



## Selected Updates – December 2015

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### Publications and Updates

- INSS has published a new book in Hebrew, [\*The Islamic State: A Black Flag Flies Above\*](#) (coming soon in English). The articles compiled in this volume analyze ways of dealing with the challenges presented by the Islamic State. It includes an article written by Keren Aviram: “Fighting against the Islamic State: The Legal Challenges” (December 2015).
- On December 8, 2015, INSS hosted [Luis Moreno Ocampo](#), former prosecutor of the International Criminal Court (ICC). The closed meeting was organized by the Program on Law and National Security and discussed the growing importance of the International Criminal Court and its influence on state practice, including on Israel.
- On December 15, 2015, INSS held a conference on [“Refugees and Displaced Persons in Light of the Regional Upheaval,”](#) in which Pnina Sharvit Baruch presented the relevant legal framework of the issue.
- A new op-ed by INSS research fellow Owen Alterman: “Analysis: The bombing of ISIS oil fields and what it means for Israel” ([Jerusalem Post](#), December 28).

- INSS will hold its [9th Annual International Conference, “Changing Rules of the Game?”](#) on January 18-19, 2016, at the Eretz Israel Museum in Tel Aviv.

## Inside Israel

### Judgments

#### House Demolition

On December 1 the **Israeli High Court of Justice** annulled a demolition order on the house of a terrorist who carried out a stabbing attack in Tel Aviv due to the length of time (eleven months) that had elapsed between the occurrence of the attack and the issuing of the order ([HCJ 6745/15 Abu Hashiyeh v. Military Commander of the West Bank](#), 1.12.15)

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In a majority decision the **Israeli High Court of Justice** (HCJ) approved demolition orders on the houses of two perpetrators of terror attacks in Jerusalem. The decision relied on previous judgements of the HCJ on similar issues. Judge Mazuz, in his dissenting opinion, stated that the use of house demolitions against innocent family members should be minimized and outlined a list of relevant circumstances that needed to be examined in the process of such a decision ([HCJ 8150/15 Abu Jamal v. GOC Home Front Command](#), 22.12.15).

### Bills

#### Dealing with Illegal Presence in Israel

**The Ministry of Public Security** presented a draft Bill of Law that toughens the penalties on employers and hosts of persons staying illegally in Israel, due to the involvement of some illegal aliens in terror activity in Israel (27.12.15) [[Bill in Hebrew](#)].

### Articles

#### Security Restrictions

**Lawrence Rubin** describes the establishment and activity of the Islamic Movement in Israel, especially with regard to the Northern Branch led by Sheikh Ra'ed Salah, and discusses the different security and political considerations that led to the outlawing of the Northern Branch in Israel and the implications of this decision ([Lawfare](#), December 6).

## International Developments Concerning Israel

### Operation Protective Edge in Gaza

**Benjamin Wittes**, in two consecutive articles, analyzes the criticism of the alleged lack of proportionality in Israel's use of force in Operation Protective Edge, arguing that such criticism stems from an inaccurate application of the proportionality tests according to international humanitarian law ([Lawfare Part 1](#), December 15 and [Lawfare Part 2](#), December 18).

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**Peter Margulies** discusses the use of artillery in urban areas, referring also to the use made by the IDF in the case of the Gaza conflict in 2014. The author maintains that the vital tactical role of artillery in urban contexts must be recognized and explains that the laws of armed conflict do not forbid the use of artillery in urban settings, although such use requires detailed and restrictive rules of engagement ([Lawfare](#), December 31).

## International Developments

### ISIL Front

Following the adoption of UN Security Council Resolution [2249](#), **British Prime Minister David Cameron** issued a [Memorandum](#) to the Foreign Affairs Select Committee in November, presenting the UK'S basis for using force in Syria against ISIL. The House of Commons Library published on December 1 a [BRIEFING PAPER](#) (Number 7404) on the "Legal Basis for UK military action in Syria."

On December 3, **the UK** sent a [Letter](#) addressed to the President of the Security Council, presenting the UK's legal basis for taking military action in Syria (individual and collective self-defense).

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**Anne Peters** discusses the decision of the German Parliament to provide military and logistics assistance in the fight against ISIL, as well as the legal challenges facing Germany and other states in using force against ISIL in Syria ([EJIL: talk](#), December 8).

On December 10, **Germany** sent a [Letter](#) addressed to the President of the Security Council, presenting Germany's legal basis for taking military action in Syria.

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In a two-part series, **Jonathan Horowitz** presents the legal justification put forth by various states involved in airstrikes against ISIS in Syria, analyzing them with reference to international law ([Just Security Part 1](#), December 7 and [Just Security Part 2](#), December 8).

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Following the Paris attacks of November 13 and the declaration of a state of emergency in the country, **France** filed a formal notice of derogation from the European Convention on Human Rights (ECHR) on November 24. **Marko Milanovic** presents the full notice of derogation and discusses its meaning ([EJIL: Talk!](#), December 13).

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With this [report](#) published on December 23, **Amnesty International** invalidates the claims of Russia that its army is only striking “terrorist” targets in Syria. While Russia has not publicly acknowledged having caused any civilian deaths or injuries, Syrian human rights organizations affirm that the Russian attacks in Syria have killed hundreds of civilians and damaged hospitals, homes, and other civilian objects. **Russia** strongly rejects Amnesty’s claims ([BBC news](#), December 23).

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**Beth Van Schaack** examines in two articles the legality of coalition attacks on fuel tankers in the Islamic State and finds that the attacks, which followed appropriate warnings, are in compliance with international humanitarian law ([Just Security Part 1](#), December 2 and [Just Security Part 2](#), December 3).

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**The Security Council** has unanimously adopted resolution 2253, which expands existing sanctions regarding the financing of terrorism to include the Islamic State of Iraq and the Levant ([UN Meetings Coverage & Press Releases](#), December 17).

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### Laws of War

After four years of extensive consultations, States have been unable to agree on a new mechanism proposed by the **International Committee of the Red Cross (ICRC)** and the government of Switzerland to strengthen compliance with international humanitarian law (IHL). Instead, States agreed to launch an inter-governmental process to find ways to enhance the implementation of IHL. The decision was taken at the International Conference of the Red Cross and Red Crescent, which took place in Geneva ([icrcblog](#), December 13).

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**Charles Dunlap** analyzes why the legal debate around “human shields” has recently intensified. He discusses the guidelines published about this topic in the new DOD *Law of War Manual*, and advocates for them while discussing criticism raised against them ([Just Security](#), December 16).

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A new [report](#) published by the **UN Assistance Mission in Afghanistan** (UNAMA) supported by the UN High Commissioner for Human Rights, presents the preliminary findings regarding civilian protection concerns, potential violations of international humanitarian law and human rights violations following the Taliban's attack and control of Kunduz city. The report also addresses the airstrike carried out by international military forces on a Médecins Sans Frontières (MSF) hospital on October 3 (which resulted in 67 casualties: 30 deaths and 37 injured). **Jonathan Horowitz** presents the report and its significance for the US ([Just Security](#), December 23).

### International Criminal Law

On December 19, 2015, Thomas Lubanga Dyilo and Germain Katanga were transferred to a prison facility in the Democratic Republic of the Congo (DRC) to serve their respective sentences of imprisonment imposed by the **International Criminal Court** (ICC). This constitutes the first time the ICC has designated a State for the enforcement of prison sentences ([ICC Press Release](#), December 19, 2015).

### Human Rights Law

**The Russian parliament** has voted to adopt a law allowing the Russian Constitutional Court to overrule judgments from the European Court of Human Rights (ECHR). The vote occurred on the same day as the **ECHR** ruled against the Russian security service for violating privacy rights with a system to secretly intercept mobile phone communications ([BBC news](#), December 4).

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**Marko Milanovic** discusses the **European Court of Human Rights** (ECHR) Judgement (*Roman Zakharov v. Russia, no. 47143/06*) which rules that the Russian surveillance Law that allows mass surveillance over mobile communications is inconsistent with Article 8 to the ECHR ([EJIL: Talk!](#), December 7).

### Decision of the General Court of the European Union on the trade agreement regarding Western Sahara

**Geraldo Vidigal** analyzes the recent [decision](#) [in French] by the **General Court of the European Union** (GC) in the plea of the Frente Polisario (the National Liberation Movement for Western Sahara), which contested the EU Council decision adopting the 2010 EU-Morocco Agreement on agricultural, processed agricultural and fisheries products. In its judgment the GC recognized the standing of Frente Polisario and granted the partial annulment of the decision, insofar as it is applied in Western Sahara, based on the argument that the EU Council failed to ensure there was no exploitation of the natural resources of the

territory of Western Sahara under Moroccan control to the detriment of its inhabitants and in violation of their fundamental rights ([EJIL:Talk!](#), December 11).

### Environment

**Daniel Bodansky** briefly covers the question of whether the [Paris Agreement](#) is indeed historic. The agreement represented a consensus of the representatives of the 196 parties attending. It aims to limit global warming to less than 2 degrees Celsius above pre-industrial temperature levels ([Opinio Juris](#), December 13).

### 80 Words on...

### Use of Physical Measures in Security Interrogations

In its 1999 judgement (HCJ 5100/94) the Israeli High Court of Justice ruled that the use of “physical measures” in interrogations was illegal. However, it stated that interrogators who used such methods may be retroactively protected by the “necessity defense” if it was deemed they acted reasonably in order to save human lives during a “ticking bomb” scenario. Israel is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.



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