

Haspel Could Be Subject to Arrest Abroad Under Universal Jurisdiction

Gina Haspel is the new CIA Director after the Senate voted on Thursday 54-44 to confirm her, with six Democrats agreeing. In this interview, Francis Boyle explains why Haspel could be at risk of arrest on trips abroad.

By **Dennis J Bernstein**



Francis Boyle is professor of international law at the University of Illinois College of Law. He is the author of many books on International Law and an outspoken critic of US policy in the Middle East. Boyle's books include *Foundations of World Order* and the sequel, *Destroying World Order*. In the following interview with Pacifica Radio host Dennis J Bernstein, Boyle warns that, among other things, given her background as key implementer of the US torture program, Gina Haspel is vulnerable to be arrested for war crimes and crimes against humanity if she travels abroad.

Dennis Bernstein spoke with Francis Boyle on May 10th, 2018. [The transcript has been updated to reflect Haspel's confirmation.]

DB: [We now have a new] a new CIA director who likes to get her hands dirty and participate directly in torture. She has also been actively involved in making sure nobody finds out that torture takes place.

FB: "Bloody" Gina Haspel is her nickname at the CIA. She was directly involved in the extraordinary rendition program, which is a euphemism for the enforced disappearance of human beings and their consequent torture. This was in the complaint I filed against Bush and company in 2010 with the International Criminal Court for this crime against humanity.

Last fall the ICC prosecutor, Fatou Bensouda, said she is going to open up an investigation into the entire CIA extraordinary rendition program for violating the Rome Statute. Although the United States is not a party to the Rome Statute, these actions took place on the territorial sovereignty of Rome Statute states, and therefore the ICC does have jurisdiction. In my opinion, Gina Haspel is a presumptive war criminal and torturer. [We now] have a torturer and war criminal as head of the CIA.

As I have argued in anti-CIA cases here in the United States, the CIA is an organized criminal conspiracy like the SS and the Gestapo. We argued that successfully back in 1987 at University of Massachusetts, Amherst. I was involved in large numbers of CIA protest cases back in the 1980's because of

what was going on in Central America, with 35,000 dead in Nicaragua, 75,000 dead in El Salvador, and perhaps a quarter of a million in Guatemala. Most of those killed were Mayan Indians, which meant outright genocide.

DB: Will it be difficult for our director of the CIA to travel abroad? Maybe she has to be covert forever.

FB: That is correct. Under international law today—following a terrible decision by the International Court of Justice—heads of state and foreign ministers have diplomatic immunity while there are in office. But that is not going to apply to the head of the CIA.

I have a whole dossier here against Bush, Jr. and the rest of them for the extraordinary rendition program. We scared him out of Switzerland over that. A Swiss prosecutor demanded that Bush be prosecuted if he showed up in Switzerland. I know that Amnesty International and the Center for Constitutional Rights also have extensive dossiers against high-level US officials involved in these torture programs, including Haspel. She would be a sitting duck for international human rights lawyers. The evidence is there.

We have a 600-page executive summary of the Senate Foreign Intelligence Committee's report on the extent of torture and extraordinary disappearances by the CIA. This is an official US government document. She was not personally named in there, but she was a high-level official who was personally involved. She certainly supervised the operation in Thailand. Under international law, there is a command responsibility. She is denying that she herself physically tortured anyone, but she supervised others doing the torturing. Under international criminal law, she is accountable for the criminal behavior she oversaw.

DB: She admitted at the hearing that she had the tapes of these torture sessions but she considered it prudent to destroy them.

FB: The Senate Committee had just announced their investigation so her boss, Jose Rodriguez, ordered her to destroy the tapes. Arguably, this would be obstruction of justice. [We now have] a notorious international criminal heading up the CIA. In my opinion, any senator who vote[d] to confirm her [became] an accessory after the fact to her crimes: torture, war crimes, crimes against humanity, and violations of the Geneva Conventions and the Convention against Torture.

DB: This is a very difficult time. We are all worried about our friend Ray McGovern, a former CIA analyst who was brutalized while protesting the Haspel nomination. Obviously, they are very serious about shutting up anyone protesting

torture.

FB: Ray arguably has the defense of prevention of crimes under international law. I am not saying it would be a winner, because it is always tough going into a federal court and defending anyone protesting and resisting criminal behavior by the United States government.

Dennis J. Bernstein is a host of “Flashpoints” on the Pacifica radio network and the author of *Special Ed: Voices from a Hidden Classroom*. You can access the audio archives at www.flashpoints.net. You can get in touch with the author at dbernstein@igc.org.

‘Worthy’ and ‘Unworthy’ Victims

As the Friday demonstrations inside the border fence in Gaza picked up again today for the fourth week, Israeli security forces have already killed four more Palestinians, who in the eyes of the U.S. are “unworthy” victims, argues David William Pear.

By David William Pear



In their book Manufacturing Consent Edward Herman and Noam Chomsky distinguished between two kinds of victims: the worthy victims and the unworthy victims. The “worthy victims” are the victims (real and alleged) of leaders on the U.S. enemies list, such as Bashar al-Assad. The “unworthy victims” are those of the U.S. and its client states, such as Israel and Saudi Arabia.

The U.S.-led alliance calling itself the “international community” is outraged when there are worthy victims. For example, U.S. Ambassador to the U.N. Nikki Haley holds up pictures in the Security Council of dead Syrian babies for the world to see. Worthy victims are granted human rights, and Assad deserves our outrage.

Unworthy victims for example are the 50,000 Yemeni children who have died of starvation because of Saudi Arabia’s blockade of Yemen, including food, water and medicine.

Unworthy victims are blamed for being victims and ignored by the international community and the mainstream media. Unworthy victims have no human rights. Yemen is a humanitarian disaster that is ignored. Saudi Arabia is a friend of the U.S. and Washington is helping the Saudi war effort with equipment and logistical

support.

So there is no outrage from the U.S. when Saudi Arabia Crown Prince and defense minister Mohammad bin Salman drops U.S.- manufactured bombs from U.S.-made planes, which indiscriminately slaughter Yemeni men, women and children below. MBS is instead the darling of the neocons. Columnist Thomas Friedman praises him as if being an absolute monarch is the thing to be in the 21st century. Robert Parry, the late founder and editor of this site, described Friedman and the neocons as “disconnected from reality.”

Protesting for a Right to Return

For weeks now, tens of thousands of Gazans have been legally protesting for their right to return to their homes in Palestine. There is no outrage in the U.S. when Netanyahu and his regime orders Israeli soldiers to massacre them. Hundreds of Palestinians were gunned down on Land Day and during demonstrations for the Right to Return. Four more have been killed today and hundreds more wounded in the fourth week of the protests. But Netanyahu has every reason to believe that the U.S. will protect him, as it has many times in the past. Nikki Haley is not going to hold up pictures of dead Palestinian children.

Instead she will shield Netanyahu from criticism, and accuse his critics of being anti-Semitic. Netanyahu’s victims are unworthy victims. And in what appears to be a major shift in U.S. foreign policy towards Israel and the Palestinians, the latest US State Department annual human rights report released today no longer labels the occupied Palestinian West Bank, including East Jerusalem, and Gaza, as “Occupied Territories,” the accurate legal term, as it had previously, reports the Institute for Middle East Understanding.

The Palestinians that have been shot dead in Gaza were inside the Israeli enclosure that has been their prison for over a decade. They were on Palestinian land. They presented no danger to the Israeli soldiers that were on the Israeli side of the barricade. The soldiers had telescopic sights on their rifles and fired from a distance of over 100 yards away. Hundreds of Palestinians were shot with illegal fragmentation bullets that have been banned by the 1899 Hague Declaration.

Netanyahu’s orders were illegal and the soldiers followed illegal orders. The Nuremberg Trials declared that “just following orders” is not a defense against war crimes.

Two million Palestinian refugees have been trapped in Gaza for over a decade. Gaza has become an inhumane, open-air prison. Even former Tory Prime Minister David Cameron called it that.

The people in Gaza have been cut off from the outside world. Israel controls everything and anything that goes in or out. What goes in is barely enough food for Gazans to survive. Netanyahu joked once he put Gaza on a diet. The sick, wounded and dying are not allowed to get out of Gaza to go to a hospital for medical treatment without Israeli permission. Netanyahu rarely gives that permission. Netanyahu's victims are unworthy victims and are blamed for being victims.

Total Blockade—an Act of War

In 2006 Israel tightened the noose around Gaza by imposing a total blockade by air, land and sea. The supposed crime for which Israel imposed an illegal collective punishment on Gazans is that they democratically elected the wrong government, against Israel's wishes. Instead of electing the Israeli controlled Palestinian National Liberation Movement, known as Fatah, Gazans elected the Islamic Resistance Movement, known as Hamas.

Israel used to consider Fatah a terrorist organization, but now it does not because they are collaborators. Instead Israel, which secretly backed the formation of Hamas in a divide and conquer strategy, calls Hamas terrorists. Netanyahu then falsely brands the demonstrators terrorists.

Israel has killed and wounded journalists reporting from Gaza. They are unworthy victims too. So there's no outcry from the mainstream media. Instead it repeatedly accuses Russia's president, Vladimir Putin, of (allegedly) killing journalists. Then there is a huge outcry because they are worthy victims.

The U.S. has imposed economic sanctions on Russia. Israel gets billions of dollars in U.S. financial aid every year, regardless of what Netanyahu does.

Putin is accused of invading Crimea when Russian troops were already legally deployed there and Crimeans voted in a referendum to rejoin their historical attachment to Russia. Putin is vilified for (allegedly) meddling in U.S. politics. Netanyahu gets standing ovations from joint sessions of Congress.

The Israeli prime minister has been illegally occupying the West Bank of Palestine, and he is building more illegal Israeli colonies there, euphemistically called settlements. Meanwhile, Netanyahu thumbs his nose at international law. The U.S. has vetoed 43 U.N. Security Council resolutions against Israel. Haley fumes that Putin is an obstructionist for vetoing a U.N. resolution condemning Assad for an alleged chemical weapons attack, even before any investigation was begun. The U.S. tried to block an investigation by the Organization for the Prohibition of Chemical Weapons (OPCW) of the alleged chemical weapon attack site in Syria. The OPCW says it will investigate anyway.

The Supreme Law of the Land

President Trump's order to attack Syria based on an alleged use of chemical weapons is a violation of international law. The U.S. is not the international policeman, judge and executioner. Article 2, section 4 of the U.N. Charter states:

"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."

The only legal uses of force according to the U.N. Charter are for self-defense and when force is authorized by the U.N. Security Council. Violations of the U.N. Charter are also a violation of the U.S. Constitution under Article VI which states:

"...all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land."

The U.N. Charter is a treaty that was signed by the President of the United States and ratified by the U.S. Senate. Under the U.S. Constitution the U.N. Charter is the "supreme law of the land" in the U.S., as well as internationally.

Under the Universal Declaration of Human Rights everyone has a presumption of innocence until proven guilty before a court of law. The U.S. does not have the right to declare a sentence before there is a trial and verdict. Article 66 of the 1998 Rome Statute of the International Criminal Court, which the U.S. has refused to join, entitles those accused of crimes the "presumption of innocence" and further says:

"The onus is on the Prosecutor to prove the guilt of the accused. In order to convict the accused, the Court must be convinced of the guilt of the accused beyond reasonable doubt."

We do not even know if a crime has been committed in Duma. There is considerable reason for doubt. Investigative journalist Seymour Hersh and others (Robert Fisk, Ron Paul, Jeffrey Sachs, former U.K. ambassador to Syria Peter Ford, Fox News Tucker Carlson, Larry Wilkerson, etc.) have raised serious doubts about the alleged chemical weapons attack by Assad.

The unproven allegation of chemical weapons comes from U.S. backed terrorists that have been waging a war against the Syrian people for over seven years. The terrorists have been reported to have chemical weapons in their arsenal. If

chemical weapons were used in any of the attacks they could have come from the terrorists themselves.

It is well known that the U.S. has been behind the war against Assad, and that the U.S. admittedly is backing terrorists in a U.S. regime change project. The dead and wounded of U.S. aggression during the 21st century number in the millions of people in over half a dozen countries. The mainstream media ignores the magnitude of the wars of U.S. aggression, and the U.S. people mainly go about their day-to-day activities as if nothing is happening.

Since the U.S. is allegedly a democracy and has freedom of the press, then U.S. citizens and the U.S. mainstream media are responsible for the actions of their government. Ignorance of the law about what their government is doing is not an excuse.

Palestinian Rights

Under international law the Palestinians have a right to resist the illegal military occupation of Palestine that has been going on since 1967. But Israel does not have the right to impose collective punishment, deny refugees the right to return home, to confiscate land, impose indefinite detention, torture prisoners and restrict the free movement of civilians; nor to confine them in inhumane living conditions in Gaza. Israel has systematically destroyed their homes and civilian infrastructure.

Israel routinely shoots to kill anyone or anything entering a "no man's land" buffer zone inside Gaza. It even has remote controlled machine guns and other indiscriminant instruments of death within the buffer zone. When tens of thousands of unarmed demonstrators approached the buffer zone, the Israeli military snipers were prepared to massacre them. And Netanyahu says Israel has the most moral army in the world.

The demonstrations in commemoration of Land Day and protests for the Right to Return have been announced in advance, including today's. The Israeli human rights organization *B'Tselem* on April 3 called on Israeli soldiers to refuse illegal orders to shoot unarmed civilians saying:

"The use of live ammunition against unarmed persons who pose no danger to anyone is unlawful. It is even more blatantly unlawful in the case of soldiers firing from a great distance at demonstrators located on the other side of the fence that separates Israel from the Gaza Strip. In addition, it is impermissible to order soldiers to fire live ammunition at individuals for approaching the fence, damaging it, or attempting to cross it."

Under international law commanders giving the orders to shoot unarmed civilians and individual soldiers who do so could be charged with wars crimes by the International Criminal Court. That is not likely to happen anytime soon because the U.S. protects Israel and allows Netanyahu to literally get away with murder. Netanyahu's victims are unworthy.

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After Gaza Massacre, Israeli Leaders Should Be Prosecuted for War Crimes

After its soldiers conducted a massacre against unarmed protesters in Gaza, Israeli leaders should be prosecuted by the International Criminal Court, argues Marjorie Cohn.

By Marjorie Cohn



On March 30, Israel Defense Forces (IDF) soldiers shot 773 unarmed Palestinian protesters in Gaza, killing 17 and wounding 1,400. Twenty remain in critical condition. The protesters were marching to demand the internationally mandated [right of return](#) of refugees to their cities and villages in what now constitutes Israel.

The Israeli leaders who ordered the massacre were in clear violation of international law. They should be prosecuted for war crimes.

Premeditated Force Against Peaceful Protestors

The use of deadly force against the peaceful protesters was premeditated. The IDF deployed 100 snipers to the border fence between Gaza and Israel, where 30,000 to 40,000 Palestinians had gathered for the Great March of Return. In a

damning tweet, later deleted, the IDF wrote, "Nothing was carried out uncontrolled; everything was accurate and measured, and we know where every bullet landed."

Jihad al-Juaidi, director of the ICU at the al-Shifa Hospital in Gaza, told Al Jazeera that all of the injured people who came to the hospital were shot in the head, pelvic joints or knee joints. "This shows that Israeli forces were shooting-to-kill, or to cause disabilities," al-Juaidi stated.

B'Tselem, a Jerusalem-based human rights organization, characterized the military orders as "shoot-to-kill unarmed Palestinians taking part in these demonstrations."

"Israeli soldiers were not merely using excessive force, but were apparently acting on orders that all but ensured a bloody military response to the Palestinian demonstrations," Eric Goldstein, deputy director of Human Rights Watch's (HRW) Middle East and Africa division, stated.

Senior IDF officers told Haaretz before the protest that a large number of casualties was "a price we would be willing to pay to prevent a breach" of the fence at the border.

Israeli leaders fostered the false narrative that Hamas was sponsoring the protest. Jason Greenblatt, US envoy to Israeli-Palestinian negotiations, followed suit, tweeting, "Hamas is encouraging a hostile march on the Israel-Gaza border" and accused Hamas of "inciting violence against Israel."

But the demonstration was actually organized by several Palestinian civil society organizations. "No Palestinian faction, organization or group can claim this march as its own. Hamas was simply riding the wave," Jamil Khader wrote on Mondoweiss. Palestinian flags, not factional ones, were visible.

Conflating civilians with terrorists and framing the planned response as protection against a security risk, Israeli authorities referred to Gaza as a "combat zone."

Lethal Force Legal Only in Imminent Threat to Life

It is illegal to shoot unarmed civilians under international humanitarian law. Some protesters

threw rocks and burned tires near the border fence. But HRW found "no evidence of any protester using firearms or any IDF claim of threatened firearm use at the demonstrations." No Israeli soldiers were killed and "the army did not report any injuries to soldiers."

“Even if a Palestinian was throwing a stone, the chances that under these conditions such an act could cause an imminent threat to life – the only situation that would justify the use of lethal force under international law – are infinitesimal,” Yousef Munayyer, executive director of the US Campaign for Palestinian Rights, wrote on HuffPost. “Indeed, even if Palestinians were trying to climb the fence, that would not give Israel the right to use lethal force.”

Sarah Leah Whitson, Middle East and North Africa director of HRW, concurred, stating, “Israeli allegations of violence by some protesters do not change the fact that using lethal force is banned by international law except to meet an imminent threat to life.”

Indeed, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement specifies, “intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

“Senior Israeli leaders who unlawfully called for the use of live ammunition against Palestinian demonstrators who posed no imminent threat to life bear responsibility” for the deaths and injuries, HRW asserted in a statement. That includes Israel’s prime minister, defense minister and chief of staff.

B’Tselem, which has called for Israeli soldiers to disobey patently illegal orders, described the legal duty to disobey unlawful orders: “It is also a criminal offense to obey patently illegal orders. Therefore, as long as soldiers in the field continue to receive orders to use live fire against unarmed civilians, they are duty-bound to refuse to comply.”

Israeli Leaders Should be Prosecuted by the ICC

Israeli leaders responsible for the deaths and injuries on March 30 should be prosecuted in the International Criminal Court (ICC).

Under the Fourth Geneva Convention, an occupying power has a legal duty to protect the occupied. Grave breaches of the convention constitute war crimes. They include willful killing; willfully causing great suffering or serious injury; intentionally directing attacks against the civilian population; and intentionally launching attacks with knowledge they will cause incidental loss of life or injury to civilians. The IDF committed all of these grave breaches on March 30.

Furthermore, under international humanitarian law, the IDF failed to comply with the principles of distinction and proportionality. *Distinction* requires parties to a conflict to direct their attacks only against people taking part in the hostilities. *Proportionality* prohibits an attack if the damage to the civilian population will be greater than the military advantage anticipated from the

attack. The IDF violated both of those principles on March 30.



An independent commission of inquiry convened by the UN Human Rights Council to investigate Israel's 2014 massacre in Gaza documented the deaths of 2,251 Palestinians, which included 1,462 civilian deaths and the injuring of 11,231 Palestinians. Six civilians and 67 soldiers were killed and 1,600 injured on the Israeli side. The commission concluded

that Israel, and to a lesser extent, Palestinian armed groups, had likely committed violations of international humanitarian law and international human rights law, some constituting war crimes.

Currently, ICC prosecutor Fatou Bensouda is conducting a preliminary examination into the 2014 massacre. She should expand her inquiry to include the events of March 30, 2018.

U.S. Vetoes Call for Investigation

UN Secretary-General António Guterres and European Union diplomatic chief Federica Mogherini advocated independent investigations into the use of deadly force by the IDF at the border fence on March 30. But the day after the massacre, the United States vetoed a Security Council resolution that called for an "independent and transparent investigation" and affirmed the right of Palestinians to peaceful protest.

Avigdor Lieberman, Israel's defense minister, said the IDF soldiers "deserve a medal" for protecting the border. "As for a commission of inquiry – there won't be one," he declared on Israeli Army Radio.

Israeli Prime Minister Benjamin Netanyahu praised his troops for "guarding the country's borders" and permitting "Israeli citizens to celebrate the [Passover] holiday peacefully," adding, "Well done to our soldiers."

Rabbi Alissa Wise, deputy director of Jewish Voice for Peace, noted in a statement, "The Israeli military evidently believes that any time Palestinians assert their basic rights in any way, they will be considered violent, and met with deadly violence."

Meanwhile, the Palestinian protests are slated to last until May 15, the day

Palestinians commemorate the *Nakba*, or the “great catastrophe” of 1948-9, when Israel expelled 800,000 Palestinians from their lands to create Israel. Approximately 70 percent of the 1.3 million Gazans are refugees.

“I think the only way truly forward is to recognize that there is a root cause: 70 years of *Nakba*,” Wise said.

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