

# Tipping the Balance: Unveiling the Imperative of International Collaboration against Disproportionate Warfare

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## Issue

The lack of clear guidelines and enforcement mechanisms on proportionality in international humanitarian law (IHL) has led to a disproportionate military response in asymmetrical armed conflicts, resulting in extensive civilian casualties and infrastructure destruction, as exemplified by the current situation in Gaza and Ukraine.

## Background

IHL establishes the protection of civilians and, specifically, vulnerable individuals such as the sick, wounded, pregnant women and children (United Nations, 1949).<sup>6</sup> However, military objectives can be attacked regardless of civilian presence that results in casualties and destruction. Proportionality in IHL mandates that the harm to civilians and civilian property during military operations must not be excessive compared to the anticipated military advantage. This principle aims to minimize civilian casualties and destruction. Disproportionality occurs when the harm significantly outweighs the military benefits, causing unnecessary suffering.

Disproportionality in armed conflicts is becoming a frequent global issue in Gaza, but also in other regions such as Ukraine and will continue if proportionality is not adequately addressed. The appropriate way of addressing disproportionality would be through international law, but with the global rise of authoritarianism, nationalism and populism, international law is struggling to effectively intervene in such a hostile environment (Amadi 2020). These ideologies mentioned above directly infringe on liberal principles of global cooperation and multilateralism and restrict the functioning of liberal institutions and organizations (Ginsburg 2020) that can help prevent disproportionality (Amadi 2020). Disproportionality is derived from the lack of effective enforcement of international law, a by-product of an increasingly asymmetrical international order where some states have advanced military capabilities above others. As a result, we are witnessing more disproportionate and asymmetrical armed conflicts that are harming innocent lives and violating international law. Therefore, international law must be strengthened and reaffirmed in this new global order to ensure that proportionality is respected.

Despite external factors and changes to the international liberal order, it is still somewhat challenging to apply international law in asymmetrical armed conflicts when international law provides resources that are vague and ambiguous (Keiler 2009). This ambiguity of proportionality in international law can lead to the lack of protection of innocent lives, the spread of crimes against humanity and infringements of humanitarian international law (ibid.). The rules governing proportionality need to clearly define the

<sup>6</sup> The most important treaties that lay the foundations of IHL are the 1949 Fourth Geneva Convention and Protocol I and III and are further enforced through other agreements that rule specific weapons or protections (International Committee of the RedCross,2004).

boundaries between proportionate and disproportionate. It is easier to identify a disproportionate response when there is something in which to compare the responses. No quantifying properties have been included in determining proportionality, even though armed conflicts and military force are quantifiable (Hicks and Spagat 2008). A quantifiable approach could ease determining the difference between proportionality and disproportionality.

This is where Canada comes into play. Canada has never been a state that has shied away from engaging in global cooperation and multilateralism (Black, David and Greg Donaghy. 2010). Canada's foreign policy has used multilateralism to emerge Canada on the world stage, but recently, it has been losing its place on that stage. For example, Canada had a solid international voice in the Suez Crisis of 1956, but that international voice is slowly fading away (Black, David and Greg Donaghy. 2010). Canada now has the opportunity to reclaim its international voice and reputation and provide global peace and security. The situation in Gaza is in dire need of strengthening International Law and redefining proportionality. If situations like these are not adequately and promptly addressed, then this will not be the last disproportionate armed conflict. Canada could be the one to start the discussion toward reaching global security and peace while regaining its international voice and strengthening its famous multilateralist strategies (Black, David and Greg Donaghy 2010).

### Case Study of Gaza

The case of Gaza exemplifies the trend of disproportionality, with extensive civilian casualties, destruction of critical infrastructure and a severe humanitarian crisis resulting from the significant power imbalance between the parties involved. By examining the situation in Gaza through the lens of IHL, the aim is to highlight the urgent need for strengthening the legal framework surrounding proportionality in armed conflicts and propose concrete measures to ensure better protection for civilians and promote adherence to the principles of proportionality in future conflicts.

On October 7, 2023, Hamas launched attacks on Israel that killed 1,181 Israelis, including 801 civilians and resulted in the kidnapping of 250 hostages (AFP 2023). In response, Israel declared war on Hamas and initiated a campaign of air strikes targeting Hamas militants and infrastructure in Gaza, particularly in the northern region. The data

displayed below shows that over the first 100 days<sup>7</sup> of the conflict analyzed here, Gaza experienced nearly continuous bombing at a level of intensity and consistency not seen in other recent conflicts.<sup>8</sup> The only respite came in November when Israel and Hamas briefly negotiated a humanitarian pause in the fighting.

**Civilian casualties:** In the first 100 days of the war, an estimated 22,878 Palestinians were killed (Appendix A, Figure 1). The Ministry of Health does not methodically classify deaths by gender or civilian status but estimates that casualties of women and children are approximately 70 percent of all fatal casualties (Epstein 2024). While some sources question the integrity of this data, citing lower casualties among women and children, the estimates are plausible given that women and children make up about 73 percent of the population (Palestinian Central Bureau of Statistics [PCBS] 2023). Historical data, such as the London Blitz (1940-1941) indicated that roughly eight percent of the exposed population suffered fatal casualties, a number comparable to that suggested by Palestinian data in the bombardment of Gaza (see more in Appendix B). In Palestine, the estimated 6,000 men killed represents an upper limit of Hamas combatants and some male children (defined as males younger than 18) expected to be Hamas fighters. Thus, soldiers accounted for approximately 26.23 percent of the total population killed. In comparison, the United Nations estimates about 10 percent to 20 percent of fatal casualties in global conflicts are combatants (United Nations 2022). International law permits civilian casualties if they result in a military advantage (Newton 2018, 867–86). In the upper limit of all men being combatants, the ratio of civilian casualties in Gaza might be slightly lower than in other conflicts. Yet, the use of explosives and urban warfare has led to a high proportion of civilian deaths (United Nations 2022).

**Infrastructure:** According to available data, 69,000 housing units have been destroyed (Appendix A, Figure 2), and 290,000 are partially damaged. Only 15 out of 36 hospitals remain partially functional, and 374 (90 percent) of school buildings have sustained substantial damage.

7 This analysis covers only the initial 100 days of the conflict, as the situation remains fluid and events are still unfolding at the time of writing. The first 100 days provides a representative snapshot of the scale of destruction while acknowledging the ongoing nature of the crisis.

8 There has been disagreement regarding the reliability of the data provided by the Palestinian Ministry of Health and replicated by intergovernmental organizations and other civil society groups. However, the analysis of the data suggests that it should be largely reliable. For further discussion, see Appendix B.

Article 53 of the Fourth Geneva Convention (United Nations 1949) and Articles 52 and 54 of Additional Protocol I (United Nations 1977a) protect civilian property and critical infrastructure, prohibiting their destruction unless necessary for military operations. Israel claims that Hamas operates from civilian areas and critical infrastructure, using human shields, which is strictly prohibited under IHL. Israel justifies its disproportionate response to Hamas' violations of the rules of war, leading to higher civilian casualties in this new type of warfare (Rubinstein and Roznai 2011, 127).

**Displacement crisis:** Since hostilities began, 1.9 million people (85 percent of Gaza's population) have been displaced. On October 13, 2023, Israeli officials ordered the evacuation of northern Gaza, affecting about one million people. UN officials deemed the rapid evacuation unfeasible (Al Jazeera 2023). Figure 3 (in Appendix A) illustrates that shelters in southern and central Gaza (Rafah, Khan Younis and Deir al-Balah) together accommodated one million people by the start of the humanitarian pause on November 23, illustrating the scale of displacement and evacuation challenges amidst daily bombings. Article 47 of the Fourth Geneva Convention (United Nations 1949) and Article 17 of the Additional Protocol II (United Nations 1977b) prohibit forced civilian movement unless required for safety or imperative military reasons. The IDF's warnings provided insufficient time, complicating the displacement efforts and enhancing challenges.

**Humanitarian aid:** According to the World Food Programme, "more than one in four households face extreme hunger," (Awad 2023). By day 100 of the conflict, 2.2 million people were categorized as being at imminent risk of starvation. Limited access to humanitarian aid exacerbates this dire situation, with an average 78.52 truckloads of aid entering Gaza daily, down from 500 before the conflict. The right to humanitarian relief is guaranteed by the Fourth Geneva Convention (United Nations 1949) and Additional Protocol I (United Nations 1977). However, Article 23 of the Convention allows disruption of the passage of aid if an "advantage may accrue to the military efforts or economy of the enemy," which Israel can use to justify such disruption. This provision, combined with the ongoing conflict, has resulted in a severe shortage of food and essential supplies, putting the lives of countless civilians at risk.

The situation in Gaza highlights the devastating impact of disproportionate warfare and non-compliance with IHL. The lack of specific thresholds for disproportionality in the IHL framework has led to civilian casualties and

infrastructure destruction. This issue is also seen in conflicts like those in Ukraine and Syria, underscoring the need for the international community to establish clear guidelines for proportionality in armed conflicts.

## Recommendations

The Russia-Ukraine and Gaza conflicts, among other recent international crises, highlight the lack of proportionality and symmetry in modern warfare, leading to increased civilian casualties, urban devastation and egregious violations of international and humanitarian law. To address this, it is recommended that Global Affairs Canada lead the proposed Lac-St-Jean Conference, reaffirming Canada's influential role as a committed advocate for peacekeeping on the global stage. The primary objective of the Lac-St-Jean Conference is to address the urgent matter of disproportional and asymmetrical international warfare through collaborative efforts. A central objective will be the creation of a comprehensive index to regulate warfare among actors, state and non-state, establishing a foundational framework to promote ethical conduct and minimize harm on an international scale.

Effective collaboration among external and internal stakeholders is crucial in addressing the contemporary challenges of asymmetrical warfare and disproportionate retaliation. Proposed attendees include Global Affairs Canada, Public Safety Canada, the Department of National Defence, the Canadian Human Rights Commission and the Canadian Security Intelligence Service. Additionally, the presence of international organizations such as the United Nations, North Atlantic Treaty Organization member states, the International Committee of the Red Cross, the European Union and other relevant international state actors is advised at the Lac-St-Jean Conference.

The proposed Lac-St-Jean conference agenda is outlined below.

### **Discussion on Proportional and Symmetrical Law:**

Participants will engage in in-depth discussions to define guidelines for proportional and symmetrical responses in warfare. Case studies and real-world examples will be presented to illustrate practical applications. Participants must collectively agree on measured responses to aggression, minimizing the risk of disproportionate retaliation.

### **Exploration and Formulation of Regulatory Index:**

Detailed discussions and collaborative efforts will focus on formulating an index to regulate warfare between both state and non-state actors. Clear guidelines, quantitative

measures and standards for conduct during conflicts will be established, ensuring adherence to international humanitarian law and principles of proportionality.

**Threshold Measure of Proportionality:** The regulatory index will include a threshold measure of proportionality. Criteria for assessing the proportionality of a military action will be defined, considering factors like civilian casualties and collateral damage. Interdisciplinary collaboration between legal experts, military strategists and humanitarian practitioners are recommended to be a part of the discussion.

**Protocols of Humanitarian Relief:** Protocols and mechanisms for effective humanitarian relief during conflicts will be developed. Inclusive approaches will be integrated to address the specific needs of women, children and marginalized groups. Coordination mechanisms between humanitarian actors, military forces and local authorities will ensure safe and efficient aid delivery.

**Protection of Civilians:** Innovative approaches to minimize civilian casualties and support vulnerable populations are proposed to be explored. Inclusion of provisions for human rights defenders and journalists at risk are emphasized.

**Protection of Cultural Infrastructure and Medical Centres:** Measures to protect cultural sites, monuments and medical facilities from deliberate targeting are urged. Establishment of partnerships with cultural heritage organizations and the United Nations Educational, Scientific and Cultural Organization are suggested to enhance protection efforts.

## Conclusion

As modern warfare increasingly involves disproportionate and asymmetric tactics, international laws must evolve to better protect civilians, urban areas and medical facilities. By adopting these recommendations, Canada can reclaim its role as a global peacekeeper and lead efforts to implement effective measures that safeguard civilians and communities.

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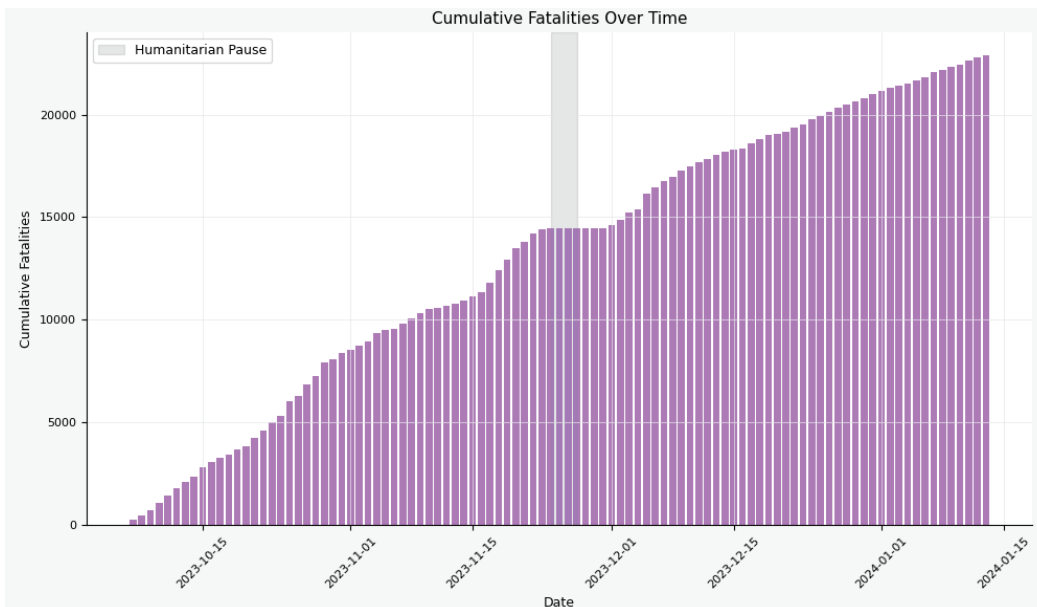
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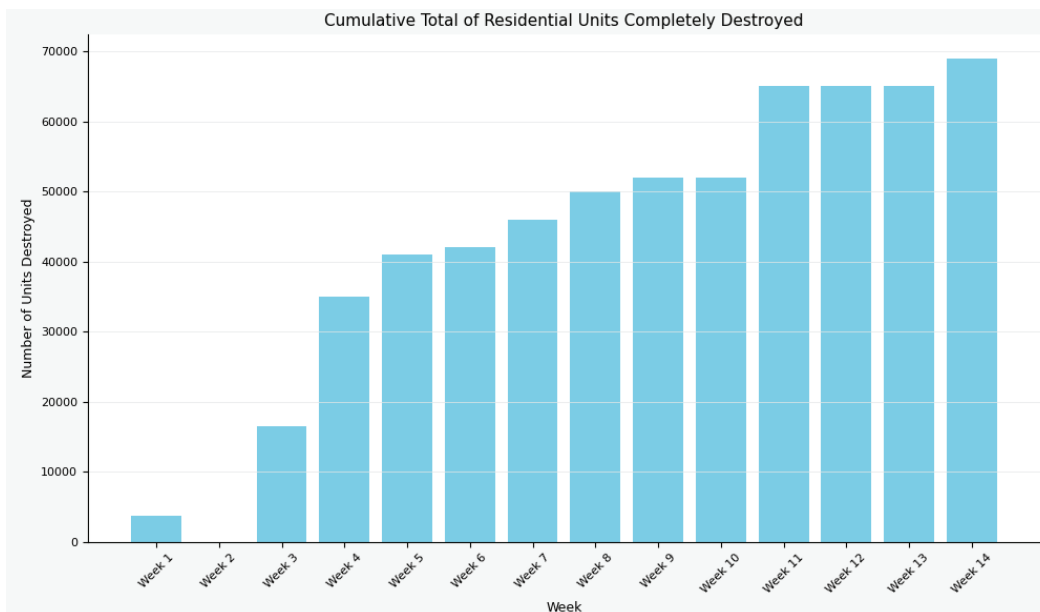
## Appendix A: Figures

Figure 1



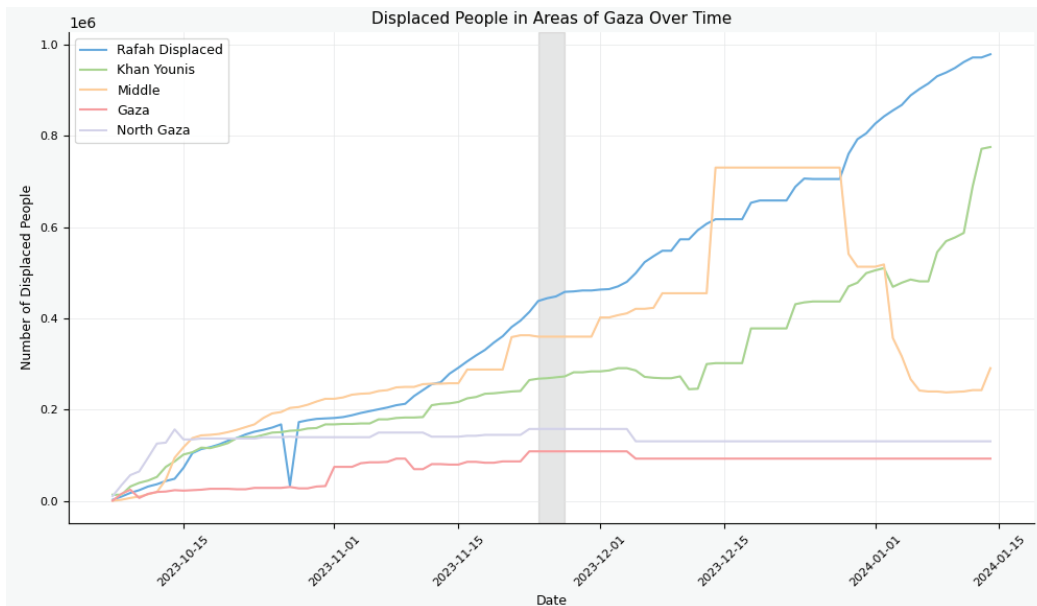
Cumulative graph of fatal casualties in the Gaza Strip in the first 100 days. The data does not discriminate between civilians and fighters. Shaded area represents the four days humanitarian pause was negotiated between Israeli and Hamas officials between November 24 and November 27. Source: Table produced by Ludmila Puchulú-Mocchiutti based on data from ACLED (2024).

Figure 2



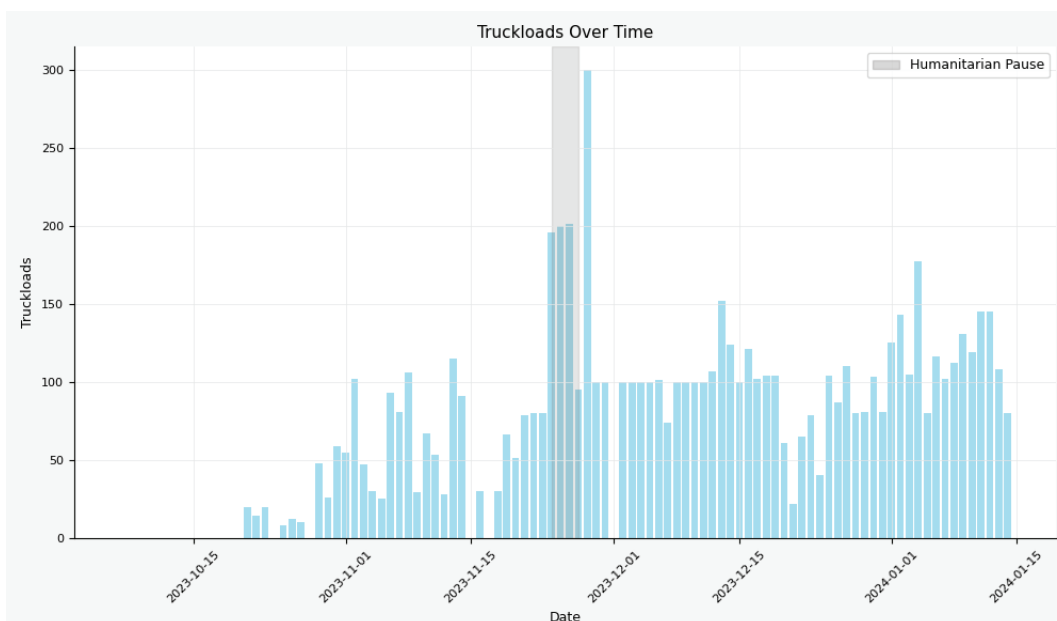
Cumulative graph of residential units completely destroyed in the Gaza Strip per week since the conflict started up until day 100 or week 14. Source: Table produced by Ludmila Puchulú-Mocchiutti based on data from Office for the Coordination of Humanitarian Affairs (OCHA) (2024a).

Figure 3



Linear graph on the number (in millions) of internally displaced people on any given day. The data includes those in UN Relief and Works Agency for Palestine Refugees, government and other shelters and is divided between internal displacements in each region of the Gaza Strip. *Source:* Table produced by Ludmila Puchulú-Mocchiutti based on data from OCHA (2024b).

Figure 4



Bar graph with number of truckloads with humanitarian aid entering the Gaza Strip per day for the first 100 days. Shaded area represents the 4 days of humanitarian pause that was negotiated between Israeli and Hamas officials between November 24 and November 27. *Source:* Table produced by Ludmila Puchulú-Mocchiutti based on data from OCHA (2024a).

## Appendix B: Rationale of Data (by Dr. Stephen Evans)

1. **Gaza geography:** Gaza has an area of 360 km<sup>2</sup> (CIA 2024) and a 2022 population of 2.17M (Palestinian Central Bureau of Statistics 2022). This gives a population density of 6,028 p/km<sup>2</sup>. Much higher population densities occur in urban areas such as Gaza City and in the eight Gaza refugee camps.<sup>9</sup> Included in the population of Gaza are 1.57 million Palestinian refugees (UNICEF SoP 2023).
2. **The demographic structure of pre-war Gaza:** The 2022 population of Gaza is estimated as 2.17 million of which 1.10 million are males of all ages and 1.07 million are females of all ages. Children (defined by the PCBS as those persons younger than 18 years old) number 1,023,771 and make up 47 percent of the population (PCBS 2023a). Men (males of 18 years and older) number 577,302 (27 percent of the 2022 Gaza population) and women (females of 18 years and older) number 568,927 (26 percent of the Gaza population). Women and children together number 1,592,698 (73 percent of the Gaza population); these numbers reflect the historical high fertility of Gazan women.<sup>10</sup>
3. **Housing units in pre-war Gaza<sup>11</sup>:** Based on an average occupancy of 5.6 people per housing unit reported by the PCBS, it is estimated that there were 387,500 housing units in Gaza in 2022 (PCBS 2022). The Gaza housing unit is characterized by its small dimensions (average 130 m<sup>2</sup>) and a general overcrowding; in 2022 PCBS data shows that the average number of rooms per unit was 3.5 with an average of 1.7 persons per room (5.95 persons per housing unit suggesting a total number of 364,705 housing units in 2022). The 2017 Palestine Census recorded 334,632 housing units in Gaza; in the Census 76.7 percent of Gaza's population lived in apartments.
4. **Impact of Israeli bombardment (housing losses and casualties):** as of January 7, 2024, (Day 93 of the bombardment) approximately 65,000 housing units (17 percent of the total) had been destroyed by Israeli forces and a further 290,000 had been damaged. As of Day 93, casualties numbered 95,251, of which 22,835 were fatal casualties (OCHA 2024a), 58,526 were seriously injured and 7,000 were missing and presumed dead. Thus, it appears that there were 29,835 fatal casualties (31 percent of the total casualties) up to January 7.
5. **Estimate of exposed population:** Assuming the exposed population as the total number of persons occupying the totally destroyed housing units, this would represent 364,000 persons. Of this number, 8.2 percent (29,835) were fatal casualties.
6. **Comparison to the London Blitz<sup>12</sup>:** In the aerial bombardment of the County of London (forming the core of the London Civil Defence Region (area of 303 km<sup>2</sup>; population of 3,083,900) by German forces in 1940-1941 (known as the Blitz), 46,607 housing units were totally destroyed by high explosive weapons. The average occupancy of these residential units was 3.3 persons, which gives (using the assumption in point 5 above) an exposed population of 153,803. 12,957 fatalities occurred in the County of London during the Blitz, which gives a fatality rate of 8.4 percent, remarkably close to our Gaza estimate in point 5 above.
7. **Evaluation of Gaza Ministry of Housing (MoH) statistics:** Thus, it can be concluded, based on the scale of destruction of residential units (a proxy for weight of attack), household occupancy and a fatality rate based on data from the London Blitz, that the Gaza MoH total casualty statistics are both plausible and credible as they roughly correspond to what may be expected in the sustained aerial bombardment of a densely populated urban area using high explosive weapons.

<sup>9</sup> PCBS data shows that the most densely populated areas in Gaza are the eight refugee camps with densities that exceed 40,000 persons /km<sup>2</sup>, followed by the main cities of Gaza, Jabalya, Deir Al Balah, Khan Younis and Rafah Governorates with densities that range between 20,000 to 40,000 persons /km<sup>2</sup>.

<sup>10</sup> The total fertility rate during (2017–2019) declined to reach 3.8 births, compared to 4.6 births during the period (1999–2003); 3.8 births in the West Bank and 3.9 births in Gaza Strip. On the other hand, the fertility rate was 3.8 births in urban areas compared to 4.4 births in rural areas and 3.5 births in the Palestinian refugee camps (PCBS 2022)

<sup>11</sup> See Gaza housing data PCBS (2023b).

<sup>12</sup> This paragraph is based on unpublished data of S.G. Evans (Balsillie School of International Affairs, Waterloo, ON).

- 8. Structure of Gaza casualty response:** With reference to the structure of the total fatal casualties, the assumption is that this has reflected the demographic composition of the Gaza population. From point 2 above, we calculate that 6,165 men (males of 18 years and older), 5,937 women (females of 18 years and older) and 10,732 children (males and females younger than 18 years old) were killed up to Day 93. Up to January 7, 2024, a total of 16,669 women and children were killed (73 percent of fatal casualties).<sup>13</sup> Palestinian data reported by Epstein (2024) for Day 93 gives total fatal casualties (22,835) as 5,835 men, 7,000 women, 10,000 children (and women and children together 17,000); these numbers roughly correspond to those calculated based on the composition of the exposed population<sup>14</sup> and suggest that at least 74 percent of the fatal casualties were civilian.
- 9. Number of Hamas combatants killed:** The estimate (6,165) of the number of men killed (in point 8 above) represents an upper limit of Hamas combatants killed. Three percent of this total consists of aged men (over 65 years old), which suggests that this number is closer to 6,000 (Thomas, Horton and Garman 2024). Thus, there are three times non-combatants killed for every combatants. It should also be noted that not all men of fighting age were Hamas combatants, and some male children (defined as males younger than 18) would be expected to be Hamas fighters.

13 Update to March 21, 2024 (Day 167). Gaza MoH report 31,819 fatal casualties]. Using the same assumptions as in point 8 above, fatal casualties up to Day 167 are men (8,591), women (8,273) and children — (14,955). Women and children fatal casualties together number 23,228. An upper estimate of Hamas combatants killed is thus 8,333.

14 On November 23, 2023 (Day 48) the Gaza MoH reported a total of 14,800 fatal casualties consisting of 6,000 children or 41 percent of the total (compared to 47 percent in the Gaza population), 4,000 women or 27 percent of the total (compared to 26 percent in the Gaza population), and 4,800 men or 32 percent of the total (compared to 27 percent in the Gaza population). Women and children together would be 10,000 or 68 percent of the total. Thus, at least 68 percent were civilian casualties as of Day 48.

#### Comparison to IDF and other estimates:

- 10. Indiscriminate bombing:** The fact that these statistics suggest indiscriminate bombing of residential areas (see Abraham 2023, para. 38) in Gaza reflect both Hamas war tactics of sheltering in and operating from residential buildings (and tunnel complexes beneath them) as well as Israel's war aim of eradicating Hamas in response to the October 7 attacks (*ibid.*). This appears to be the case despite Israel's use of high-precision bombs.
- 11. Concluding comments as of Day 169:** The number of fatal casualties (31,829) in the 169-day Israeli bombardment of Gaza exceeds that in the seven-month London Blitz (1940-1941) and the Royal Air Force Bomber Command attack on Dresden (1945) in WW II. The number reflects the intensity of the Israeli attack, the targeting policy of the IDF (particularly attacks on so-called "power targets"), the high population density of the Gaza Strip, locally increased in high-rise apartment buildings, the high occupancy of residential units, and Hamas war tactics of using residential buildings as cover for defensive operations. It should be noted that Israeli weapons used were almost exclusively of the high explosive type; this allowed direct comparison with data on fatal casualties in the London Blitz. An analysis of the County of London data indicated that roughly eight percent of the exposed population (defined as the number of people living in those housing units destroyed based on average occupancy data) suffered fatal casualties, a number comparable to that suggested by Palestinian data in the bombardment of Gaza. This indicates that the fatality statistics released by Palestinian authorities are plausible and credible. Considering the demographic structure of the fatal casualty response, the assumption that the total number of people killed in the bombardment mimics the composition of the Gaza population that was roughly verified by Palestinian casualty data. These statistics suggest that indiscriminate "area" bombing (whereby neighbourhoods were "attacked on a large scale and not in a surgical manner" (Abraham 2023) of residential areas in Gaza and reflects both Hamas war tactics of sheltering in and operating from residential buildings (and tunnel complexes beneath them) as well as Israel's declared war aim of eradicating Hamas, and that Israel's reported efforts to reduce the exposed population by evacuation (IDF 2023) and/or leaflet warning have not been successful or were implemented in a limited manner. The fact that 73 percent of the



fatal casualties are women and children is a tragic consequence of their dominance in Gaza demography resulting from the historical high fertility of Gaza women. We also estimate the number of Hamas combatants killed in the bombardment as of Day 167 to be 8,333; the ratio of non-combatants to combatants killed as of Day 167 is calculated to be 3.8, a figure nearly double that of the IDF estimate.

12. A counterargument to the assertion that the data from the Hamas Ministry of Health is plausible, based on its consistency with the extensive damage to residential buildings, household density, and the fatality rate observed during the London Blitz, concerns the Israel Defense Forces' directive for civilians to relocate from Gaza's north to its south. This order led to the displacement of approximately 2.2 million individuals towards Khan Younis and Rafah, as depicted in Appendix A, Figure 3. Still, the original assertion remains valid considering that this mass displacement occurred over an extended period amid ongoing bombings.

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