

population of Gaza, with the exception of 200 foreign wives, to leave the war zone during the 22 days of attack that commenced on 27 December. As the UN High Commissioner for Refugees stated on 6 January 2009, Gaza is “the only conflict in the world in which people are not even allowed to flee.” All crossings from Israel were kept closed during the attacks, except for rare and minor exceptions. By so doing, children, women, sick and disabled persons were unable to avail themselves of the refugee option to flee from the locus of immediate harm resulting from the military operations of Israel. This condition was aggravated by the absence of places to hide from the ravages of war in Gaza, given its small size, dense population, and absence of natural or man-made shelters.

19. International humanitarian law has not specifically and explicitly at this time anticipated such an abuse of civilians, but the policy as implemented would suggest the importance of an impartial investigation to determine whether such practices of “refugee denial” constitute a crime against humanity as understood in international criminal law. The initial definition of crimes against humanity, developed in relation to the war crimes trials after World War II, is “murder, extermination, enslavement, deportation, and other inhumane acts done against any civilian population.” More authoritative is the definition contained in Article 7(1)(k) of the Rome Statute, according to which crimes against humanity includes “inhumane acts . . . intentionally causing great suffering, or serious injury to body or to mental or physical health.” Refugee denial under these circumstances of confined occupation is an instance of “inhumane acts,” during which the entire civilian population of Gaza was subjected to the extreme physical and psychological hazards of modern warfare within a very small overall territory.

20. The small size of Gaza and its geographic character also operated to deny most of the population remaining within its borders an opportunity to internally remove itself from the combat zones. In this sense, the entire Gaza Strip became a war zone, although the actual combat area on the ground was more limited. . . . In this respect, the option to become an internally displaced person was, as a practical matter, unavailable to the civilian population, although some civilians sought relative safety in shelters that were made available on an emergency basis for a tiny fraction of the

population, mainly through the efforts of . . . the UN Relief and Works Agency [UNRWA] and other UN and NGO efforts. In some situations, the shelters were not always treated as sanctuaries by the Israeli armed forces. Six UNRWA emergency shelters were damaged during Operation Cast Lead.

VII. The Broader Setting of the Attacks

40. At the conclusion of the present report, it seems appropriate to reaffirm the connection between Israeli security concerns and the Palestinian right of self-determination. As long as Palestinian basic rights continue to be denied, the Palestinian right of resistance to occupation within the confines of international law and in accord with the Palestinian right of self-determination is bound to collide with the pursuit of security by Israel under conditions of prolonged occupation. In this respect, a durable end to violence on both sides requires an intensification of diplomacy with a sense of urgency, and far greater resolve by all parties to respect international law, particularly as it bears on the occupation as set forth in the Fourth Geneva Convention.

A2. INTERNATIONAL CRISIS GROUP, “GAZA’S UNFINISHED BUSINESS,” GAZA CITY, RAMALLAH, JERUSALEM, WASHINGTON, AND BRUSSELS, 23 APRIL 2009 (EXCERPTS).

International Crisis Group’s (ICG) 50-page report in the wake of OCL examines the war’s toll and fallout for Gaza, the West Bank, and Israel, as well as prospects for a lasting cease-fire, Gazan reconstruction, and intra-Palestinian reconciliation in light of current realities. The excerpts below focus on Egypt’s role, both in Gaza and with regard to the “regional cold war.” Footnotes have been omitted for space considerations. The full report can be found online at www.crisisgroup.org.

A. Egypt

1. Background

. . . Throughout [the war], Cairo’s position was guided by several considerations. Ever since Hamas’s January 2006 electoral victory, and especially since its June 2007 takeover of Gaza, it has viewed the Islamist group’s strengthening warily. Its lens was, in this respect, essentially domestic. Hamas enjoys a close association with Egypt’s increasingly influential Muslim Brothers, a

movement that scored an unprecedented 20 percent in the 2005 parliamentary elections. Hamas's success further emboldened the Egyptian movement, contributing to its decision to compete for the first time for upper house and municipal council posts and, later, to announce plans to create a political party. . . .

There is a further domestic angle. Events in the Gaza Strip since the second intifada helped radicalize the Sinai Peninsula's Bedouin population, which has been neglected since the area was returned by Israel in the 1980s. . . .

Egypt was further unnerved by the January 2008 breach of the Rafah border by armed Palestinians and the ensuing influx of Gazans into the Sinai. This, along with Israel's closure of its Gaza crossings, convinced several officials that Israel was seeking to push the Strip toward Egypt and entrench its separation from the West Bank. In a speech delivered during the war, President Mubarak evoked Israel's plan to separate the two territories and its intention to turn Gaza into Egypt's problem:

The situation in Gaza is the result of the dispute between the PA and Hamas, which opens the door for Israel to carry out its plan to divide the West Bank and Gaza. . . . Egypt rejects the Israeli plan to separate Gaza from the West Bank in order to eschew its responsibilities in Gaza and make Egypt responsible for the situation in Gaza. . . .

Egypt's complex, at times seemingly contradictory, policy is best understood in this light. It maintained close contact with Hamas even as it wished to bring a swift end to its rule. It criticized Israel's "siege" even as it kept the Rafah crossing for the most part closed, invoking the 2005 Agreement on Movement and Access [AMA; see Doc. A4 in *JPS* 138] between Israel and the PA requiring the presence of PA representatives at the crossing. It mediated talks between the Islamist movement and Fatah, essentially in hopes of bringing the Ramallah-based PA back to Gaza. . . . It negotiated a fragile truce between Hamas and Israel that lasted from 19 June 2008 to 19 December 2008. . . .

By late 2008, the strategy had run into substantial trouble. Reconciliation talks were halted after Hamas rejected Egypt's draft of reconciliation principles and refused to attend an inter-Palestinian meeting scheduled for 9 November. Relations between Hamas and Cairo soured further, as the Egyptian Muslim Brothers staged demonstrations demanding that Rafah be opened to

humanitarian aid, reviving a campaign they had waged during the January 2008 border breach. . . . This period also coincided with attempts by Hamas and others to challenge Egypt's monopoly over negotiations involving the Islamist movement.

2. *Egypt, Hamas, and the War*

From Hamas's perspective, the Gaza war represented the nadir in relations with its Arab neighbor. Israel launched Operation Cast Lead two days after a high-profile visit by Foreign Minister Livni to Cairo aimed at discussing the truce's collapse. In hindsight, Hamas leaders interpreted Livni's warning, delivered from Cairo, that "enough is enough" . . . as evidence of Egyptian foreknowledge of the operation. Hamas officials go further, alleging that Egypt sought to lull them into complacency by claiming Israel would not attack immediately. True or not, these allegations embarrassed Egyptian authorities. . . .

The Gaza conflict coincided with a delicate period in domestic politics. Since 2004, the country has experienced a political crisis of sorts, expressed through questioning of President Mubarak's 28-year rule, the Muslim Brothers' ascent as the country's largest opposition force after their strong performance in the 2005 parliamentary elections, public anger at economic reforms and rising prices—all reflected in a media environment often relentlessly hostile to the government. Regional developments, notably the second Palestinian intifada and the U.S. invasion of Iraq, had already contributed to the formation of several "popular committees" demanding stronger Egyptian opposition to Israeli and U.S. regional policies. Even within establishment circles, commentators lamented Cairo's waning regional influence and excessive alignment with Washington.

Only two years before the Gaza conflict, the regime had had to weather intense domestic opposition, when it criticized Hizballah for provoking the 2006 war and watched as the movement's leader, Hasan Nasrallah, was extolled throughout the Arab world as Gamal Abdel Nasser's rightful heir. Similar sentiment was awakened by official statements blaming Hamas. . . . The ensuing campaign, combining support for Gazans, condemnation of Rafah's closing, and contestation of Cairo's ties with Israel, brought Egypt's traditionally divided opposition—secular and Islamist—together, at least to an extent and for a time. . . .

Notwithstanding popular feeling, the regime stood firm. . . . To deflect criticism and lessen Hamas's appeal, the government seized upon the 28 December 2008 killing of an Egyptian border guard, purportedly by a Hamas militant, to instigate sentiment against the movement. Likewise, it played upon fears among ordinary Egyptians that their country could be dragged into conflict. In his first major address after the war, Mubarak argued that Egyptians had fought enough wars for Palestine and that "the priority will always remain . . . Egypt above all else."

3. *The Sinai Question*

Throughout the crisis, a central question has concerned Egypt's efforts to curb weapons smuggling from the Sinai into Gaza. Israel periodically accused Cairo of laxness; Egypt vigorously denied any negligence; and the U.S. Congress seized on this matter to condition a (relatively small) portion of U.S. military assistance on greater Egyptian efforts. As the war neared its end, Israel touted its memorandum of understanding with the United States, as well as broader international involvement to curb arms traffic to Gaza, as one of its signal achievements.

Smuggling between Egypt and Gaza predates the blockade of Gaza—it was previously focused on illegal goods and avoidance of customs duties—but has been significantly aggravated due to closure of Israel's crossings. Demand rose dramatically, and Gazans were prepared to pay large premiums to obtain smuggled merchandise, whether consumer goods or weapons. Relatively high profit margins and a lucrative business fostered tribal rivalries that often masked clan warfare. . . . The conflict among criminal gangs, rapid influx of capital, and attempts by government forces to control the situation further inflamed northern Sinai's population, which—as seen above—already felt aggrieved by the crack-down in the aftermath of suicide bombing attacks against resorts. . . .

Throughout this period, Egypt offered various explanations. Officials stressed that most traffic involved consumer goods that once came in through Israel, and what weaponry entered probably came from the sea. In the words of one official, "the war proved that Hamas does not have the powerful arsenal the Israelis claimed it did. Not a single anti-tank or anti-helicopter weapon was used. Where were all these advanced

weapons?" . . . At the same time, Cairo periodically mentioned its longstanding argument that troop levels allowed along the Gaza border pursuant to the peace treaty (amended prior to Israel's 2005 disengagement from Gaza to 750 soldiers and 10 armored vehicles) are insufficient to police the 14-km zone and Rafah's population of 30,000 (although additional civilian police forces also are stationed there). Finally, Egypt welcomed tunnel-detection training and equipment from the United States and Germany, and within days of the end of the conflict agreed to upgrade its border equipment and cracked down on smugglers. . . .

The attitude reflects competing Egyptian concerns. In effect, the government has used its policy toward smuggling to manage relations with Israel, the West, Hamas, Sinai Bedouins, and Egyptian public opinion, each relationship pulling in a slightly different direction. A decision to try to shut down the tunnels or, conversely, to allow them to operate more freely risks straining relations to the breaking point with one or more of these important constituencies, hence the ambivalence. Similarly, another reason for its zigzag course is that Egypt sees Gaza both as part of its core sphere of influence and as a dangerous burden for which it does not wish to take responsibility.

In short, one cannot address the smuggling issue outside of its local context (Bedouin discontent and the tunnel economy), the very real demand in Gaza for nonmilitary goods, or Egypt's concern that a humanitarian crisis in Gaza could lead to a repeat of the January 2008 storming of the border. The question of weapons entering Gaza—the focus of Israeli and Western attention—is only one piece of a far larger puzzle.

4. *The Regional Cold War*

Since the 2006 war between Israel and Hizballah, an emerging regional narrative has pitted a "resistance front" led by Iran, Syria, Hizballah, and Hamas against a "moderate front" represented by Egypt, Saudi Arabia, Jordan, Lebanon's March 14 Alliance, and the current West Bank PA leadership. In this context, Cairo's priority has been to maintain a pivotal regional influence, push back against any putative rival, and in particular contain Iran. . . .

The Gaza war was another, more visible stage in this struggle. To a large extent, the Iranian threat appears somewhat exaggerated. The war highlighted the concept's

limitations: Hamas did not possess the military arsenal many had suggested; neither Iran nor any other regional player was capable of displacing Egypt as the central mediator (between Israel and Hamas, as well as among Palestinians); and, to a degree, Iranian support hurt the Islamist movement as much as it helped, by allowing detractors to paint it as alien to the Sunni Arab body politic.

Still, seen from Cairo, Tehran's policies and backing of militant Arab groups defy both the regional order and domestic stability. . . . Cairo claimed that Iran had torpedoed earlier Palestinian reconciliation talks and regularly blames Tehran for encouraging Hamas's supposedly more hard-line external wing. It also depicted Hasan Nasrallah's strong denunciations of Egypt's attitude throughout the crisis and calls on the Egyptian people to take action against the regime as well as Hizballah's alleged operations from within Egypt as the most pernicious manifestations of Iranian designs. The regime exploited Nasrallah's words as well as attacks from the Arab media to mobilize nationalist and, in some respects, anti-Shi'ite feelings.

During and after the war, Egyptian ire also targeted Syria and Qatar, both of whom were suspected of seeking to displace or at a minimum lessen Cairo's role and of forming a new three-way axis with Iran. Egypt accused Syria of encouraging the Damascus-based Hamas leadership to scuttle the November 2008 reconciliation talks, reacted bitterly to the Syrian media's war coverage and tacit endorsement of Nasrallah's diatribe, and was incensed by Qatar's decision to host a separate meeting of Arab states on 16 January 2009. . . . If anything, Qatar's positioning was all the more infuriating and less understood. . . .

The regional battle for influence was one of the more important of the war's subplots. Buoyed by Arab public opinion and media, the so-called radical axis enjoyed strong momentum. Often on the defensive, Egypt ultimately maintained its preeminence in Israeli-Palestinian and Palestinian-Palestinian talks, fending off attempts by others (including Turkey, Qatar, and France) to insert themselves, much to Hamas's and Syria's disappointment.

From Egypt's vantage point, the overall balance sheet appears mixed. Despite the loss of prestige in the eyes of Arab public opinion, officials express satisfaction at having demonstrated their centrality, as Cairo became the focus of indirect cease-fire talks and prisoner exchange negotiations as well

as inter-Palestinian reconciliation efforts. In this, it was aided by forceful indications that the United States would not allow any third party to supplant Cairo.

But the battle is not over, and the war's ripple effects are yet to be fully felt. As Arab polarization grew to almost unprecedented heights, Saudi Arabia, fearful of the consequences, appeared interested in mending fences with Syria. . . . Mubarak and his foreign minister stayed away from the Arab summit in Doha in late March 2009. . . . The summit itself did little to heal the regional rift. Finally, Fatah-Hamas reconciliation talks were halted in early April without any breakthrough, despite Egypt's heightened interest and far more engaged role as a mediator present in all discussions.

The most dramatic turn in the struggle occurred in April 2009, when Egypt announced it had uncovered an extensive network of Iranian-supported Hizballah operatives operating on its territory with the aim of gathering intelligence, recruiting new members, carrying out attacks against Israeli tourists, and smuggling weapons to Hamas. In the ensuing sharp exchange of words, Nasrallah acknowledged that Hizballah members were present in Egypt but sought to turn the tables by explaining they were doing what Cairo ought to have done all along, namely help the Palestinians in Gaza [see Doc. B1 below for Nasrallah's response]. . . .

The Muslim Brothers have had a relatively nuanced reaction, evidently worrying that they might be associated with foreign interference and so pay a political price, yet reiterating that Hizballah was right in aiding the resistance and Egypt wrong in not doing so. It is premature to measure the full scope of the event's fallout. The wide-ranging ramifications touch Egypt's relations with Iran, its posture toward Hamas, and Hizballah's standing in the region. For now, they have coincided with stepped-up Egyptian efforts to pressure Hamas, both politically and financially, to curb its weapons smuggling and manufacturing and perhaps to force it to choose between Cairo and Tehran. . . .

A3. PALESTINIAN AND ISRAELI HUMAN RIGHTS ORGANIZATIONS, CALL FOR AN END TO INTERNATIONAL DONOR COMPLICITY IN ISRAELI VIOLATIONS OF INTERNATIONAL LAW, 4 MAY 2009 (EXCERPTS).

Prompted by the 2 March 2009 international donors conference that pledged