

Considering Operation Protective Edge: Can Declaration of War Be Part of a Strategy to Offset the Asymmetry of the Israeli-Hamas Conflict in the Gaza Strip?

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Three rounds of violence between Israel and Hamas since 2008 have not resulted in any change to the fundamental essence of the conflict. Israel is trapped in an asymmetrical conflict with increasingly intense violence, a reality in which Hamas manages to prove the “Paradox of Power”: Israel’s military strength becomes its weakness while Hamas’ military weakness becomes its strength. Seeing Gaza as a state-like entity and declaring war on it may help alter public opinion, allowing for definition of clear goals and less engagement in dialecticism. Declaration of war could help lay a foundation of awareness more suitable to a change of the second degree, i.e., a change of the system, to distinguish from a change of the first degree, i.e., a change within the system. Analyzing the significance and implications of a declaration of war, this article does not rely on a case of an actual recent declaration; rather, it challenges conventional thought and may help in transforming the conflict by laying the foundation for rearranging the system, so as to manage the conflict at a lower level of violence and perhaps even end and resolve it.

Key words: Israel, Gaza, Hamas, declaration of war, asymmetrical conflict, awareness

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Introduction

“In war as in war,” Maj. Gen. Giora Eiland wrote at the height of Operation Protective Edge, “only when we communicate at the level used between states and nations can we generate real deterrence or defeat the enemy when the next confrontation breaks out.”¹ Stressing the importance of declaring war, Eiland explained that in all confrontations since 2006 Israel has fought terrorist organizations (whether Hizbollah or Hamas) with impressive skill and absolute military superiority, but with concurrent concern for non-combatants, including the supply of food, electricity, fuel, and medical care. As long as war is not declared, Israel is expected to fight and attend to humanitarian needs simultaneously.

Thirteen years after 9/11, U.S. President Barack Obama has yet to shape an effective strategy to fight Islamic terrorism. Indeed, some in the United States – Democrats and Republicans alike – believe the time has come for Obama to declare war on the Islamic State (ISIS).²

On July 7, 2014, Israel embarked on Operation Protective Edge in the Gaza Strip. It began as a focused aerial battle that to a large degree was forced on Israel. However, once it began, Israel chose to act in a way that facilitated preservation of its initial strategic interest: that Hamas remain the functional governing entity, accountable and responsible for the civilian population.

Israel’s intention was to engage in a focused aerial campaign designed to cause massive damage to Hamas’ military infrastructures in order to restore and maintain deterrence. However, in practice, Israel got caught up in the longest of the three recent preceding military engagements: the Second Lebanon War and the two operations in the Gaza Strip.

This operation, like the earlier ones, did not begin with a formal declaration of war. The operation expanded over time and lasted beyond initial expectations. The general feeling of most Israeli citizens, as well as that of military and security experts, was that this was a war,³ and that the government “forgot” to declare war whether because of internal considerations or international ones. Although it ended with a ceasefire, the next round is only a matter of time.

Hamas’ deployment of strategic capabilities in the form of naval commando units, UAVs and especially the use – and threat of use – of attack tunnels caused Israel to expand the operation by extensive deployment of ground troops. The operation lasted 51 days (which included several ceasefires violated by Hamas) and placed the IDF in a high-intensity military

confrontation that involved intensive friction with civilians in a densely populated, booby trapped urban setting, replete with terrorist tunnels.

The characteristics and intensity of the friction in the ground campaign, the operational and strategic necessity to destroy the tunnels, and the tremendous effort by Israeli forces to avoid Gazan civilian casualties greatly slowed the forces' progress and increased the level of risk to which they were exposed. But as time went by, the ground forces employed high-intensity firepower and, in many cases, required air and artillery support. This led to increased casualties amongst civilians and massive destruction of civilian infrastructures, inadvertently aiding Hamas' sophisticated media goals, and further eroding international legitimacy for a military move against the threats of terrorism and attack tunnels.

Operation Protective Edge was in many ways a war rather than an operation, but this is the third time that Israel, quite intentionally, has avoided issuing a declaration of war. This may have been inadvertent in the Second Lebanon War, which by any comparable parameter was fought at much lower intensity. This time around, the firepower and the levels of violence were much higher. In fact, the characteristics of Operation Protective Edge call into question the whole strategic concept that was formulated around the notion of low-intensity conflict. The operation also reflected the gap between the strategic view that the political and senior political echelons took about the nature of the operation on the one hand, and the military view at the operational and tactical levels on the other. It is safe to assume that this gap will have a significant role to play in the future as well.

Nonetheless, this was an asymmetrical war par excellence in which Hamas succeeded brilliantly in exploiting the advantages of urban guerrilla warfare. Hamas did not hesitate to use the civilian population as human shields and the urban sphere as a battlefield, thereby making it extremely difficult for the IDF, operating as a state-sponsored army on behalf of a Western democracy that subordinates itself to international laws of warfare. Hamas aimed at widespread damage to civilians and prepared to exploit the international media and sensitivity of the international community to horrifying sights of death and destruction (often distorted or completely fabricated and staged)⁴ and used this to ostracize Israel, ramp up the delegitimization campaign against it, and use international criticism to limit Israel's ability to operate against Hamas.

This military campaign built on the advantages enjoyed by semi-state terrorist and guerrilla organizations in the reality of asymmetrical conflicts between states and semi-state entities. The nature of the arena and campaign greatly reduced Israel's scope of operations and strategic and operational flexibility. In fact, Israel's absolute military advantage was greatly eroded. Israel was unable to attain a sufficiently significant military achievement that might have been translated into a political objective and a new, long-term political reality. In fact, it was only during the operation's last week, after Israel bombed prominent symbols of Hamas's rule, especially the high-rise apartment buildings in downtown Gaza City, that Hamas changed its conduct. To borrow from Defense Minister Ya'alon, the turnaround in this operation – Hamas' agreeing to a ceasefire on Israel's terms – occurred only after Israel "removed the gloves" in the last week and dared do what it hadn't done before.

It is possible that in a conflict with greater symmetry between the warring sides, Israel may have had other methods of operation at its disposal by power of issuing a declaration of war, backed by international law. In addition, a reality of a declared war between two state entities shapes a very different public opinion on both sides of the conflict as well as in the international arena.

This article examines the theoretical significance of a declaration of war and its effect on the possibility of reducing asymmetry in a given conflict. The underlying assumption is that reducing asymmetry could allow Israel, as a state entity, greater spheres of strategic and operational flexibility that could increase the probability of maximizing military achievement, which could then be translated into a more significant political achievement.

Key Assertion

Three military operations against Hamas since December 2008 have failed to generate a change in the fundamental essence of the conflict. On the contrary, Hamas has only increased its strength, Israel's deterrence has waned, Israel's international reputation has been tarnished, and Hamas continues to leverage and maximize the asymmetrical aspect and establish the image of Israel's weakness vis-à-vis the ability to shape reality to serve its own strategic interests.

Relating to Gaza as a state-like entity and declaring war on it could allow Israel to set new rules into motion and create an alternate perception.⁵ These could allow a reduction of the asymmetry and perhaps a greater military

achievement that may lead to greater damage to Hamas' military might, its political weakening, and its replacement by an alternative governing entity.⁶ Such changes are likely to lead to a reconstruction of the Gaza Strip in a process of state building that would lay a possible foundation for resolving the conflict or at least attenuating it (e.g., demilitarizing the Gaza Strip for the sake of reconstruction at the hands of the Palestinian Authority instead of Hamas, strengthening the moderate elements in the region, resuming a political process, and creating a credible regional security regime).⁷

An operation such as Protective Edge, without a prior declaration of war, is liable to create dissonance and argument over the articulation of the strategic goal or objective (see the definition of Israel's strategic interest as noted at the beginning of this article).⁸ A declaration of war is likely to help alter public awareness allowing for the definition of clear goals and less dialecticism. This could help reshape the battlefield, as opposed to changing the existing battlefield, while maintaining its formative rationale. Strategically speaking, declaration of war could help lay a foundation for perception more suitable to a change of the second degree, i.e., a change of the system, to distinguish from a change of the first degree, i.e., a change within the system.⁹

At first glance, it seems that a declaration of war contradicts the guiding rationale of conflict resolution strategies, but at times it is precisely the use of the paradoxical principle of strategy, i.e., acting completely contrary to linear intuition,¹⁰ that allows the resolution of a conflict by means of its transformation.

The Theoretical Foundation

Given the limitations of the test case and without a formal declaration of war, this analysis is essentially theoretical, but to our understanding may serve as a conceptual expansion and challenge. The discussion will be divided into two parts: the first relates to the legal and ritual aspects of a declaration of war and to a new approach in the discipline of conflict resolution, known as "conflict transformation." We conclude this part by relating to asymmetrical confrontations and focus on the Israeli-Hamas conflict in the Gaza Strip. The second part of the discussion presents the major problem we seek to confront. We then lay the conceptual foundation and discuss the possible contribution a declaration of war can make to the transformation of an asymmetrical conflict.

Declaration of War: The Legal Aspect

In the past, a declaration of war¹¹ was considered a necessary legal act for engaging in war. The consequence of a declaration was an elimination of all diplomatic and commercial relations between two countries as well as the abrogation of all treaties between them. In the modern world, international legal implications of a declaration of war are less dramatic. In fact, since World War II, formal declarations of war have become quite rare.¹² In addition, there have also been mixed situations, creating ambiguity and confusion: war without fighting, fighting without war, military operations turning into wars, military interventions in third-party countries, using military force for limited duration and in limited location, and so on. Indeed, “one of the signs of the modern world is that the use of force has become commonplace whereas wars between nations have become rare.”¹³

As a rule, international law places limits on nations’ rights to use military force against others;¹⁴ the United Nations Charter of 1945 prohibits the use of force in Article 2, Section 4, which states that “all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”¹⁵ The ban on the use of force is also a custom law that obligates non-U.N. members. Two exceptions to the ban on the use of force are a Security Council resolution permitting the use of force and engaging in self- and/or collective defense.¹⁶

According to Article 1 in the laws of war established in the 1907 Hague Convention,¹⁷ “the Contracting Powers recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war. The warning must come first – “previous warning” – rather than be retroactive. According to Article 2 of the convention, “the existence of a state of war must be notified to the neutral Powers without delay.” The rationale for Article 1 would seem to be a prohibition on surprising the enemy with a war it did not expect. This rationale seems odd and not well-suited to the waging of any war as the element of surprise is one of the most important tools for achieving an advantage on the battlefield whereas a formal declaration of war is liable to undermine that advantage.

At present, some researchers and jurists posit that nations concede their right to resolve conflicts by means of a declaration of war because of the charters of which they are members.¹⁸ Still, the question whether the

emergence of terrorist organizations and non-state players has neutralized that concession and restored the right to formally declare war, as was the case in the past, has yet to be fully resolved.¹⁹ We assert that the determinative impact of a declaration of war as a ceremony is powerful and significant in its effect on any group of people, whether defined as a state, organization, non-state entity, or other.²⁰

In Israeli law, Basic Law: The Government, Paragraph 40(a) indicates that the state can only start a war by virtue of a government decision. A government that decides to go to war must inform the Security and Foreign Affairs Committee of the Knesset “as soon as possible” and the prime minister must announce the decision to go to war to the Knesset plenum “as soon as possible.”²¹

The above-mentioned Paragraph 40 ensures that the State of Israel does not begin a war without a decision by the government, which in turn is accountable to the Knesset. There may be several types of declarations of war, such as conditional, unconditional, comprehensive, or partial, but Israeli law does not distinguish among them. Moreover, Israeli law does not define the basis or the criteria according to which the government can declare war.²²

We assert that the legal prism through which academics, military personnel, legal scholars, jurists, and policy makers are used to viewing declarations of war is too narrow and does not fully appreciate so complex and varied a phenomenon. We would like to reframe that view to say that a declaration of war contains great potential for a fundamental transformation of an asymmetrical reality and conflict characteristics. We therefore suggest an analysis of the phenomenon of declaration of war from a new point of view: an anthropological one.

Declaration of War: The Anthropological/Ritual Aspect

When referring to a declaration of war, Austin²³ defines it as a “declarative performative sentence.” Kenny²⁴ posits that a declaration of war is a political act occurring in public “in the framework of asserting power relations.”²⁵ The very act of a declaration creates a new situation even before any concrete act has taken place, and therefore the moment in time of the declaration represents both a beginning and an end, and has the power to generate a change to the current state of affairs. Austin²⁶ proposes a focus on the language and relevant contexts in which the words are spoken, and notice the power of those words.²⁷

Kenny²⁸ explains that a political act, such as a declaration of war, structures the legal dialogue about the act rather than the other way around. Therefore, even though a declaration of war is anachronistic and may not be legally accepted in the modern era, it retains its “potential” effect at the political and transformative level.

In the past, war would be declared in a formal ritual representing a cutoff in time, separating two conditions: before and after; peace versus war. According to Van Gennep, a ritual, then, is a social phenomenon with symbolic value carried out with the proper, familiar ritual rules that are quite rigid and fixed and common to all of humanity, bearing a new important message: that of a change in situation.²⁹ Van Gennep stresses that the ritual has long-term effects as it is a political tool for generating change or transformation. According to Turner, rituals are held at turning points in life and through these rituals relations between people and social structures undergo a restructuring process.³⁰

Handelman³¹ emphasizes the importance of rituals as essential phenomena in which concentration of symbols with special contexts and meanings for a certain group of people occurs. Handelman stresses the ritual as a tool whereby one can generate a cosmological change and create a transformation in the world.³² He explains that the form of the ritual shapes the ritual experience and creates the meaning imbued in it.

The ritual is noted for its repetition of contents and form. The ritual initiator enacts a pre-determined script; he does not act spontaneously. The behavior of the declaration is formal, symbolic, stylized and unique to the specific ritual. It is thereby set off from daily conduct.³³ The ritual has a constant order of its own and pre-determined, prepared documents attendant to it; the ritual is designed to create a certain state of awareness and emotion, a social obligation and/or commitment, and legitimacy for this change, and is therefore carried out in public with the message and its meaning clearly shared with the entire community and the world.³⁴

Conflict Management and Resolution, Protracted Conflicts, and Conflict Transformation

Conflict resolution became an academic discipline following the Second World War.³⁵ The main theories in the field strive to find the generic organizing principles of conflicts, the reasons behind conflicts and their escalation, and the rationales and methods to manage and resolve them.³⁶

Beyond the mainstream approaches in the field, the last decade has seen the growing acceptance of a new approach to protracted conflicts. Due to the tremendous difficulty in resolving this type of conflict and because of the high human, economic and political toll, a new approach stressing the rationale of Transforming conflicts was developed.³⁷ Conflict Transformation³⁸ is seen as an alternative paradigm to the traditional approach of conflict management and resolution,³⁹ and for many researchers represents a new development in the field⁴⁰ encompassing a more comprehensive approach than others.⁴¹ According to this approach, the characteristics of the protracted conflict, especially its strategic and psychological blocks, do not allow its resolution. Therefore, there is need for a transformation of the conflict itself and the social and political system in which it is set.⁴²

Unlike the conceptual world of conflict resolution, where the emphasis is placed on resolving conflicts in non-violent ways and escalation is viewed as negative and destructive, the Conflict Transformation approach presents a different vision: because the conflict is essentially based on interpersonal relations, at times it is precisely escalation that can lead to its resolution by means of a necessary structural change.⁴³ The desired transformation, according to this approach, is one that generates a “turnaround in the dynamics of conflicting interactions.”⁴⁴

Reducing the asymmetrical aspect of the conflict allows for changes in the rules of conduct and operation, which in turn make possible a spiral and circular approach – a non-linear rather than a linear approach – which is more relevant to dealing with the complexity of conflicts of this type. This approach seeks to help not only in settling the conflict or managing it, but to do something much deeper: “It points to the inherent dialectical process, the ability to transform the dynamic of the conflict and the relationship between the parties – indeed to transform the very creators of the conflict.”⁴⁵

Väyrynen points to a series of necessary transformations in the components of the conflict without which the conflict will be channeled into more violence and war.⁴⁶ Among the ways in which a conflict is transformed, the following are the most pertinent to our discussion:

- Context transformation: given that the conflict is rooted in social, regional and international contexts, a fact that contributes to its intractability, a change in context is necessary before any change can be made in the relationship between the parties.
- Structural transformation: the conflict comprises actors, contradictory objectives, and the parties’ relationships. To the extent that the conflict

is fundamentally rooted in the structure of the relationship between the parties, a structural transformation (in the social-political sense and in the sense of the power structure of the parties involved) will help resolve the conflict. In asymmetrical conflicts, for example, a change in the asymmetrical reality between the powerful and the powerless party would represent a structural transformation.

Protracted Conflicts

Azar coined the term “Protracted Social Conflict (PSC)”⁴⁷ in reference to the Israeli-Arab conflict in the Middle East. Protracted conflicts, he claimed, incorporate ethnic (as well as religious) elements in conflicts between states, and are hostile and violent interactions spread over time during which there are war-like flare-ups at varying frequencies and intensities. In protracted and intractable conflicts, the entire population is involved, leading to national solidarity and identification. Despite periods of calm, it is impossible to point to an end, but one can use hindsight to isolate the process that led to the protracted conflict’s end.⁴⁸

Azar refers to violent episodes as part of the normal process of conflict and therefore developed a tool to examine volatility ranging from escalation to cooperation, calling it the “Normal Relations Range (NRR).”⁴⁹ Below we present a refinement of this tool as it relates to the conflict between Israel and Hamas.

The Asymmetrical Conflict: Attrition and Exhaustion as the Weapon of the Weak

In the past, most conflicts around the world were considered symmetrical in the sense of the statehood status of the parties involved. But in the last few decades the world of warfare has undergone a significant transformation and most violent conflicts conducted in recent years are characterized as asymmetrical conflicts, mostly between states with organized armies and sub-state entities in the form of terrorist or guerrilla organizations.⁵⁰

In fact, more than 90 percent of today’s conflicts are considered low-intensity conflicts⁵¹ and are inherently asymmetrical. At present, conflicts are increasingly taking place between states and quasi-state entities, or between states and terrorist organizations (resembling protracted asymmetrical wars)⁵² in which the asymmetry shapes the operating rationale of the actors.

The powerless side is the one that usually initiates the conflict; in some cases, it adopts the strategy of attrition⁵³ by means of terrorism and guerrilla

warfare designed to influence a decision made by the more powerful side, the state-entity, based on the understanding and knowledge that it cannot succeed in forcing a physical change.⁵⁴ This is true to organizations that operate with the help of locals who provide them with support and legitimacy, as well as refuge, and are willing to serve as human shields, all of which are designed to take advantage of the state's inability to act freely since it is committed to international law and moral norms. In such conflicts, there is no proven win-win outcome.⁵⁵ The new battlefield is densely populated by civilians and the new enemy is not an army. Non-state players make a point of blurring two prominent aspects of traditional warfare: the battlefield and the uniform.

The Israel-Hamas Conflict in the Gaza Strip

The State of Israel has a long history of fighting Hamas, but for the purpose of this article we focus on the period starting in January 2006 when Hamas was elected to the PA, and in particular since June 2007 when Hamas completed its forcible takeover of the Gaza Strip and became the exclusive sovereign (with the exception of the presence of the Islamic Jihad and other small terrorist organizations that challenge Hamas from time to time).⁵⁶

Since then, Hamas, as a political and military movement, stands out due to its violent actions whose frequency, intensity, and duration are rising, as manifested in Operation Cast Lead (2008-2009), Operation Pillar of Defense (2012) and Operation Protective Edge (2014). If we examine Hamas' manifestations of violence through Azar's Normal Relations Range⁵⁷ model, we quickly discover a sharp, clear upward trend, to be discussed in the second part of this article.

Hamas' government in the Gaza Strip is solidly entrenched despite the attempts of different jihadist organizations to challenge it. Nevertheless, and although this government is supported by external parties such as Iran, Qatar and Turkey, the Gaza Strip, while operating like a state-like entity, has not developed into a functioning state entity. In fact, it is a failing state-like entity of which its very existence as such exacerbates the asymmetry of its conflict with Israel

The Gaza Strip as a Failing State-like Entity

The Gaza Strip is a semi-state entity; the characteristics of its existence are consistent with the four principles defining a state in the Montevideo Convention on the Rights and Duties of States.⁵⁸ On the other hand, it is

also a failing (semi-) state entity because it fulfills all the basic conditions defining failing states: a government that fails to provide for the needs of the local population, lack of legitimacy (its existence within Gaza strip itself is mostly coerced and the result of terrorist tactics), severe poverty, the lack of monopoly on the use of force (the very existence of terrorist organizations challenging the Hamas government to the point it is dragged into a military act such as Operation Protective Edge), and the government's violent, unchecked struggle for survival while violating every taboo on harming civilians.⁵⁹ It seems that this description applies to Hamas and the Gaza Strip in the wake of Operation Protective Edge.

The richer the rulers of failing states grow, the poorer and more exploited their citizens become. Personal human security is nonexistent in failing states, leaving citizens to fend for themselves. Because the state is incapable of providing for the basic needs of its citizens, organizations motivated by economic, social, political, ethnic, religious and/ or nationalistic interests enter the vacuum to exploit the weakness of the state and the people. They assume some of the responsibilities of the state, thereby advancing their own agendas and entrenching themselves in society.⁶⁰ This was the case in the Gaza Strip before Hamas' rise to power, facilitating seizure of power in the first place.

Failing states are not expected to vanish from the international arena in the near future, and clashes between established, functioning states and failing ones are inevitable.⁶¹ These are, in fact, an updated version of asymmetrical conflicts, and therefore the test case before us is significant to local and international contexts alike.

One of the reasons for the inevitable clashes is the security threat created by failing states, because terrorist organizations, good at creating violence and terrorism against established, functioning states – even if they have no shared borders with the failing states and all the more so if they do – operate in and from them. Globalization, technology, widespread support in the form of financing from foreign sources, and accessibility to weapons of state, including WMDs, allow these terrorist organizations to operate cross-border terrorism, wreaking chaos at relatively low cost and with relative ease. Consequently, weak nations like Afghanistan can pose great danger to the national interests of strong nations.⁶²

The Gaza Strip, as a failing semi-state entity, exports instability and insecurity to the region (Israel, Egypt and the PA) and forces the state players (Israel and Egypt) to use military violence to suppress terrorism

and threats. Nevertheless, the asymmetry is exploited by Hamas, which operates like an armed non-state player, especially in the Gaza Strip, in dictating the rules of the games, leading to a situation that reinforces the paradox of “the power of powerlessness” versus “the powerlessness of power.”

Defining the Problem

Since Hamas seized control of the Gaza Strip and established its rule, the Gaza Strip has become a semi-state entity. Hamas institutionalized its military power, significantly improved military capabilities and infrastructures, developed the ability to manufacture rockets domestically and to build an underground network of attack tunnels, complete with command and control centers, weapons, and storage facilities. The features characterizing the Hamas state-like entity in the Gaza Strip are those of a failing state where the major effort exerted by the government is focused on its own survival.⁶³ These efforts are manifested in ongoing oppression of the population; especially those opposed to the regime, and in the constant preparations to confront the regime’s external threat, in this case, the State of Israel.

The question at the heart of this article relates to Israel’s ability to advance an arrangement of the sphere in a way that would serve its own strategic interests at a time when an asymmetrical reality is forced on it by a failing semi-state entity, dictating rules that do not allow Israel the opportunity to maximize its strength and advantages over Hamas.

The Basis of our Claim

The Israel-Hamas conflict is an intractable and protracted socio-religious conflict. These stem from the violent clashes between the sides; the intensity and frequency of the violence result in continual mutual attrition, with no end in sight. The intractability of the conflict also serves to perpetuate the psychological infrastructure⁶⁴ of the sides to the conflict and creates discrepancies that will not allow the conditions for a resolution.

1. The Israel-Hamas conflict intersects with other conflicts as it interlocks with other arenas and players,⁶⁵ a consequence of the Israeli-Palestinian conflict as it is affected by other conflicts and also affects them in turn.
2. The conflict comprises several simultaneous levels: it has complementary and sometime overlapping aspects, especially the military, political, ideological, cultural, religious, international and economic, but the most important one is the military, i.e., the violence aspect, which is

- the main cause for the protracted nature of the conflict without there being an end in sight.
3. The Israel-Hamas conflict has a Normal Relations Range. Throughout the conflict there are upper and lower thresholds of violence. As soon as the upper threshold is reached, actors in the regional and international system attempt to contain the conflict and restore it to its normal range. Alternately, as soon as the conflict reaches the lower threshold, both domestic and external spoiler forces go into action to raise the level of violence and restore it to the normal range.
 4. The level and scope of the violence are constantly on the rise. The Israel-Hamas conflict may be defined as a low-intensity asymmetrical conflict, but the intensity of the violence is on a constant upswing over time because of the military nature of the conflict.

An analysis of the conflict's features in recent years indicates that the Normal Relations Range is moving upwards as a block in terms of its values of violence and retaining the volatility in the level of violence within the developing relations range (see Figure 1). The rise in the level of violence develops with time, while the sides to the conflict gradually adapt to the new level of violence. It would seem that this structure will continue its escalation unless something is done. Therefore, we suggest a proactive move to stop the range from moving further upwards; a surprising transformative act could be just that proactive move. A declaration of war,

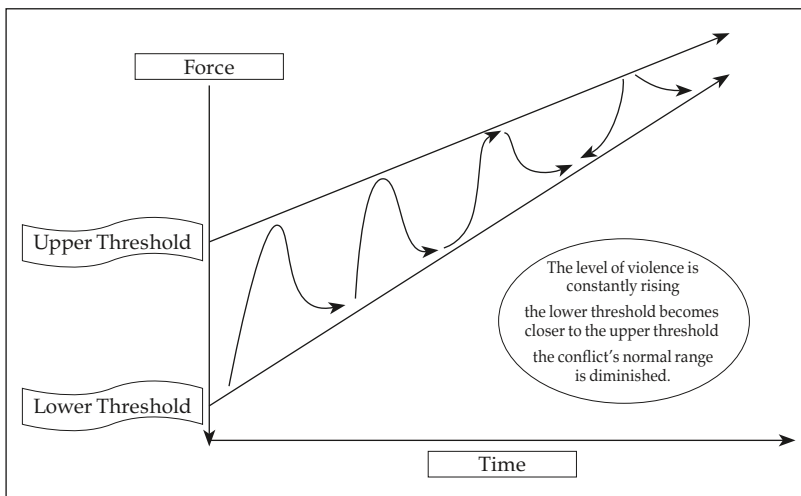


Figure 1. The Normal Relations Range in the Israel-Hamas Conflict

which has many advantages as well as certain drawbacks, could emerge as just that transformative act.

5. Resolving or managing the conflict at lower levels of violence requires a transformation of the conflict. In order to generate a structural transformation, it is necessary to change the power structure in the Gaza Strip, which means weakening Hamas and denying its relevance as a political player so as to allow the entrance of a different player (such as the Palestinian Authority) to take its place as the governing entity in order to rebuild the Gaza Strip and create a possible foundation for settling or mitigating the conflict. It is possible to weaken Hamas by causing significant damage to its military capabilities and infrastructures. Because Hamas' political power as the governing entity in the Gaza Strip is a direct consequence of its military might, damaging Hamas militarily would lead to damage to its political power.
6. A transformation of the conflict by means of a declaration of war could turn out to be a "fundamental surprise."⁶⁶ As such, it may disrupt Hamas' awareness at a very basic level (similar to a second tier change, a change of the system itself). A disruptive move of this kind could lead to an inversion in the dynamics between the sides and thus to a transformation of the conflict and a change in the developing trends of the conflict's normal relations range.

The Possible Contribution of a Declaration of War to a Transformation of the Conflict

A formal declaration of war places a shared responsibility on the authorities, leaving no room for vagueness. Furthermore, a declaration of war informs the entire nation that the lives of its citizens are about to change, and that they may pay dearly. Another important advantage stems from the fact that a declaration of war provides the executive with the political and moral authority – as well as the legitimacy – to conduct a war in the population's name and steer the military forces according to its considerations. Finally, a declaration of war leads to a binding paradoxical proceeding, which is likely to prevent unnecessary wars from breaking out.⁶⁷ The very act of declaring war may lead the other side to change its policy, and under these conditions a declaration of war becomes a type of deterrence.

By declaring war, the state shows that it is willing to do everything within its power, allocating all the required resources and changing its priorities accordingly.⁶⁸ Consequently, it can strengthen the potential for

deterrence while at the same time express a change in stances and belief, which may be seen as a direct consequence of a process of learning or, by extension, a manifestation of a leadership's readiness.⁶⁹ An example may be found in President G.W. Bush's declaration of war on terrorism in 2001. His declaration outlined the U.S. threshold and red lines, detailing the means the nation would use in defense of these interests. In addition to credibility, a declaration of war helps enlist the entire nation to support the declaration and can therefore be viewed as a collective act; hence its impact and advantage. It allows for the following:

1. *Abrogation of the dissonance of fighting the enemy while assisting it.* In the three operations Israel waged against Hamas in the Gaza Strip (2008-2009, 2012, and 2014), Israel continued to transfer – in practice via Hamas itself – raw materials, fuel, electricity and water, as well as humanitarian relief, which served to improve Hamas' endurance against Israel, reduce Gaza's domestic opposition to Hamas, and prolong the fighting.
2. *A shift of arena from population centers to a defined front.* At present, the biggest challenge the IDF must face – unlike the challenges faced by other Western armies – is fighting an armed entity that intentionally, cruelly and cynically sacrifices its civilians in order to present Israel as the demon, killing innocent bystanders.⁷⁰ A declaration of war, by its very definition, places the responsibility for the choice of fighting arena on the enemy.
3. *A prolonged hiatus and an exhaustion of the conflict.* The time factor is critical, and exhaustion exposes Israel's relative disadvantage as a developed Western nation compared to its enemy. Long and violent confrontations result in the depletion of Israel's forces, civilian and political exhaustion, and erosion of the citizens' trust in the state. The trust and cohesion in the government-military-civilian triangle⁷¹ are its Achilles' heel: prolonging the conflict damages the Israeli economy and its citizens' morale. This stands in contrast to a non-democratic state or entity in which the regime's operations are independent of the trust of its (non-voting) citizens, free of accountability.
4. *A declaration of war would lead to fighting under conditions in which the IDF excels.* Most IDF units were formed and trained for high-intensity warfare and ground maneuvers, though in fact since 1982 they have been fighting guerilla forces.⁷² Therefore, paradoxically, the transition to high-intensity fighting and ground maneuvers – consequences of

- a declaration of war – would reduce the asymmetry and allow for the realization of the power of the state-sponsored army.⁷³
5. *Legitimacy for the policy of war in general and the use of force in particular.* The bans on using force or limiting the proportionality of response in international law mostly apply to situations of confrontation rather than war. Subject to certain limitations, a nation at war has the legitimacy to defend itself at almost any cost. The military maneuvering room is greater under a declaration of war, because then the use of force is expected, permissible, and even imperative. When a non-state enemy is incapable of winning a war, yet it has won the asymmetrical confrontation for years, the declaration of war turns a disadvantage into an advantage.⁷⁴ Furthermore, a declaration of war would allow the State of Israel to exert pressure on the other side by withholding the supply of fuel, electricity, water, food, and medical care while fighting as the enemy tries to harm Israel's population and infrastructures. (It should be said that the supplies Israel transfers to the Gaza Strip are already reduced to the bare minimum required on humanitarian grounds. Furthermore, the High Court of Justice has determined that Israel must consider circumstances that pose a risk to human life as affecting the amount of supplies crossing the border.⁷⁵ At the same time, the effect of declaring war is different: a declaration of war allows the exertion of real, effective pressure on the enemy's population.)
 6. *Focusing and refining the political-to-military-echelon discourse.* A declaration of war would require the refinement of the strategic discourse of the political objective between the echelons⁷⁶ that would define the military task and the ways to complete it; the relationship between ends and means.⁷⁷ Moreover, if we accept Harkabi's assertion on the use of diplomacy and strategy as two complementary methods of action,⁷⁸ then the Israeli government must, vis-à-vis Hamas, create a "complementary opposition"⁷⁹ and "balance an aggressive military strategy or severe military blow to Hamas with a political, diplomatic strategy."⁸⁰
 7. *Determining the rules of the game.* So far, Israel has allowed Hamas to define the rules of the game, and Hamas has established the nature of the fighting: terrorism and attrition. By means of declaring war, the chances that Israel would seize control of the rules and maximize its advantages would grow. "The side that forces the type of war that favors its strengths can operate effectively to realize its objection, whereas the other side will be less relevant from the outset."⁸¹

8. *Subordinating the struggle between the parties to the laws of war.* Hamas is aware that Israel and other Western armies are subject to international law and therefore does all it can to exploit what it perceives as its enemy's biggest weakness. Hamas' basic assumption is that Western armies will generally act on the basis of the laws of war, and the organization therefore intentionally engages a policy that falls outside the laws of war. This is, in fact, the foundation for its operational doctrine.⁸² A declaration of war subjects the entire conflict to the laws of war where the state enjoys a potential advantage.

While this article has dealt with the advantages of a declaration of war, it has not discussed the inherent disadvantages, including economic ramifications of compensation, for instance.⁸³

Conclusion

This article examined whether a declaration of war can be used as a tool for the structural and conceptual transformation of the intractable and protracted conflict between Israel and Hamas. The rounds of violence since 2008 have failed to generate convenient, desirable strategic positioning as these flare-ups can clearly be shown to be spiral fluctuations within the Normal Relations Range of the conflict while they have, at the same time, established an ever-rising trend in the intensity of violence within the range. In fact, Israel is trapped in the reality of an asymmetrical conflict with increasing intensities of violence in which Hamas manages to entrench the power paradox, where Israel's strength becomes its weakness and Hamas's weakness becomes its strength. Changing the reality in which Israel finds itself requires a proactive move that would pose a fundamental surprise to Hamas, one with the power to transform the conflict and change the system.

In our attempt to examine the possible contribution of a declaration of war to the transformation of the conflict's asymmetrical structure in a way that would allow Israel to maximize its advantages over Hamas, we chose to expand the legal definition and relate to the declaration of war as a ritual or ceremony having the capacity to change public awareness and reformulate the rules of the game. The integration of four disciplines – international law, conflict resolution, anthropology and strategic studies – allows the reframing of the asymmetrical conflict, providing a different view of the options the state has for confronting a non-state entity.

Notwithstanding disadvantages and problems inherent in a declaration of war, we have indicated the possibility of reversing reality and adopting a

proactive approach through declaring war in a way that would deny certain advantages from the non-state player in the asymmetrical conflict. We believe that the alternate rationale – based as it is on the assumption that reducing the asymmetrical aspect will help decide the conflict by reducing Hamas’s political power and relevance as a governing agent – will help change the structure of the conflict, to use conflict resolution terms, and prepare the ground for another player, such as the PA, to take Hamas’ place.

The analysis of the implications in this essay is essentially theoretical, absent an existing test case of an actual declaration of war. Nevertheless, we think the analysis can challenge conventional thought and expand the toolkit at our disposal and create a transformation of the conflict, lay the foundation for rearranging the system, and manage the conflict at a lower level of violence and even end or resolve it altogether.

Notes

- 1 Giora Eiland, “In War as in War,” *Yediot Aharonot*, August 4, 2014.
- 2 Colin Clark, “Obama to World: We’re Back,” *Breaking Defense*, September 12, 2014, http://breakingdefense.com/2014/09/obama-to-world-were-back/?utm_source=Breaking+Defense&utm_campaign=60f34e7ab4-RSS_EMAIL_CAMPAIGN&utm_medium=email&utm_term=0_4368933672-60f34e7ab4-408029065.
- 3 According to Maj. Gen. (res.) Israel Tal, this was a war, as is clear from his address at the conference “Operation Protective Edge: Military and Political Lessons” held on September 29, 2014, at the BESA Center at Bar-Ilan University.
- 4 See, e.g., Richard Behar, “the Media Intifada: Bad Math, Ugly Truths About New York Times In Israel-Hamas War,” *Forbes*, August 21, 2014. <http://www.forbes.com/sites/richardbehar/2014/08/21/the-media-intifada-bad-math-ugly-truths-about-new-york-times-in-israel-hamas-war/>; Efraim Karsh, “ Hamas War Tactics: Attacks from Civilian Centers,” Military - Strategic Information Section, Planning Directory, Israel Defense Force; “Palestinian Suffering Used to Demonize Israel.” A lecture at The Begin Sadat Center for Strategic Studies, July 23, 2014.
- 5 In July 2007, Defense Minister Barak led the Israeli cabinet to declare Hamas a “hostile security entity” in order to try to change the rules of the game. But the declaration carried no legal weight and was certainly not a declaration of war. Furthermore, following that declaration there has been a series of operations in the Gaza Strip during which the rules of the game have not changed in any significant way and are certainly nothing like the rules of the game made possible by virtue of a declaration of war.
- 6 John P. Lederach, “Conflict Transformation,” In *Beyond Intractability*, G. Burgess and H. Burgess, eds. (Boulder, Colorado: Conflict Research

- Consortium, University of Colorado, 2003).
<http://www.beyondintractability.org/essay/transformation/>.
- 7 For more, see Kobi Michael, "Demilitarization of the Gaza Strip: Realistic Goal or Pipe Dream?" in *The Lessons of the Operation Protective Edge*, A. Kurz and S. Brom, eds. (Tel Aviv: Institute for National Security Studies, 2014) http://www.inss.org.il/uploadImages/systemFiles/Demilitarization%20of%20the%20Gaza%20Strip_%20Realistic%20Goal%20or%20Pipe%20Dream_.pdf.
 - 8 Yair Naveh, as cited in Amir Rapaport, "Yair Naveh, in the First Interview about Operation Protective Edge and the IDF's Professional Conduct," *Israel Defense*, January 8, 2015: "I think there was a new political conception, and the army had not adapted its plans and inventories to it, nor its state of mind. What happened in practice was the opposite of how the army had prepared in recent years. In the course of the operation they said, OK, now we're embarking on a war of attrition... If you want to change the army's operating conception that drastically, you first have to carry out orderly debates in the government, decide what the implications and ramifications will be, and prepare accordingly, and not arrive at a 50-day long campaign as if by surprise."
 - 9 Paul Watzlawick, John Weakland and Richard Fisch, *Change: Principles of Problem Formation and Problem Resolution* (New York: W.W. Norton & Co., 1974).
 - 10 Kobi Michael, "Limitations of Strategic Maneuver: The Israeli Case," *Infinity Journal* 1, no. 4 (2011): 12-16.
 - 11 We would like to thank Col. (res.) Pnina Sharvit Baruch, an expert on international law and senior research fellow at the Institute for National Security Studies for her comments and insights on this part of the essay.
 - 12 Jennifer K. Elsea and Richard F. Grimmett, *Declaration of War and Authorizations for the Use of Military Force: Historical Background and Legal Implication* (prepared for members of Committee of Congress USA, March 17, 2011).
 - 13 Yehoshafat Harkabi, *War and Strategy* (Tel Aviv: Ma'arakhot Publishers, 1990).
 - 14 It should be said that there is a difference between a declaration of war and the use of force. In the context of this essay, we examine the transformative aspect of the actual declaration of war rather than the transformative aspect of the use of force. Nonetheless, we must also examine the legal aspect of the act of declaring war because the basis for waging war is legal to begin with. On the basis of this aspect, we wish to add the anthropological aspect and examine the declaration of war as a possible strategy.
 - 15 United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, <http://www.un.org/en/documents/charter/>; see also: Robbie Sabel, "Operation Cast Lead and International Law," *Strategic Assessment* 11, no. 4 (2009): 25-28.

- 16 Beyond the use of force for self- or collective defense, some recognize the right to use force under other circumstances. For more see, Pnina Sharvit Baruch and Brandon Weinstock, "The Use of Chemical Weapons Against the Syrian People: Does It Justify Forceful Intervention?" *Law and National Security: Selected Issues*, P. Sharvit Baruch and A. Kurz, eds. Memorandum 138 (Tel Aviv: Institute for National Security Studies), pp. 11-28, <http://www.inss.org.il/uploadImages/systemFiles/memo138110618427.pdf>.
- 17 *Laws of War: Opening of Hostilities (Hague III)*; October 18, 1907, Entered into Force: 26 January 1910. http://avalon.law.yale.edu/20th_century/hague03.asp.
- 18 Kellogg-Briand Peace Pact (Treaty Providing for the Renunciation of War As an Instrument of National Policy, 46 Stat. 2343 (1929); TS 796; 2 Bevans 732) and the Charter of the United Nations. Treaties prohibit the use of war as part of a national policy. The nations that are party to a treaty bind themselves to resolve conflicts using only peaceful means. Such treaties are the first step to delegitimizing the use of force. Atty. Daniel Reisner goes even further and says that declarations of war are no longer legal by virtue of these charters (in an interview by Ilana Kwartin with Atty. Reisner for her doctoral thesis on December 11, 2011).
- 19 Elsea and Grimmett, *Declaration of War*, p. 2.
- 20 For more on the laws of war, see David P. Cavalieri, *The Law of War: Can 20th-Century Standards Apply to the Global War on Terrorism?* (Kansas: Combat Studies Institute Press, 2005); Sabel, "Operation Cast Lead and International Law;" Harkabi, *War and Strategy*; Raphael Biton, "Laws of War as Overall Framework for Regularizing Institutional Killing," *IDF Law Review* 19, IDF Military Advocate General (2007): 245-323.
- 21 Basic Law: The Government Paragraph 40(c), published in Israel's Statutes 2001, No. 1780, March 18, 2001, p. 158 (1999 Bill No. 2756, p. 72).
- 22 In July 2006, after Hizbollah attacked on Israeli soil, MK Dr. Yossi Beilin submitted a petition to the High Court of Justice against the prime minister and the government of Israel to issue an order nisi to force the government to declare war in Lebanon (High Court of Justice 6204/06, 6235/06, 6274/06 Yossi Beilin et al Versus the Prime Minister et al, court.gov.il). According to Beilin, the Israeli government had acted improperly by not making a decision to go to war based on Basic Law: The Government, Paragraph 40(a) even though it was already, in practice, in a state of war. His petition was rejected, in part because, as determined by Justice Beinisch, there had not been a casus belli for a declaration of war as required by law. In rendering her judgment, Justice Beinisch stressed that the conditions stipulated by Paragraph 40(a) of Basic Law: The Government had been fully met and an announcement had been given to the Security and Foreign Affairs Committee of the Knesset and then to the Knesset plenum. She also noted that the Emergency Regulations enacted on the basis of the situation dealt

- with the possibility of compensating residents and there was no need for a declaration of war to ensure their rights.
- 23 John L. Austin, *How to do Things with Words: The William James Lectures Delivered at Harvard University in 1955*, J. O. Urmson and M. Sbisà, eds. (Oxford: Clarendon Press, 1962).
 - 24 Yoav Kenny, "Declaration," *Maft'e'ah* 1 (2010): 21-33.
 - 25 Ibid.
 - 26 Austin, *How to do Things with Words*.
 - 27 Ibid.
 - 28 Kenny, "Declaration."
 - 29 Arnold van Gennep, as appears in Victor W. Turner, *The Ritual Process: Structure and Anti-structure* (Chicago: Aldine Pub., 1969).
 - 30 Ibid., p. 152.
 - 31 Don Handelman, *Models and Mirrors: Towards an Anthropology of Public Events* (New York: Berghahn Books, 1990), pp. 1-132.
 - 32 Trexler in: Handelman, *Models and Mirrors*, p. 11.
 - 33 Ibid., p. 12.
 - 34 Ibid.
 - 35 The publication of *The Journal of Conflict Resolution* in 1957 marks the founding of the field.
 - 36 For more on existing approaches in the field of conflict management and resolution, see Robert A. LeVine and Donald T. Campbell, *Ethnocentrism: Theories of Conflict, Ethnic Attitudes and Group Behavior* (New York: Wiley, 1972).
 - 37 Johannes Botes, "Conflict Transformation: A Debate over Semantics or a Crucial Shift in the Theory and Practice of Peace and Conflict Studies?" *The International Journal of Peace Studies* 8, no. 2 (2003).
http://www.gmu.edu/programs/icar/ijps/vol8_2/botes.htm.
 - 38 Lederach, "Conflict Transformation."
 - 39 "The old paradigm of conflict resolution is clearly being revised if not in the process of being replaced," Botes, "Conflict Transformation."
 - 40 Oliver Ramsbotham, Tom Woodhouse, and Hugh Miall, "Introduction to Conflict Resolution: Concepts and Definitions," In: *Contemporary Conflict Resolution: The Prevention, Management and Transformation of Deadly Conflicts* (Cambridge: Polity Press, 2005), pp. 3-31.
 - 41 Botes, "Conflict Transformation."
 - 42 Ibid.
 - 43 Lederach, "Conflict Transformation."
 - 44 Louis Kriesberg, "Conflict Transformation," in *Encyclopedia of Violence, Peace and Conflict*, L. Kurz, ed. (New York: Academic Press, 2008), pp. 401-13, p. 407.
 - 45 Botes, "Conflict Transformation."
 - 46 Väyrynen, cited in: J. Botes, "Conflict Transformation."

- 47 Edward E. Azar, Paul Jureidini, and Ronald McLaurin, "Protracted social conflict; Theory and practice in the Middle East." *Journal of Palestine Studies* (1978): 41-60.
- 48 Ibid.
- 49 The tool presents an axis ranging from cooperation to high-intensity violence (the Y axis) and the element of time (the X axis). Azar claims that every conflict can be located on this graph within what he defines as the normal range of the conflict (despite the paradox). According to him, protracted, unresolvable conflicts tend to be volatile and therefore seek to leave the so-called normal range. At the same time, leaving the range means encountering mechanisms (doorkeepers of a sort) whose function is to ensure that the conflict returns to its normal range. This means that a deviation from the range on the Y axis towards escalation arouses in turn regional dangers and perhaps also damage to the interests of international players in the arena, or at least destabilizes the international system and therefore leads to intervention on the part of the international community working to bring the conflict back to the normal range. On the other side of the range, any deviation on the Y axis towards cooperation encounters pressure from the social structure charged with maintaining national solidarity and a shared national identity preventing cooperation.
- 50 Kobi Michael, "Who Really Dictates What an Existential Threat is," *Journal of Strategic Studies* 32, no. 5 (2009): 687-713.
- 51 Klaus, J. Gentzel and Torsten Schwinghammer, *Warfare Since the Second World War* (New Jersey: Transaction Publishers, 2000).
- 52 Hanan Shai, "The Intellectual Challenge in the Struggle Against Human Bombs and Other Inhuman Terrorism", in *Ticking Bombs*, H. Golan and S. Shai, eds. (Tel Aviv: Ma'arakhot, 2006), pp. 167-77.
- 53 A "strategy of attrition" is defined as a military method of operation with political goals and designed to gradually erode the enemy's fighting power; its objective is to prevent the enemy from winning a military decision. The less powerful side makes every effort to draw the conflict out in time so as to bleed the enemy while delegitimizing the more powerful side and making massive use of psychological warfare via the media to cause cumulative exhaustion and erosion. Moshe Ya'alon, "Between Decision and Victory," *National Security Studies* 2, (2001) <http://www.xn-7dbl2a.com/wp-content/uploads/2014/05/%D7%91%D7%99%D7%9F-%D7%94%D7%9B%D7%A8%D7%A2%D7%94-%D7%9C%D7%A0%D7%99%D7%A6%D7%97%D7%95%D7%9F.pdf>.
- 54 Shai, "The Intellectual Challenge."
- 55 Ramsbotham, Woodhouse and Miall, "Introduction to Conflict Resolution."
- 56 The test case was extensively discussed in an essay published in a Canadian journal. For more, see Ilana Kwartin and Kobi Michael, "Declaration of War – Between a Ceremony and a Strategy: The Case of Israel and Hamas in the Gaza Strip," *Journal of Politics and Law* 6, No. 3 (2013): 198-208.

- 57 Azar, Jureidini and McLaurin, "Protracted Social Conflict: Theory and Practice in the Middle East," *Journal of Palestine Studies* 8, no. 1 (1978): pp. 41-60.
- 58 Although the Gaza Strip is not recognized as a state, it fulfills the four characteristics defining a state noted by the 1931 Montevideo Convention: a defined territory, a population, a government and an independent foreign policy. In addition, the Hamas government in the Gaza Strip has an organized military force as well as police and enforcement mechanisms. Montevideo Convention on the Rights and Duties of States, signed at Montevideo, 26 December 1933, Entered in to Force December 26, 1934, LNTS 19; 49 Stat 3097, 165. <http://ilsa.org/jessup/jessup15/Montevideo%20Convention.pdf>.
- 59 Montevideo Convention on the Rights and Duties of States, signed at Montevideo, December 26, 1933, Entered in to Force 26 December 1934, <http://ilsa.org/jessup/jessup15/Montevideo%20Convention.pdf> LNTS 19; 49 Stat 3097, 165.
- 60 Robert I. Rotberg, "Failed States in a World of Terror," *Foreign Affairs* (2002), <http://www.foreignaffairs.com/articles/58046/robert-i-rotberg/failed-states-in-a-world-of-terror>.
- 61 David Reilly, "The Two-Level Game of Failing States: Internal and External Sources of State Failure," *Journal of Conflict Studies* 28 (2008), p. 17.
- 62 The National Security Strategy of the United States of America, 2002, <http://www.whitehouse.gov/administration/eop/nsc/>.
- 63 David Reilly, "The Two-Level Game of Failing States."
- 64 Daniel Bar-Tal, "The Psychosocial Foundation of Uncontrollable Conflicts: A Conceptualization", in *Living with the Conflict: A Psychosocial Analysis of Israeli Society*, D. Bar-Tal, ed. (Jerusalem: Carmel Publishing, 2007), pp. 24-52.
- 65 Louis Kriesberg, "Interlocking Conflicts in the Middle East," *Research in Social Movements, Conflicts and Change* 3 (1980): 99-119.
- 66 Zvi Lanir, *The Fundamental Surprise: Intelligence in Crisis* (Tel Aviv: Kibbutz Me'uhad Publishers, 1983).
- 67 Gregory J. Sidak, "To Declare War," *Duke Law Journal* 41 (1991): 27-121, <http://scholarship.law.duke.edu/dlj/vol41/iss1/2>.
- 68 Ibid.
- 69 William I. Zartman, *Ripe for Resolution* (New York: Oxford University Press, 1985/1989).
- 70 Richard Kemp, International Law and Military Operations in Practice. Paper presented at the Joint International conference on Hamas, the Gaza war and Accountability under International Law. Center for public affairs, Jerusalem, July 2009.
- 71 Ron Tira, "The Struggle over the Nature of War: From Clausewitz to Scipio Africanus and Anwar Sadat and the State Enemy Used to Fighting RMAs," Memorandum 96 (Tel Aviv: Institute for National Security Studies), p. 68.

- 72 Boaz Zalmanowitz, "The Tactical United States for Fighting Limited Conflicts: Conception, Testing Process and Experiments," *Ma'arakhot* No. 405(2006), pp. 28-33.
- 73 Erez Wiener, "Fighting Terrorism: Through Direct Contact or by Standoff Fire?" *Ma'arakhot* No. 406, pp. 22-27.
- 74 "Armed opposition groups are not able to win a direct confrontation with the regular armed forces because they lack firepower, but they can win small local engagements, keep large numbers of regular forces tied up and, perhaps, prevent control by the armed forces of the whole territory." A.P.V. Rogers, "Unequal Combat and the Law of War," *Yearbook of International and Humanitarian Law* 7 (2004), pp. 3-34.
- 75 See the state's position and its imprimatur by the High Court of Justice in High Court of Justice 9132/07 Al Bassyouni et al Versus the Prime Minister et al; and High Court of Justice 4258/08 Gisha (Gaza Gateway) et al Versus the Minister of Defense.
- 76 See Michael, "Demilitarization of the Gaza Strip."
- 77 The Joint Operation Environment (JOE), Distribution Statement A, February 18, 2010, <http://fas.org/man/eprint/joe2010.pdf>.
- 78 Harkabi, *War and Strategy*.
- 79 Kobi Michael, "The Weakness of Statesmanship: Who Really Shapes Israel's Security and Peace Policy and Why" lecture presented at Tel Aviv University conference, 2009.
- 80 Ibid.
- 81 Ron Tira, "The Struggle over the Nature of War," p. 68.
- 82 Richard Kemp, "International Law and Military Operations in Practice." Paper presented at the Joint International conference on Hamas, the Gaza war and Accountability under International Law (Jerusalem: Center for Public Affairs, 2009).
- 83 The inherent disadvantages of declaring war: 1) irrelevance at the political level as well as the legal one because of its rarity; 2) a declaration of war is liable to lead to internal dissent or widespread panic rather than social cohesion and patriotism of the population; 3) a declaration of war would grant legitimacy to a movement that is defined and recognized as a terrorist organization; 4) the concern that a formal declaration of war is liable to generate an actual war, one of whose consequences would be winning a decision against Hamas and restore Israel to effective control of the Gaza Strip and having to assume responsibility for its population. For more, see Ilana Kwartin and Kobi Michael, "Declaration of War – Between a Ceremony and a Strategy: The Case of Israel and Hamas in the Gaza Strip," *Journal of Politics and Law* 6, no. 3 (2013): 198-208.