.S. aid expenditures. (McNerney et al., 2017, p.15) Although the data, cases, and testimonies previously considered, and the accessibility of that data, prove that the vetting mechanism should not have to exhaust itself in order to identify clear violations of human rights committed by Israel. The Department of State suggests that United States embassies in the state under investigation should include the work of local human rights NGOs, as well as media contacts, the internet, and official government records in the vetting process. (McNerney et al., 2017, xiv) In my analysis, I have included dozens of records and statements made by human rights NGOs local to Israel, Palestine, the United States and the United Kingdom. These sources are not being properly considered in the U.S.' vetting of Israel.

In the State Department's 2019 report regarding Israel's human rights practices, they provide a summary of human rights standards, and where Israel stood in regards to those standards that year. These standards include: arbitrary deprivation of life and other unlawful or politically motivated killings, disappearance, torture and other cruel, inhuman, or degrading

treatment or punishment, prison and detention center conditions, arbitrary arrest or detention, arrest procedures and treatment of detainees, denial of fair public trial, and others. (U.S. Department of State, 2019)

In the section entitled: “arbitrary deprivation of life and other unlawful or politically motivated killings”, the State Department begins by absolving Israel’s arbitrary killing of over 130 Palestinian protesters in the Gaza Strip, claiming that Israeli forces identified them as terrorists. The State Department acknowledges that various human rights organizations claimed that protesters were of no imminent threat to Israeli forces, but the point is refuted by the State Department with a rebuttal by the Israeli government, that the victims of lethal Israeli force were in fact terrorists, and therefore deserving of the IDF’s force. (U.S. Department of State, 2019)

However, The United Nations Relief and Works Agency (UNRWA) argued that the vast majority were unarmed, peaceful demonstrators. (UNRWA, 2019) The State Department report failed to mention the disproportionate number of Palestinians injured, which causes us to question, how truly threatened were the Israeli soldiers who decided to use lethal force? According to Amnesty International, at least 10,000 Palestinians were injured, including 1,849 children, 424 women, 115 paramedics and 115 journalists. (Amnesty International, 2018) Amnesty International cited Al Mezan Center for Human Rights, who claim that of the thousands injured, 5,814 were shot by live ammunition. (Amnesty International, 2018) According to Amnesty International, one Israeli soldier was killed, and six Israeli soldiers were injured. (UNRWA, 2019)

In the section entitled “torture and other cruel, inhuman, or degrading treatment or punishment”, the State Department stated “ISA [Israeli Security Agency] interrogators may be

exempt from criminal prosecution if they use “exceptional methods” in extraordinary cases determined to involve an imminent threat, such as the “ticking bomb” scenario, as long as such methods did not amount to torture.” (U.S. Department of State, 2019)

But that these methods are confidential to the ISA. This “legally-sanctioned torture” was condemned by Amnesty International as “utterly outrageous”. (Amnesty International, 2019) According the Amnesty International, these “exceptional methods” put Palestinian prisoner, Samer ‘Arbid, in critical condition and in need of a respirator, with broken ribs and kidney failure. (Amnesty International, 2019) According to Physicians for Human Rights, they were denied access to Samer by the Israeli hospital and rejected when inquiring about Samer’s condition. (Physicians for Human Rights – Israel, 2019)

Furthermore, the State Department states that “an extended temporary law exempts the ISA from the audio and video recording requirement for interrogations of suspects related to “security offenses.”” (U.S. Department of State, 2019) If you will recall from Section 2 concerning the Prolonged Detention Without Charges and Trial, the majority of Palestinian prisoners, including the majority of Palestinian prisoners who are minors, are categorized as “security prisoners”, with the most common convictions of minors being stone-throwing. (Defense for Children International, 2016, p.51; Korn, 2003, p.39) Therefore, the majority of interrogations by the ISA are not filmed or recorded, voiding Israeli interrogators of any accountability once so ever and explaining the high rates of physical and emotional abuse that is endured by Palestinian prisoners, including minors, during interrogations in Israeli facilities.

Correspondingly, the International Criminal Court, has accused Israel of human rights violations, including war crimes. The ICC Chief Prosecutor, Fatou Bensouda, stating: “I am

satisfied that war crimes have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip…" (International Criminal Court, 2019) In response, President Donald Trump signed an executive order which sanctions members of the International Criminal Court in order to avoid investigation of the U.S. or its ally, Israel. (White House, 2020) These two examples suggest that the United States' dilemma is not the process of vetting, but rather their ignorance towards international humanitarian standards and practices.

Throughout the State Department's report, there is an apparent disconnect between the U.S. government's position on human rights abuses committed by Israel and reputable human rights organizations, as well as the international community. It is also evident that the United States government prioritizes the word of the Israeli government, over internationally recognized and reputable human rights organizations and international bodies. According to legislation like the Leahy Laws, the U.S. aid allotted to Israel, and to any foreign security force, is conditional. Regardless of the current efforts to codify military aid to Israel into American law, unconditionally (S.3176, 2020), this aid, legally has been, and currently is conditional.

Yet in practice, Israel has asserted its impunity and has been continuously enabled by the United States through what has amounted to unconditional aid. The United States must enforce its own laws which seek to prevent the abuse of public funds. Granted the violations of not only the state of Israel and their military forces, but the participation of the United States, I would recommend a complete withdrawal of United States military aid until a fair and balanced investigation is launched against the Israeli military and Israeli security force units. I would also recommend that this investigation and others measures towards Israel be publicized in order to

insure inter-governmental transparency. Furthermore, I would be interested in expanding on this research and delving into the subject of Israel's indictment at the International Criminal Court.

As previously mentioned, conducting this research presented its own unique set of limitations. Those include primarily the issue of accessibility to information, as well as the classification of processes necessary to fully understanding governmental measures towards aid recipients guilty of human rights violations. For example, for the most part, the investigations and implementation of the Leahy Laws is kept confidential. This has prevented me from understanding government processes in regards to vetting, investigations, and the withholding of aid. All that I can assume is that there has not been an investigation that has found Israel guilty of human rights violations, even in secret, as aid packages have remained consistent and constant.

Similarly, I could not acquire documentation concerning the exact uses and allocations of U.S. military aid by Israel. As Nathanael Tenorio Miller states: "Once a country receives FMF financing, the DOD does not track unclassified information on how that country distributes the financing. All that is available from the public reports is the line-item funding disbursement." (Miller, 2012, p.687) This information is accessible only to members of congressional intelligence committees. (Miller, 2012, p.671) Miller also states that if a non-governmental agency wished to inquire about the disbursement of aid, and the recipient country refuses to provide that information, there exists no mechanism for the public to track how U.S. military aid is spent by that recipient country. Miller suggests that receipts should be declassified and publicized, allowing government accountability on a public level. (Miller, 2012, p.695) Therefore, the direct uses of grants and other forms of military financing are inaccessible. This is

an obvious hindrance to future investigations of Israeli human rights violations and prospects for accountability.

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