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MADE IN THE U.S.A.: AMERICAN MILITARY AID TO ISRAEL

FRIDA BERRIGAN

Enforcement of U.S. law concerning weapons exports and the disbursement of military aid are subject to highly politicized interpretations of concepts like “legitimate self-defense” and “safeguarding internal security.” As illustrated by Israel’s July 2006 war in Lebanon and its 2008–2009 Operation Cast Lead in Gaza, Washington has essentially allowed Israel to define “self-defense” however it chooses. This overview of U.S. military aid to Israel, including weapons sales and related support of its domestic military industrial complex, examines in detail the mechanisms through which aid is funneled, the restrictions on aid that do exist, and the uses to which U.S. military aid has been put—particularly in terms of Israel’s military operations and its exports abroad.

POLITICALLY, economically, and militarily, the closeness of the U.S.-Israel relationship is unique. Israel has been the largest recipient of U.S. security assistance since the early 1970s, when the Nixon administration dramatically increased military aid to the country and cemented the close relationship that endures to this day. In recent years, both U.S. military aid and weapons transfers have increased. At the same time, the intensity and ruthlessness of Israeli military operations has also increased, with U.S. weapons and military hardware of every size—including F-16 fighter planes and GBU-39 bombs—on lethal display. Most recently, Israel used U.S.-supplied weapons in its July 2006 war in Lebanon and its December 2008–January 2009 Operation Cast Lead in Gaza to devastating effect, with civilians overwhelmingly bearing the brunt of the attacks.

Israel receives most of its U.S. military assistance through Foreign Military Financing (FMF), which are U.S. grants for weapons purchases. But this is not the totality of U.S. support for Israel.¹ At least as valuable is the special treatment that comes with the billions of dollars in grants. Israel is the only country allowed to use a substantial portion of its U.S. military aid to build its domestic military industry, a privilege that includes developing indigenous weapons systems based on U.S. designs and using FMF funds to purchase materials as well as research and development from Israeli firms. Additional U.S. funds are spent on joint military research and production such as anti-ballistic missile defense

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systems and even fighter jets. While other countries get their FMF doled out in quarterly allotments, Israel receives all of it in one lump sum early in the year. This practice creates a loan burden for the U.S. government, as it necessitates borrowing from the U.S. Treasury long before Congress actually releases the monies promised. Along with a handful of other nations, Israel enjoys “fast-track” status for weapons sales, meaning that it can essentially bypass the Pentagon’s intermediary role, involving cumbersome procedures and delays, to make deals directly with manufacturers. It is not possible to quantify all these perks in dollars, but what is beyond dispute is that they add up to a very special relationship.

MILITARY AID AND WEAPONS SALES: A MAJOR COMMITMENT

Israel received more than \$22 billion in military assistance during the eight-year Bush administration, mostly, as noted, through FMF. Until fiscal year 2008, Israel also received Economic Support Funds (ESF), which are grants for infrastructure and development projects that are not technically military, but whose “fungibility” makes it possible to free up monies for military expenditures.² In 1998, however, U.S. president Bill Clinton and Israeli prime minister Benjamin Netanyahu agreed to eliminate ESF gradually while increasing FMF. This process was completed in 2008, when \$2.38 billion in U.S. assistance to Israel was disbursed through FMF and no ESF aid was transferred.³

Major U.S. Assistance Programs to Israel
FY 2002–FY 2009 (in thousands of dollars)

Program	FY 2002–2006	FY 2007	FY 2008	FY 2009
Economic Support Funds (ESF)	\$2,437,988	\$120,000	—	—
Foreign Military Financing (FMF)	\$11,733,346	\$2,340,000	\$2,380,560	\$2,550,000
Nonproliferation, Antiterrorism Demining and Related Programs (NADR)	\$28,736	\$240	—	—
Anti-Ballistic Missile Defense Systems	\$700,659	\$137,894	\$155,572	\$177,237
Total	\$14,900,729	\$2,598,134	\$2,536,132	\$2,727,237
TOTAL FY 2002 through FY 2009				\$22,762,232

Data for ESF, FMF and NADR programs come from the U.S. Department of State, *Congressional Budget Justification for Foreign Operations*, FY 2004 through FY 2009 editions. Data for the Anti-Ballistic Missile Defense Systems comes from the Department of Defense Appropriation Acts, 2002—2009.

In FY 2007, Israel received \$2.34 billion in FMF, or just under half the total U.S. FMF disbursed that year worldwide (\$4.7 billion). That sum is now on the rise. President Bush’s promise to increase security assistance to Israel was formalized in a new Memorandum of Understanding (MoU) signed 16 August 2007 that will bring the FMF total to \$30 billion over the next ten years. The one-page document, which emphasizes the United States’s “unshakeable commitment” to Israel’s security, delineates exactly how the \$30 billion will be apportioned over the ten-year period.⁴ Israel will see the first fruits of the increase with the FY 2009 budget, recently signed into law, which grants Israel \$2.55 billion in

FMF. For 2010, that number is expected to increase to \$2.775 billion. By 2013, FMF will level off at \$3.1 billion a year for the rest of the decade.

It is a major commitment. Between 1998 and 2008, the Israeli government devoted \$75 billion to its military budget. During that same period, FMF alone accounted for nearly \$25 billion, essentially covering a third of Israel's defense budget. But while the U.S. yearly military assistance will increase under the new MoU, the share of its contribution to the Israeli defense budget may fall: According to an August 2008 memo by the American Israel Public Affairs Committee (AIPAC), Israel plans to double its military budget in the coming decade to \$150 billion. If this plan materializes, the U.S. share of support for Israel's military budget will drop from the current one-third to one-fifth—still a rather astonishing level.⁵

At the MoU signing ceremony, Undersecretary of State for Political Affairs Nicholas Burns characterized the \$30 billion as an "investment in peace" and emphasized America's "abiding interest in the security of Israel." In his speech, Burns also noted that the agreement would "allow successive American administrations to also know that our commitment to Israel will be sure, beyond the presidency of President Bush and into the next American presidency."⁶

According to the State Department's 2009 Congressional Budget Justification, "Increased assistance will allow for a more robust Israeli defense budget during a critical time for the peace process and in the midst of regional instability. It will also help safeguard Israel's Qualitative Military Edge."⁷ In other words, even if the United States increases aid and weapons transfers to other regional powers as part of the "global war on terror" and containment of Iran, it is committed to providing commensurately increased military aid to Israel to ensure its continued regional military supremacy. The result, inevitably, is a regional arms race for which the United States provides virtually all the weapons. Significantly, the Bush administration's commitment to increase FMF to \$30 billion over the next ten years was announced at the same time as a U.S. pledge to sell \$20 billion in weapons to Middle Eastern states, including Joint Direct Attack Munitions systems to Saudi Arabia, marking the first such transfer of this high-tech system to Riyadh.

Burns was at pains to explain that the U.S. commitment to Israel "is not linked to U.S. military assistance to any other country in the region, it is not conditioned upon it, it is not linked, it is completely separate." At the same time, he did acknowledge that aid increases are decided "within the wider framework of our general policy in the Middle East."⁸ The "wider framework" when the MoU was signed consisted in part of heightened regional anxieties about violence and instability spilling across the borders of U.S.-occupied Iraq and U.S. attempts to neutralize Iran's growing influence throughout the region.

Asked about restrictions to the aid, Burns was very clear that the MoU "does not convey any restrictions," adding that "we have great faith that the Israel government will make the necessary decisions to strengthen its military forces."⁹

The billions of dollars in U.S. military aid to Israel have bought a stunning array of U.S. weapons and military hardware for the Israel Defense Forces (IDF). The bulk of Israel's current arsenal is composed of equipment supplied by the United States. For example, Israel has 226 U.S.-supplied F-16 fighter and attack jets, more than 700 M-60 tanks, 6,000 armored personnel carriers, and scores of transport planes, attack helicopters, and utility and training aircraft, not to mention innumerable bombs and tactical missiles of all kinds. The IDF also has a wide array of munitions at its disposal, including cluster bombs and incendiary devices like white phosphorous.

In 2006 and 2007, U.S. Foreign Military Sales (FMS) agreements worldwide totaled \$37.20 billion.¹⁰ Israel, with \$2.06 billion in weapons imports, was the sixth-largest U.S. weapons buyer for those two years—after Pakistan (\$3.66 billion), Turkey (\$3 billion), Saudi Arabia (\$2.55 billion), the United Arab Emirates (\$2.40 billion), and Greece (\$2.35 billion).¹¹

While not the largest FMF recipient, Israel is a more regular customer than other nations; over the last ten years for which full data is available (FY 1997–2007) Tel Aviv signed agreements for U.S. weapons imports worth \$10.59 billion. Of the six biggest importers in 2006 and 2007, only Saudi Arabia, with \$10.7 billion in U.S. weapons purchased over the last ten years, signed agreements worth more. Other nations' purchases varied greatly from year to year. Pakistan, for example, purchased more than 80 percent of its ten-year total in U.S. weapons (\$4.5 billion) in the two-year period 2006–2007. The Pentagon has yet to tabulate the dollar value of total weapons transfers in 2008, but a glance at the proposed weapons sales suggests that it will be a big year all around. U.S. arms sales offers to Israel last year included a proposed deal for as many as 75 F-35 Joint Strike Fighters worth up to \$15.2 billion; nine C-130J-30 aircraft worth up to \$1.9 billion; four littoral combat ships and related equipment worth as much as \$1.9 billion; and up to \$1.3 billion in gasoline and fuel for military aircrafts.

Given the dollar volume and the variety and capabilities of the U.S. weapons systems annually provided to Israel, it is virtually guaranteed that when the IDF engages in combat—be it in Lebanon, Gaza, or anywhere else—it will be using U.S.-designed weapons systems that were either made in the United States or produced in Israel under U.S. license (meaning that Israel is able to manufacture and upgrade U.S. military technology domestically).

The U.S. role in the Israeli defense industry is particularly significant because Israel is also a weapons-exporting nation. This poses the constant risk that technologies of U.S. origin will be transferred to other countries.

A SPECIAL RELATIONSHIP

The United States does not just transfer money and missiles to Israel; it maintains with Israel a special relationship and the unique advantages that go with it. The 2007 MoU spelled out one of the perks Israel has long enjoyed: the ability to spend 26.3 percent of FMF on weapons systems manufactured

domestically. For example, in FY 2009, Israel will receive \$2.55 billion in FMF, of which slightly more than \$660 million can be spent on purchases from Israeli defense contractors. When asked about this arrangement during the August signing ceremony, Undersecretary Burns called it a “long-time” and “unique” agreement. No other country is allowed to invest U.S. funds in its own military industry. With that money, Israel has heavily invested in research and development, resulting in Israeli systems like the Merkava tank.

As a close ally and preferred customer, Israel is eligible for what amounts to custom-designed U.S. weapons platforms. The Israeli version of Lockheed Martin’s F-16 fighter plane, known as the F-16I Sufa, is a good example of this unique advantage. In November 2003, the first of a new batch of 102 F-16s built to Israeli specifications rolled off the production line in Texas, with Israeli defense company Lahav providing customized avionics. At \$45 million per plane, the F-16I Sufa is part of a \$4.5 billion deal between Lockheed Martin and the Israeli government, although much of the money paid to the U.S. manufacturer for the fighter planes will have originated as FMF.

The U.S. role in the Israeli defense industry is particularly significant because Israel is also a weapons-exporting nation. This poses the constant risk that U.S. technologies will be transferred to other countries. To cite just one example, the Chinese Air Force flies a Jian-10 fighter plane that is almost identical to the Israeli Lavi (or Lion), a joint Israeli-U.S. design based on the F-16. Although the joint production of this fighter plane was canceled in 1987 because of cost overruns, the design and technology ended up in Beijing.¹² Indeed, Israel is China’s second-largest weapons supplier after Russia. Despite close U.S.-Chinese economic ties, the two nations remain military rivals, and most future war scenarios imagined by Pentagon planners involve China as an adversary in some way. The fact that Washington’s closest ally is assisting a “near peer” rival to obtain high-tech weaponry should be a major worry. China’s own role as an arms dealer is well known and roundly criticized in Washington. Just over a decade ago, the United Nations Register of Conventional Arms disclosed that China has passed on technology that was co-produced by Israel and the United States to Iran and Iraq, among other nations.¹³

RESTRICTIONS AND PROCEDURES: THE ARMS EXPORT CONTROL ACT

By law, the U.S. government cannot transfer weapons and military aid to any country without formal conditions or requirements, and Israel is not exempt from these criteria. The most important regulations governing weapons transfers and military aid arrangements are found in the 1976 Arms Export Control Act (AECA). According to this act, foreign governments that want to remain eligible to purchase U.S. defense articles, training, and services must agree to use purchased items and/or training only for purposes that fall under the rubrics of “internal security” and “legitimate self-defense”; for any other use, they must secure the prior consent of the U.S. president.¹⁴

The 1961 Foreign Assistance Act (FAA), often seen as a companion to the AECA, regulates the provision of economic and military assistance to foreign governments. Under the FAA, the executive branch and Congress can give funds (in the form of grants or loans) to foreign governments for the purchase of newly manufactured U.S. arms. The FAA includes language barring military aid or arms sales to any country that shows a "gross and consistent" pattern of human rights abuse, and it bars arms transfers and aid to specific countries.

While the AECA sounds like a strong law, a critical weakness is that it does not clearly define "internal security" or "legitimate self-defense," neither of which is defined in earlier statutes or subsequent amendments, either. Rather, the terms are interpreted on a case-by-case basis, which makes the statute negotiable. In the case of Israel, the rule of thumb appears to be that if the IDF calls a military action "legitimate self-defense," the U.S. administration accepts that.

A May 2005 Congressional Research Service (CRS) report entitled "U.S. Defense Articles and Services Supplied to Foreign Recipients: Restrictions on Their Use" describes how the law works. In the event of an incident that could violate the terms of the AECA, the president must "report promptly to the Congress upon the receipt of information that a 'substantial violation' of the AECA may have occurred." This report triggers an investigation by the State Department, which is then submitted to the president for judgment as to whether the violation was substantial. If Congress disagrees with the president's determination, it can overrule it through a joint resolution. If it is determined (either through the presidential report or a joint resolution of Congress) that a "substantial violation" has occurred, "then that country becomes ineligible for further U.S. military sales under the AECA." However, the act allows the president to veto a congressional decision rendering a country ineligible by "certifying in writing to Congress that termination of such sales and deliveries would have a 'significant adverse impact on United States security'."¹⁵

This lengthy process, involving the executive, Congress, and agencies within the State Department, is rarely enforced—not surprising given the absence of codified definitions for key terms such as "internal security" and "legitimate self-defense" and the inclusion of the clause allowing the president to override AECA enforcement by invoking "adverse impact on U.S. security." In fact, according to the CRS May 2005 report, there have been no instances in which a violation resulted in the termination of deliveries or other penalties under the AECA.¹⁶ On the other hand, weapons sales and military aid transfers have been *suspended* based on assertions that a country's actions *may* have violated the AECA and the FAA, with Argentina during the Falklands war being a prime example.¹⁷

Although the AECA has never been used to suspend weapons transfers or military aid to Israel,¹⁸ there have been brief suspensions based on other agreements, thus demonstrating that U.S. leverage can be applied. At the time of Israel's 1982 invasion of Lebanon, the Reagan administration suspended all military aid and weapons transfers to Israel after determining that Israel may have violated the terms of a 1952 Mutual Defense Assistance Agreement (which

included a commitment that U.S. military materiel and other assistance would be used only to “maintain its internal security, its legitimate self defense . . . and not undertake any act of aggression any other state”). A ten-week investigation into whether Israel was using weapons for “defensive purposes” was launched. After Secretary of State Alexander Haig declared that one could “argue until eternity” about whether an incident involving the use of force was offensive or defensive, the blanket ban was lifted. Nonetheless, a related ban on cluster weapons exports remained in place for the next six years.

ARGUING UNTIL ETERNITY: THE ISSUE OF SELF-DEFENSE

The crux of U.S. weapons export policy, particularly with regard to Israel, is encapsulated in Secretary Haig’s determination that the self-defensive nature of a military act could be “argued until eternity.” What military actions and reactions constitute “self-defense”? When does a military action become offensive?

The UN Charter, signed by all UN member states, allows for acts of self-defense “if an armed attack occurs against a Member of the United Nations.” Article 51 further provides a mechanism for the UN Security Council to become involved on the side of the attacked, and self-defense can continue “until the Security Council has taken measures necessary to maintain international peace and security.”¹⁹ In the best of circumstances, Security Council involvement means that the claim of self-defense is subjected to outside (and hopefully dispassionate) scrutiny, but the mechanism is seldom used.

Although the United States has a permanent seat on the UN Security Council, its laws regulating the arms trade make no reference either to the UN Charter language about self-defense or to the UN Security Council’s process for determining whether a military act is defensive. Rather, in drafting laws concerning weapons exports, the United States opted for ambiguous language that is open to interpretation and provides for freedom of action, freedom of export, and ultimately freedom from responsibility. Thus, although Israel has initiated two wars with U.S. weapons in the past three years, there has been no substantial effort by Congress or the president to suspend or ban exports to Israel. On the contrary, the United States has actively continued to export weapons and increase U.S. military aid in support of these military operations, with Congress and the Bush administration explicitly asserting, without further explanation, that the military operations were motivated by “self-defense.”

Thus the Reagan era suspension, however limited, is the firmest U.S. rebuke to Israeli military action in the last quarter century.²⁰ What propelled the Reagan administration in 1982 to act? In an April 2008 report, analyst Michael F. Brown with the Institute for Middle East Understanding cites congressional pressure as “instrumental to President Reagan’s suspension decision.” Citing hearings in subcommittees of the House Committee on Foreign Affairs—specifically the Subcommittees on International Security and Scientific Affairs under Rep. Clement J. Zablocki (D-WI) and the Subcommittee on

Europe and the Middle East headed by Rep. Lee H. Hamilton (D-IN)—Brown comments that the kinds of “probing questions in a public setting” seen in both hearings “are almost unthinkable today.” Writing in the context of the 2006 Lebanon war, he concludes that it “is of significant concern that the Congressional oversight in 1982” exceeds present day oversight by a significant margin.²¹

A closer look at the two recent instances of Israel’s use of U.S. supplied weaponry—the 2006 Lebanon War and the 2008–2009 Gaza War—provides a window onto the ways in which U.S. law has been ignored since the Reagan administration.

Lebanon 2006

Perhaps the most controversial use of U.S.-supplied armaments in recent years came during Israel’s summer 2006 war in Lebanon, a conflict sparked by Hizballah’s capture of three Israeli soldiers on the Israeli-Lebanese border near the occupied Shaba’ Farms. Israel’s massive air strikes on Lebanese targets, including key civilian infrastructure, soon gave way to a bloody ground war in southern Lebanon between the IDF and Hizballah irregulars. Lebanese civilians bore the brunt of the onslaught. In a study released a year after the 2006 war, Human Rights Watch reported that Israel’s assault on Lebanon left at least 1,109 dead (of which approximately 860 were civilians), 4,399 injured, and an estimated one million displaced,²² while Hizballah’s rockets were responsible for the deaths of 55 Israelis, of whom 43 were civilians.²³

The Israeli military extensively used cluster bombs in the 2006 Lebanon operation. On initial use, the bombs scatter thousands of separate bomblets over an area as large as several football fields. In Lebanon, 75 percent of the bomblets detonated on impact, killing or maiming anyone in that area, but 25 percent failed to explode on impact, remaining as lethal ordnance long after the end of the conflict. Because these weapons are indiscriminate (meaning they are unable to distinguish between civilians and combatants) and because they continue to kill after the cessation of hostilities, cluster munitions are now the subject of a global ban known as the Cluster Munitions Convention, which is part of international humanitarian law aimed at protecting civilians.²⁴ The global ban has been endorsed by more than a hundred nations but not, thus far, by either the United States or Israel.²⁵

According to Human Rights Watch and other on-the-ground observers, the majority of the cluster bombs used by Israel were of U.S. origin. The M77 submunition, for example, delivered by the Lockheed Martin’s Multiple Launch Rocket System (MLRS), was widely used during the war. As many as one million unexploded bomblets remained on Lebanese soil after the 2006 intervention, posing an ongoing threat to civilians and impeding the resumption of crucial economic activities such as agriculture and herding.

The IDF has repeatedly agreed to aid in the removal of unexploded ordnance by providing the United Nations Interim Force in Lebanon (UNIFIL) with strike data detailing the location of the cluster bombs. But as recently as March

2009—almost three years after the war ended—the UN special coordinator for Lebanon was again asking for the information.²⁶ Since the end of the conflict, Human Rights Watch estimates that there have been at least 200 casualties caused by leftover cluster munitions.²⁷

The impact of the use of these and other U.S.-origin weapons on civilians caused an uproar throughout the world, especially when it came to light that Israel was launching more cluster munition volleys into Lebanon even while a cease-fire was being negotiated. According to Jan Egeland, the United Nations' chief humanitarian negotiator, "90 percent of the cluster bomb strikes occurred in the last 72 hours of the conflict, when we knew there would be a resolution." Egeland further called the strikes "shocking" and "immoral."²⁸

On 27 July 2006 the Center for Constitutional Rights, a leading U.S. nonprofit legal organization, wrote to President Bush and Secretary of State Condoleezza Rice as follows:

Defense articles provided to Israel are not being used for internal security or legitimate self-defense, as required by the AECA. The AECA prohibits sales or 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. [The Center for Constitutional Rights] demands that you comply with your legal obligation to immediately cease all sales and deliveries of those items to Israel.²⁹

Responding to this and other expressions of concern, the State Department did launch an investigation, but not the one demanded by the human rights community. Rather, it was an investigation into whether Israel violated confidential agreements with the United States that restrict Israel's use of U.S.-supplied cluster munitions to military targets.³⁰ If nothing else, the investigation at least brought to light the existence of this secret U.S.-Israeli agreement that explicitly banned the use of cluster bombs in civilian areas.

In January 2007, the State Department submitted its findings in a classified report to Sen. Joseph Biden (D-DE), chairman of the Senate's Foreign Relations Committee, and to Rep. Nancy Pelosi (D-CA), speaker of the U.S. House of Representatives. State Department spokesman Sean McCormack told reporters that his agency found "likely violations" of the agreement but said that it was up to Congress to take the next step.³¹

As the *New York Times* later reported, the investigation into possible violations had "caused 'head-butting'" between "the Bureau of Political-Military Affairs and the Bureau of Near Eastern Affairs at the State Department, as well as Pentagon arms sales officials. Some officials 'are trying to find a way to not have to call this a substantial violation,' an unnamed official was quoted as saying."³² The determination of a "substantial violation" could have resulted

in a fine levied against Israel or a cessation of transfers. There was no follow-up, and Israel was soon to be embroiled in another conflict that, once again, involved the use of U.S. weapons against civilian populations.

Gaza 2008–2009

The IDF launched its Operation Cast Lead invasion of Gaza on 27 December 2008, more than three years after Israel unilaterally withdrew settlers and troops from the Strip in late summer 2005 (but retained total control of all entry points) and about eighteen months after Israel imposed a draconian economic blockade on the territory. The Strip had been prey to grave humanitarian hardship since Israel's economic blockade imposed on the territory after Hamas won the Palestinian legislative elections in January 2006.

As in Lebanon, the vast majority of the casualties were civilian. Gaza is one of the most densely populated regions in the world, with 1.5 million people occupying a narrow strip between the sea and Israel. The Associated Press reported that in the attacks, "children are paying the price . . . [And] the broad range of Israel's targets—police compounds, fire stations, homes of militants, Hamas-run mosques and university buildings—means most shelling is occurring in residential areas."³³ Richard Falk, the UN special rapporteur for human rights in the occupied territories, asserts that of the 1,434 Palestinians killed in Gaza, 960 were civilians, including 121 women and 288 children.³⁴ By contrast, the total toll of 13 Israeli deaths included 2 Israeli civilians, and of the 11 IDF soldiers killed, 4 were killed by "friendly fire."³⁵

Once again, U.S.-supplied weapons were used to carry out the assault; given the predominance of U.S.-supplied platforms and munitions in Israel's arsenal, it could not have been otherwise. The CRS's February 2009 review of the conflict lists a number of the U.S. weapons platforms used in Operation Cast Lead, including "F-15 and F-16 aircraft [and] Apache helicopters."³⁶ Human Rights Watch's list of the U.S. systems deployed by Israel is far more extensive, including Cobra helicopters and American made 30 mm (HEDP) rockets and American made 120 mm (HEAT) missiles.³⁷

While U.S. criticism of cluster weapon use in 2006 may have reduced the use of the weapons in Operation Cast Lead, human rights groups documented Israel's use (or suspected use) of a wide array of controversial munitions including antipersonnel and bunker busting munitions, flechette rounds, white phosphorous, and depleted uranium.³⁸

Ignoring the disproportionately civilian death toll, President Bush stated on 5 January 2009 that "the situation now taking place in Gaza was caused by Hamas," adding that "Israel has obviously decided to protect herself and her people."³⁹

SELF-DEFENSE?

In both the 2006 and 2008–2009 military operations, members of the Israeli government and military justified actions by invoking the right of self-defense. The U.S. Congress and president essentially went along. In 2006, the State

Department investigated the use of cluster bombs, but there was no follow-up of its finding that Israel had *likely* violated its secret agreement with the United States, and Congress did not push for an AECA investigation at the time.

In the aftermath of Operation Cast Lead, on the other hand, only a single voice in Congress publicly called for an investigation: In a 5 January 2009 letter to Secretary of State Condoleezza Rice, Rep. Dennis Kucinich (D-OH) asserted that

[N]o nation is immune from the legal conditions placed on the receipt of U.S. military assistance. I believe that with the current escalation of violence in Gaza, a legal threshold has been reached, warranting a presidential examination and report to Congress. I hereby request an examination of Israel's compliance with the provisions of the Arms Export Control Act of 1976.⁴⁰

His call met with no response. Indeed, very few members of Congress objected to the characterization of 2008–2009 Operation Cast Lead as “legitimate self defense.”

On the contrary, as the Palestinian civilian death toll in Gaza mounted, both the House and Senate passed nonbinding resolutions overwhelmingly supporting Israel's offensive. The name of the House resolution is telling: “Recognizing Israel's Right to Defend Itself against Attacks from Gaza, Reaffirming the United States' Strong Support for Israel, and Supporting the Israeli-Palestinian Peace Process.” The measure passed by a vote of 390 for and 5 against, with 22 representatives voting “present.” The five “nay” votes were by Kucinich, Maxine Waters (D-CA), Gwen Moore (D-WI), Nick Rahall (D-WV), and Ron Paul (R-TX).⁴¹ A similar resolution passed in the Senate by unanimous consent.⁴²

The validity—legal and moral—of Israeli and American self-defense rhetoric to justify the aggressive war is greatly undermined by two key factors: the disproportionate nature of the use of force, and the fact that military action was premeditated and awaiting a trigger. Kucinich's letter touches on the first of these issues: “Israel's most recent attacks neither further internal security nor do they constitute ‘legitimate’ acts of self-defense. They do, however, ‘increase the possibility of an outbreak or escalation of conflict,’ because they are a vastly disproportionate response to the provocation, and because the Palestinian population is suffering from those military attacks in numbers far exceeding Israeli losses in life and property.”

Premeditation would also seem to nullify any claim to self-defense. In a lengthy working paper for the Social Science Research Network, Victor Kattan, a fellow at the British Institute of International and Comparative Law, focuses on “Israel's bombardment, blockade, and subsequent invasion of southern Lebanon” in summer 2006 to question how an attack can be both self-defense

and premeditated. To make his point, he cites the 8 March 2007 testimony of Israeli prime minister Ehud Olmert to the Winograd Commission, set up by the Israeli government to investigate Israel's prosecution of the Lebanon war. According to Olmert, his administration had decided "at least four months in advance" of the [2006] operations that any kidnap of Israeli troops on its borders would trigger war.⁴³ As for the recent Gaza war, the evidence that Operation Cast Lead was planned well in advance and just awaited a strike from Hamas to set it in motion is similarly convincing. Writing in *Ha'Aretz*, analyst Barak Ravid cites sources within the Israeli defense establishment as stating that "Defense Minister Ehud Barak instructed the Israel Defense Forces to prepare for the operation over six months ago, even as Israel was beginning to negotiate a cease-fire agreement with Hamas." Preparations included intelligence gathering that mapped out "Hamas' security infrastructure, along with that of other militant organizations operating in the Strip." The political establishment also waged a disinformation campaign that slowed and confused civilian evacuation and lured Hamas political and security personnel back into the region.⁴⁴

WHAT NOW?

Why doesn't the United States hold Israel accountable to the laws regulating the use of U.S.-supplied weaponry or even (in the case of cluster munitions) to the bilateral special agreements on their use? For weapons export policy, the problem isn't so much a lack of legal restrictions and regulations, although these could be stronger and less subject to interpretation and political manipulation. The problem is that the United States is unwilling or unable to enforce those laws when it comes to Israel. And what allows the White House and Congress to turn a blind eye to Israel's undisputed use of U.S. military hardware and technology in situations where civilians are the main victims is the argument of "self-defense."

The Bush administration's circumvention of U.S. weapons law is consistent with its misappropriation of "self-defense" into the doctrine of preemptive warfare in Iraq and elsewhere. Thus, when Washington's closest ally justifies its indiscriminate volleys against civilian populations as self-defense, asserting that its internal security hangs in the balance when three IDF soldiers are captured or when crude rockets fall on some border towns, Washington goes along.

Indeed, the response is not just passive acceptance, but active support for military missions using U.S. weaponry that kills civilians. During the IDF's thirty-three-day assault on Lebanon in 2006, the Pentagon's Defense Security Cooperation Agency complied with an Israeli request for jet propellant fuel and other military fuels worth up to \$210 million. In describing this deal, the Pentagon's news release noted that "The proposed sale of the JP-8 aviation fuel will allow Israel to maintain the operational capability of its aircraft

For weapons export policy, the problem isn't so much a lack of legal restrictions and regulations . . . but rather that the United States is unwilling or unable to enforce those laws when it comes to Israel.

inventory. The jet fuel will be consumed while the aircraft is in use to keep peace and security in the region."⁴⁵ As for Operation Cast Lead, two days after the assault was launched, the *Jerusalem Post* reported that the Israeli air force was using recently delivered GBU-39 bombs (250-pound GPS-guided bombs manufactured by Boeing, capable of penetrating more than 3 feet of reinforced concrete)⁴⁶ to penetrate Hamas's underground rocket launcher sites.⁴⁷ The United States also tried to transfer new weaponry in the midst of the operation: According to a 9 January 2009 Reuters report, the United States had

tried to hire a merchant ship to transport hundreds of tons of U.S. arms from Greece to Israel.⁴⁸

In the cases of the Lebanon and Gaza wars, active U.S. support was forthcoming and its laws circumvented because punishing Hizballah and curbing Hamas are political goals shared by Tel Aviv and Washington. The real question, however, is whether active support for Israel's wars depends on shared interests or political ends, or whether such support is an unalterable given whatever the circumstances. This is a question that will dog all future U.S. administrations regardless of their intentions.

Recently, the United States elected a new president who has unequivocally signaled his determination to depart from the path set by his predecessor, particularly with regard to foreign policy. Whether Barak Obama will be able to take the high road and stick to the letter and spirit of U.S. and humanitarian law is an open question. So far, he has in no way questioned U.S. support for Israel, though the election in Israel of a right-wing government under Likud hard-liner Benjamin Netanyahu, who openly opposes a Palestinian state, has raised speculation about possible bilateral tensions. The *Philadelphia Bulletin*, for example, recently reported that the Obama administration may be using weapons shipments as a bargaining chip, delaying shipments "amid a brewing dispute between the U.S. and Israel over establishing a Palestinian state in the West Bank."⁴⁹ This move, as the Obama administration prepared to welcome Prime Minister Netanyahu to the White House in mid-May, could be an indication of the new president's commitment to play hardball in seeking peace in the Middle East.

But the political pressures aligned against a rethinking of U.S. policy toward—and uncritical support for—Israel are deeply entrenched and on the offensive. There are also financial pressures from a U.S. military industrial complex accustomed to billions of dollars in sales to Israel and other Middle Eastern nations locked in a seemingly perpetual arms race with each other, but all buying American and using FMF to pay the bills.

What is certain is that whatever efforts will be deployed for achieving peace in the region, in order for them to be taken seriously they will have to be

accompanied by a review of U.S. security assistance that brings it under the scrutiny and rigors of U.S. law. Otherwise, Israel will continue to receive the signal that it can do whatever it wants. And no peace will come from that stance.

NOTES

1. There are different ways to quantify U.S. support for Israel; some analysts even include the funds contributed by Jewish community groups in the United States through synagogues or cultural organizations in their assessment of U.S. support for Israel. See "U.S. Financial Aid to Israel: Figures, Facts, and Impact," *Washington Report on Middle East Affairs*. Available online at www.wrmea.com/html/us_aid_to_israel.htm.

2. For more detailed explanations of these and other U.S. military aid programs, see the Federation of American Scientists Arms Sales Monitoring Project, available at www.fas.org/programs/ssp/asmp/index.html.

3. The Pentagon's Defense Cooperation Agency describes FMF as a credit or grant given to a foreign government "for the procurement of defense articles, defense services, and design and construction services." The procurements can be from U.S. military departments or (for some countries) from U.S. commercial suppliers. The ESF was established by Congress to promote economic and political stability in strategically important regions where the United States has special security interests. The funds are provided on a grant basis and are available for a variety of economic purposes, like infrastructure and development projects. Although not intended for military expenditure, these grants allow the recipient government to free up its own money for military programs, and they are not required to report back to the United States on how these funds were spent.

4. "Memorandum of Understanding" (between Israel and the United States), available online at www.endtheoccupation.org/downloads/2007israelusmou.pdf.

5. "Boost in U.S. Aid to Israel Vital amid Increasing Threats," AIPAC Memo, American Israel Public Affairs Committee,

August 2008. Available online at www.aipac.org/Publications/AIPACAnalysesMemos/ForeignAidMemo.pdf.

6. Signing of MoU between Israel and the United States, 16 August 2007; transcript provided by the Israeli Ministry of Foreign Affairs. Available online at www.mfa.gov.il/MFA/About+the+Ministry/MFA+Spokesman/2007/Signing+of+Memorandum+of+Understanding+between+Israel+and+the+United+States+16-Aug-2007.htm?DisplayMode=print.

7. U.S. Department of State, *Congressional Budget Justification for Foreign Operations*, FY 2009 ed., Israel profile. Available online at www.state.gov/documents/organization/101442.pdf.

8. Signing of MoU between Israel and the United States, 16 August 2007.

9. Signing of MoU between Israel and the United States, 16 August 2007.

10. An FMS agreement refers to weapons and military equipment contracted for sale (but not necessarily delivered) pending congressional approval in a given fiscal year.

11. Defense Security Cooperation Agency, *Historical Facts Book* (Washington: U.S. Department of Defense, 2008) as of 30 September 2007.

12. David Isenberg, "Israel's Role in China's New Warplane," *Asia Times*, 4 December 2002.

13. Jonathan Reingold, "U.S. Arms Sales to Israel End up in China, Iraq," *CommonDreams.org*, 9 May 2002; available at www.commondreams.org/views/02/0509-07.htm.

14. Title 22, Chapter 39, Subchapter I, § 2754. *Purposes for which military sales or leases by the United States are authorized; report to Congress*: "Defense articles and defense services shall be sold or leased by the United States Government under this chapter to friendly countries solely for *internal security, for legitimate self-defense*, for preventing or hindering

the proliferation of weapons of mass destruction and of the means of delivering such weapons, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security, or for the purpose of enabling foreign military forces in less developed friendly countries to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries."

15. Richard Grimmert, "U.S. Defense Articles and Services Supplied to Foreign Recipients: Restrictions on Their Use," Congressional Research Service, 14 March 2005.

16. Grimmert, "U.S. Defense Articles."

17. Grimmert, "U.S. Defense Articles." The United States suspended deliveries of defense articles and services to Argentina for several months in 1982 after it was determined that the use of U.S.-supplied military equipment in Argentina's occupation of the Falklands Islands may have constituted a violation of agreements.

18. During the 1973 airlifts, Secretary of State Henry Kissinger raised the specter of AECA with the Israeli government, but the airlifts continued. Ainsworth B. Mills, "The Use of Arms Transfers and Arms Control to Enhance Security in the Middle East," *Storming Media*, 7 April 2000. Abstract available online at www.stormingmedia.us/73/7397/A739773.html?searchTerms=The~Use~of~Arms~Transfers.

19. Charter of the United Nations, "Chapter VII. Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression." Article 51 states: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and

responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."

20. President Dwight Eisenhower suspended all U.S. aid after Israel's 1956 invasion of Egypt until Israel withdrew from the Sinai. More recently, following Israel's first invasion of Lebanon in March 1978, President Jimmy Carter threatened to suspend U.S. aid if Israel did not withdraw its forces; it did so, but left a "security zone" under the control of its rightist allies.

21. Michael F. Brown, "Arms Export Control Act: Israeli Breaches and U.S. Indulgence Result in Palestinian and Lebanese Civilian Casualties," Palestine Center report, 15 April 2008. Available online at thejerusalemfund.org/ht/a/GetDocumentAction/i/3061.

22. Human Rights Watch, "Why They Died," 5 September 2007. Available online at www.hrw.org/en/reports/2007/09/05/why-they-died.

23. Human Rights Watch, "Civilians under Assault," 28 August 2007. Available online at www.hrw.org/en/reports/2007/08/28/civilians-under-assault-0.

24. For more on International Humanitarian Law, see the International Committee of the Red Cross, "Advisory Service on International Humanitarian Law," available online at www.icrc.org/web/eng/siteeng0.nsf/htmlall/57jnrp?opendocument.

25. For more on the Cluster Munitions Convention, see www.clusterconvention.org. Although the United States did not sign the convention, the 2009 budget that President Obama signed into law on 11 March 2009 included a provision stating that the United States can only export cluster munitions that leave behind less than 1 percent of their submunitions as duds. The importing country must also agree not to use cluster munitions where civilians are known to be present. Only a very small number of cluster munitions in the U.S. arsenal meet the 1 percent dud-rate standard, and so the provision effectively bans export of these weapons.

26. Mohammed Zaatari, "UN Envoy: Israel Must Hand Over Maps of Cluster Bomb Locations," *Daily Star* (Lebanon), 27 March 2009.

27. Human Rights Watch, "Israel and Cluster Munitions," 8 February 2008; and Human Rights Watch, "Israel's Use of Cluster Bombs Shows Need for Global Ban," 17 February 2008.
28. David Banks, "Israel Accused of 'Shocking Behaviour' on Cluster Bombs," *Times* (U.K.), 31 August 2006.
29. Center for Constitutional Rights letter to President Bush and Secretary of State Rice, 27 July 2006.
30. Jeremy M. Sharp, "U.S. Foreign Aid to Israel," Congressional Research Service, 2 January 2008.
31. Sue Fleming, "U.S. Says Israel Cluster Bomb Use Possible Violation," Reuters, 29 January 2007.
32. David S. Cloud and Greg Myer, "Israel May Have Violated Arms Pact, U.S. Says," *New York Times*, 28 January 2007.
33. Ibrahim Barzak, "Fighting in Dense Gaza Brings Child Casualties," Associated Press, 1 January 2009.
34. Richard Falk, Special Rapporteur for the Occupied Palestinian Territories, statement to the Human Rights Council, 23 March 2009. Available online at www.eyeontheun.org/assets/attachments/documents/7555.pdf.
35. "UN Gaza Inquiry 'to Proceed Despite Israel'," BBC, 20 May 2009. Available online at news.bbc.co.uk/2/hi/middle_east/8059021.stm.
36. Jim Zanotti et al., "Israel and Hamas: Conflict in Gaza 2008-2009," Congressional Research Service, 19 February 2009.
37. Human Rights Watch researchers saw F-15s, F-16s, Apaches, and Cobras, and found American made 30 mm HEDP (from Apache) and American made 120 mm HEAT (fired from Merkava tanks). Correspondence with Marc Garlasco of Human Rights Watch, 1 May 2009.
38. Human Rights Watch, "Rain of Fire: Israel's Unlawful Use of White Phosphorus in Gaza," March 2009.
39. Dan Eggen, "Bush Blames Hamas for Starting Gaza Conflict," *Washington Post*, 5 January 2009.
40. The Arms Export Control Act, U.S. Code section 38, title 22, 2771-2781.
41. *Recognizing Israel's Right to Defend Itself against Attacks from Gaza, Reaffirming the United States' Strong Support for Israel, and Supporting the Israeli-Palestinian Peace Process*, HR 34, 111th Cong., 1st sess. *Congressional Record*, daily ed. (9 January 2009): H 138.
42. *A Resolution Recognizing the Right of Israel to Defend Itself against Attacks from Gaza and Reaffirming the United States' Strong Support for Israel in Its Battle with Hamas, and Supporting the Israeli-Palestinian Peace Process*, S. Res. 10, 111th Cong., 1st sess. *Congressional Record*, daily ed. (8 January 2009): S 212.
43. Victor Kattan, "The Use and Abuse of Self-Defense in International Law: The Israel-Hezbollah Conflict as a Case Study," Social Science Research Network Working Paper Series, 15 June 2007.
44. Barak Ravid, "Disinformation, Secrecy and Lies: How the Gaza Offensive Came About," *Ha'Aretz*, 31 December 2008.
45. Defense Security Cooperation Agency, "Israel—JP-8 Aviation Jet Fuel" (press release), 14 July 2006. It should be noted, however, that when the IDF ran out of cluster bombs during the July 2006 war and Israel asked the United States for an emergency shipment of 1,200 of the devices, Washington refused. See Amira Hass, "Penetrating the Laws of War," *Ha'Aretz*, 16 April 2009.
46. In September 2008, the U.S. Congress approved the sale of 1,000 GBU-39 bombs for \$77 million.
47. Yaakov Katz, "IAF Uses New U.S.-Supplied Smart Bomb," *Jerusalem Post*, 29 December 2008.
48. "U.S. Seeks Ship to Move Arms to Israel," Reuters, 9 January 2009.
49. David Bedein, "Israel to Wean Itself off of U.S. Munitions," *Philadelphia Bulletin*, 21 April 2009.